

KACM510001832022



**IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC
AT N.R.PURA, ITINERATE AT KOPPA**

Present: Smt.B.S.Rayannawar, B.A., L.L.B,
Senior Civil Judge & JMFC.,
N.R.Pura, Itinerate at Koppa.

Dated this the 06th day of January 2024

OS No.09/2022

BETWEEN:

Dr.Nataraj R. Rao,

...Plaintiff.

V/s.

AND:

Sri.Meega Chandrashekar

...Defendant.

IA.No.X

BETWEEN:

Sri.Meega Chandrashekar

...Applicant/Defendant

V/s.

AND:

Dr.Nataraj Rao,

...Opponent/Plaintiff.



ORDERS ON IA NO.X

The applicant/ defendant filed IA No.X under Order 14 Rule 5 R/w Section 151 of CPC to pass an order to raise additional issues as proposed bellow in view of the defence taken by the defendant/ applicant in I.A. in his written statement and allow the application.

Proposed Additional Issues

1. Whether the defendant proves that the suit agreement is invalidated on account of undue influence and misrepresentation practiced by the plaintiff on the defendant and want of valid consideration and free consent?
2. Whether the defendant proves that the time is an essence of the contract?
3. Whether the defendant proves that the suit agreement is unenforceable under law for want of registration?
4. Whether the defendant proves that the suit agreement is not a concluded agreement but it is incomplete and inchoate agreement?
5. Whether the suit is maintainable in view of the arbitration clause adumbrated in the suit agreement?
6. Whether the defendant proves that the suit agreement is concocted, fabricated and forged document?
7. Whether the plaintiff is entitled for specific performance of the suit agreement?

2. IA No.X application is supported with the memorandum of facts of the applicant/defendant stating that,



in para No.25 and 26 of the written-statement it is explicitly averred by the defendant that there was absolutely no need or necessity for the defendant to sell the suit schedule property and an account of persistence made by the plaintiff and his associates who later signed as attesting witnesses on the father of the defendant yielded to the pressure tactics applied by the plaintiff and quoted the market price Rs.35.00 lakh per acre and the plaintiff who had frankly agreed for the said price. The sum and substance of the stand taken by the defendant is that because of acquaintance of the plaintiff and attesting witnesses the defendant father yielded to the pressure. That means to say the plaintiff has applied undue influence and misrepresentation in making the suit agreement and even though it was orally agreed by the plaintiff to purchase the suit schedule property for sale consideration of Rs.35.00 lakh per acre the suit agreement was written differently. Therefore the suit agreement suffers from adequate consideration and also free consent.



3. As per the recitals of the suit agreement the time is stated as to within what time the agreement is to be performed and such being case time is an essence of contract. Admittedly the suit agreement is unregistered agreement and the plaintiff claims to have been in possession of the suit schedule property and such being case as per the amended provision of section -17-A of the registration Act it calls for compulsory registration. Registration cannot be dispensed with and such being case suit is not maintainable for want of registration. The plaintiff has averred in plaint that there is an arbitration clause in the agreement and market price will have to be ascertained and decided only after panchayathdars visits and decides. Unless the arbitration clause is exhausted suit is not maintainable. In para -27 of the written-statement it is specifically averred by the defendant that his signature has been forged and therefore the suit agreement is void, illegal and ab-initio and salient features of valid contract does not exists and it is averred that suit agreement is forged, fabricated



and fraudulent document and in as much as not binding on the defendant. In the circumstances the proposed additional issues are necessary for adjudication of the above case for just disposal. If the additional issues are not framed the defendant will be exposed to adverse situation and his interest will be prejudiced. Hence prays to allow I.A.No.X.

4. I.A. opposed by plaintiff by filing written objections contending that, The I.A. of the defendant is not maintainable either under law or upon facts and hence, the same is required to be dismissed as not maintainable. The defendant has sought for an order to raise additional issues as proposed in view of the defense taken by the defendant/applicant in I.A. in his written statement. It is submitted that, the defendant has sought for raise the additional issued which are proposed as under:

- 1) Whether the defendant proves that the suit agreement is invalidated on account of undue influence and misrepresentation practiced by the plaintiff on the defendant and want of valid consideration and free consent?
- 2) Whether the defendant proves that the time is an essence of



the contract?

3) Whether the defendant proves that the suit agreement is unenforceable under law for want of registration?

4) Whether the defendant proves that the suit agreement is not a concluded agreement but it is incomplete and inchoate agreement?

5) Whether the suit is maintainable in view of the arbitration clause adumbrated in the suit agreement?

6) Whether the defendant proves that suit agreement is concocted, fabricated and a forged document?

7) Whether the plaintiff is entitled for specific relief of the suit agreement?

