

KABC010051162024



**IN THE COURT OF THE I ADDITIONAL CITY CIVIL &
SESSIONS JUDGE (CCH – 02) AT BENGALURU**

PRESENT : **Sri. B.P. DEVAMANE, LL.M.,**
I Addl. City Civil & Sessions Judge,
Bengaluru City.

Dated this the 20th day of January 2026

O.S. No.1453 / 2024

PLAINTIFFS : **1. M/s. Srinivasa Trust,**
A Trust registered under the Indian Trust
Act, 1881,
having its Principal Office at 7/21, 1st
Cross, 9th Main, RMV Extension,
Bengaluru-560 080.

Rep. by its Trustee and Authorised
Signatory Sri.D.A.Srinivas.

2. Smt. Kalpaja Dalavoi,
Aged about 57 years,
Trustee of M/s.Srinivasa Trust,
No.87, Sai Keshav, Opposite Sai
Gardens, Seegahalli,
Bengaluru-560 067.

(By **Sri. Shravan Madhav K.P., Adv.**)

- VS -

DEFENDANTS : **1. D.A. Thejeshwari,**
Aged about 57 years,
W/o K.M. Srinivasa Murthy,

R/at No.5/25, 10th Main, 13th Cross,
Jayanagara, 1st Block,
BENGALURU – 560 066.

2. Smt. Ekta Kukreja,
Director of Anushka Constructions Pvt.
Ltd.,
D/o late Sri. Nanda Kumar Bashomal
Menda,
Aged about 48 years,
R/at Flat 21B, Kingfisher Towers,
Kasturba Road Cross,
BENGALURU – 560 001.

3. M/s. Anushka Construction Pvt. Ltd.,
A Company incorporated under the
Companies Act, 1956
having its registered office at No.100/1,
City Center, Opp. Town Hall, J.C. Road,
BENGALURU – 560 002.
Rep. by its Director,
Sri. Avnash Amarlal.

(D1 by Sri. B.K. Narendra Babu;
D2 & D3 by Sri. P.S. Gurumurthy,
Advocates.)

* * * * *

ORDER ON MEMO

Advocate for defendant No.1 filed this memo contending that the present advocates appearing for defendant Nos.2 & 3 were earlier advocates for defendant No.1 and actively participated at the time of execution of sale deed by defendant No.1 in favor of defendant No.3. They are personally aware about entire transaction and directly involved in every stage of execution of sale deed. They are privy to the confidential communications, instructions & information received in the course of advocate-client relationship.

Hence, they are disqualified from appearing against defendant No.1 or cross-examining her as per the Bar Council of India Rules framed under The Advocates Act, 1961.

2. As per Rule 9, Chapter II of Part IV of Bar Council of India Rules, an advocate shall not act or plead in any matter in which he has reason to believe that he will be a witness, nor shall he continue to appear in a matter where his personal knowledge of facts is in issue. Defendant Nos.2 & 3 have personal knowledge of the transaction. As per Rule 15, Chapter II, Part VI mandates that an advocate shall not misuse or disclose the confidential communications made by his client. Permitting the said advocates to cross-examine defendant No.1 would involve the use, misuse or attempted explanation of confidential information. Rule 33 of Chapter II, Part VI obligates an advocate to uphold the dignity of profession and prohibits conduct which is inconsistent with professional ethics. Acting against a former client in respect of the same transaction violates the fiduciary duties owed by an advocate to his client.

3. Defendant Nos.2 & 3 have earlier taken contention that a co-defendant cannot be cross-examined. Hence, they are estopped from resiling therefrom and seeking to cross-examine defendant No.1. Hence, prayed to allow the memo and not permit the advocate appearing for defendant Nos.2 & 3 to cross-examine defendant No.1 / DW2.

4. Advocate for defendant Nos.2 & 3 orally opposed the memo.

5. Heard arguments. Perused the material on record.

6. Now the points that arise for my consideration are : -

1. Whether the memo filed by advocate for defendant No.1 deserves to be allowed ?
2. What Order ?

7. My answer to the above points are as under : -

Point No.1 : In the Negative

**Point No.2 : As per the final order,
for the following : -**

REASONS

8. **POINT Nos.1 & 2** : Initially, plaintiffs filed this suit against defendant No.1 Smt. D.A. Thejaswari for specific performance of agreement of sale dated 13.03.2023 stating that defendant No.1 agreed to sell the suit schedule property for consideration of Rs.80.00 crore and received advance of Rs.70.00 crore. Defendant No.1 being a trustee of the plaintiff No.1 Trust and sister of Managing Trustee of plaintiff No.1 Trust and plaintiff No.2, has contended that she has availed loan of Rs.70.00 crore from the plaintiff No.1 Trust and towards security of the same she has executed agreement of sale dated 13.03.2023.

9. Defendant No. 1 in her written statement contended that she had executed registered agreement of sale dated 07.11.2022 in favor of defendant No.3 and also she executed registered supplementary agreement based on which she executed registered sale deed in favor of defendant No.3 on 13.03.2024 and delivered possession of the suit schedule property. It is the defence of defendant Nos.2 & 3 that in view of registered agreement of sale dated

07.11.2022 and supplementary agreement, they have purchased the suit schedule property from defendant No.1 under the registered sale deed.

10. Defendant No.1 examined as DW2 and specially in her cross-examination by advocate for plaintiffs, went on admitting all the suggestions made by advocate for plaintiffs and stated that she had raised loan from the Director of defendant No.3 Company. DW2 further stated that she received amount from the Director of Defendant No.3 Company and executed Ex.D5 agreement of sale towards security of the said loan and it was not an agreement to sell the suit schedule property. Under these circumstances, the entire cross-examination of DW2 is against the defence of defendant Nos.2 & 3. Hence, it is necessary for defendant Nos.2 & 3 to cross-examine DW2.

11. This is a direction matter. The Hon'ble High Court has directed to dispose this matter within time limit. Defendant No.1 kept quiet all along and in her cross-examination by advocate for plaintiffs, went on giving admissions as sought by plaintiffs and when she is asked to tender for cross-examination by advocate for defendant Nos.2 & 3, she is stating that it is violation of Bar Council Rules and misuse of disclosure of confidential communication etc.

12. Looking to the facts & circumstances of the case and specially looking to the cross-examination of DW2 by advocate for plaintiffs, to discover the truth and to decide rights of the parties effectively, the Court is of the considered opinion that cross-examination of DW2 by advocate for defendant Nos.2 & 3 is necessary. Accordingly, **Point No.1** is answered in the **Negative**.

13. **POINT No.2** : In view of the above, I proceed to pass the following : -

ORDER

Memo filed by the advocate for defendant No.1 is rejected.

Defendant No.1 / DW2 is directed to tender for cross-examination by advocate for defendant Nos.2 & 3, failing which evidence of DW2 against defendant Nos.2 & 3 stands discarded.

*Dictated to Senior Sheristedar (now under instructions to continue the work as Stenographer Grade I) directly on computer, computerized by him, revised, corrected by me and then pronounced in the open Court on this the **20th day of January 2026.***

(B.P. DEVAMANE)
I Addl. City Civil And
Sessions Judge (CCH-02),
Bengaluru City.