5. In support of the the I.A. the counsel for the defendant has submitted that, submitted that in para-25 & 26 of the written statement, it is explicitly averred by the defendant that, there was absolutely no need or necessity for the defendant to sell the suit schedule property and on account of persistence made by the plaintiff and his associates who later signed as attesting witnesses on the father of the defendant yielded to the pressure tactics applied by the plaintiff and quoted the market price as Rs.35.00 lakh per acre and the plaintiff who had frankly agreed for the said price. The sum and substance of the stand taken by the defendant is that because of acquaintance of the plaintiff and attesting



witnesses the defendant father yielded to the pressure. That means to say the plaintiff has applied undue influence and misrepresentation in making the suit agreement and even though it was orally agreed by the plaintiff to purchase the suit schedule property for sale consideration of Rs.35.00 lakh per acre the suit agreement was written differently. Therefore the suit agreement suffers from adequate consideration and also free consent. It is submitted that, the suit of the plaintiff is for specific performance of the contract and in support of the contentions taken by the plaintiff, the plaintiff has produced all relevant documents and also the original sale agreement that has been entered into between by the plaintiff and the defendant as parties to the said agreement. The defendant now is not at liberty to deny the execution of the said sale agreement under the alleged grounds of defense of undue influence, misrepresentation and also raise the question regarding the adequate consideration and free consent. When once the defendant agrees that, there is execution of the



agreement made by him in favour of the plaintiff with respect to sale of the suit schedule property, then he cannot question of the said execution of the agreement at this stage by taking the untenable plea and defense. The plaintiff has failed to answer the Legal Notice which is a mandatory notice issued under due process of law before filing of the suit. Hence, at this stage i.e, after institution of suit, the defendant is not at liberty to raise the question regarding the very execution of the sale agreement. There is no provision under law to frame such Issues which is with regard to proved facts. The very act of the defendant so far clearly shows that he is having the very knowledge of all the contents of the sale agreement and his silence regarding the same goes to show that he has agreed for the same. If instead he had any grievances, then the defendant would have lodged complaint before the proper authorities such as police and also would have initiated for rescinding/cancellation of the sale agreement. But, no such initiations have been made by the defendant. Further, he is in



receipt of the advance amount which is paid to him by the plaintiff and he has not made any efforts to event return it to the plaintiff and he kept it with him in order to enrich himself by illegal means. Hence, the intentions of the defendant is very clear that, he is making efforts to drag on the suit matter and thereby to caused unwanted delay and waste of the precious time of both the Court and the plaintiff. Hence, under the circumstances, the I.A. of the defendant is liable to be rejected in limine.

6. Further the counsel for the defendant in his memorandum of facts submitted that, as per the recitals of the suit agreement the time is stated as to within what time the agreement is to be performed and such being case time is an essence of the contract. It is submitted that, it is very important to consider and note that, the defendant during the earlier dates has not taken any lawful action to rescind/cancel the agreement and such being the circumstances, when the plaintiff has initiated legal proceedings, the only matter of



dispute is whether the plaintiff is entitled to the suit relief and for the same, the Court has already framed the relevant issues based upon the question of law and facts. Hence, under the present circumstances, the essence of Time period is not a relevant question and the defendant is under lawful obligations to act in accordance to the terms and conditions of the said sale agreement which is enforceable under. Without canceling the sale agreement, the defendant is not at liberty to raise the question regarding the time period of the sale agreement and hence, the I.A. of the defendant is liable to be dismissed. Further, the counsel for the defendant has submitted that admittedly the suit agreement is unregistered agreement and the plaintiff claims to have been in possession of the suit schedule property and such being case as per the amended provisions of section-17-A of the registration Act it calls for compulsory registration. Registration cannot be dispensed with and such being case suit is not maintainable for want of registration. It is submitted that, before filing of the



suit, the plaintiff has approached the District Registrar and submitted the sale agreement before him and got it impounded and under the said circumstances, the said agreement becomes a considerable document under the process of adjudication as if it is a registered document enforceable under law. Hence, raising of any issues regarding the registration of the document does not arise at all. Hence, the I.A. of the defendant is liable to be dismissed in limine.

7. Further, the counsel for the defendant has submitted that, the plaintiff has averred in the plaint that there is an arbitration clause in the agreement and market price will have to be ascertained and decided only after panchayathdars visits and decides. Unless the arbitration clause is exhausted suit is not maintainable. It is submitted that, the defendant by raising the matter of arbitration is trying to confuse the Court. The defendant very act of keeping silent until initiation of this suit by the plaintiff against him seeking for specific performance of the agreement of sale itself



shows that, the defendant is very much aware of the contents of the agreement and despite of the same he kept quite only for the reason that he is having a malafide intention to cheat and defraud the plaintiff and enrich himself at the illegal means of the plaintiff. If there is any such clause of Arbitration, then he would have referred the matter before the Arbitrator and got resolved the same. The defendant has not preferred for the same and now he cannot take the advantage of his fault and shift the burden upon the shoulders of the plaintiff. Hence, framing of any issues which is not at all relevant at this stage when the plaintiff has approached the last resort i.e., the Court to safe guard his interest seeking for the proper remedy, the raising of the issue regarding the Arbitration clause which will deny the justice to the plaintiff is not maintainable and hence the I.A. of the defendant is liable to be dismissed in limine. Further, the counsel for the defendant has also submitted that, in the circumstances the proposed additional issues are necessary for adjudication of the above case for just



disposal. If the additional Issues are not framed the defendant will be exposed to adverse situation and his interest will be prejudiced. It is submitted that, the mere allegations of the defendant without any supportive documents such as police complaint or private complaint against the plaintiff regarding the forged, fabricated and fraudulent document, the said allegations could not be blindly be believed and hence under the circumstances, framing of any issues at the instance of the defendant is not allowed and maintainable under law. Hence prays to dismiss the application of the defendant with heavy costs.

8. Upon hearing arguments and on perusal of materials placed on record the following points that would arises for my consideration.

POINTS

1. Whether the applicant/plaintiff has made out grounds to allow the application?
2. What order ?



9. My findings to the above points are as under.

Point No.1: In the Affirmative.

Point No.2: As per order
for the following;

REASONS

10. **Point No.1:** The plaintiff filed the suit against the defendants for the relief of specific performance of contract. Now the case is posted for further cross of PW.1 at this stage applicant/defendant filed present application to frame additional issues.

11. This is a suit filed by the defendant for specific performance of contract, on the basis of pleadings this court already framed six issues. But defendant filed present application to frame additional issues shown in the application. This is suit for specific performance of contract, and the burden is on the plaintiff to prove execution of agreement of sale, and ready and willingness to perform his part of contract. But in this the defendants have taken contention in their written-statement that there was absolutely



no need or necessity for the defendant to sell the suit schedule property. That because of acquaintance of the plaintiff and attesting witnesses by the defendant yielded to the pressure. The plaintiff has applied undue influence and misrepresentation in making the suit agreement and even though it was orally agreed by the plaintiff to purchase the suit schedule property for sale consideration of Rs.35.00 lakh per acre the suit agreement was written differently. Therefore the suit agreement suffers from adequate consideration and also free consent. Admittedly no issue framed on the point of undue influence and misrepresentation by this court.

12. Further the defendant prays to frame on the point that as per the recitals of the suit agreement the time is stated as to within what time the agreement is to be performed and such being case time is an essence of contract. Admittedly the suit agreement is unregistered agreement and the plaintiff claims to have been in possession of the suit schedule property and such being case as per the amended provision of section



-17-A of the registration Act it calls for compulsory registration. Registration cannot be dispensed with and such being case suit is not maintainable for want of registration.

13. Usually the time limit for registration of sale deed mentioned in agreement of sale. Normally, in case of immovable property there is no presumption that time is the essence of contract even though the time is stipulated in the agreement. Section 55 of Indian Contract Act, 1872 deals with the effect of failure to perform at a fixed time, in contract in which time is essential. In contract relating to sale of immovable property if time is specified for payment of the sale price but not in regard to the execution of the sale deed, time will become the essence only with reference to payment of sale price but not in regard to execution of the sale deed. Normally in regard to contract relating to sale of immovable properties, time is not considered to be the essence of the contract unless such an intention can be gathered either from the express terms of the contract or impliedly from the intention of the



parties as expressed by terms of the contract. Hence it is not necessary to frame issue on the point that the time is essence of contract. with respect registration of document, that the agreement is unregistered agreement the defendant can raise objection at the time of marking of document.

14. Further it is the contention of defendants that, the plaintiff has averred in plaint that there is an arbitration clause in the agreement and market price will have to be ascertained and decided only after panchayathdars visits and decides. Unless the arbitration clause is exhausted suit is not maintainable. In the circumstances the proposed additional issues are necessary for adjudication of the above case for just disposal. But as per condition of agreement plaintiff permitted to file the suit if the other party fails to comply the condition of agreement. There is no any specific mention is made in the sale agreement regarding the resolution of the dispute though arbitration. Learned counsel for plaintiff read over the section 7 of the Arbitration and Conciliation Act, there is no any



specific written agreement regarding Arbitration of the dispute in future or reference of the matter to any Arbitration which may arise in future. Arbitration and conciliation Act as per section 7 Arbitration agreement-(1) In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. Counsel submits that the defendant is very well aware of the execution of the sale agreement and before filing of this suit, he has been intimated and provided with an opportunity to come forward and execute the sale agreement by issue of a prior Legal Notice through the Advocate for which he has not complied with and never made any response. Hence in the present case without touching to the merits of the case, as the defendant not complied the condition of the agreement the plaintiff filed present suit after issuing legal notice and complying legal aspect under the law. Hence there is no need to frame



additional issue. On going through the written-statement it appears that, the defendant has taken contention that, the agreement is illegal and without free consent of the defendant. And Hence if the first issue framed no hardship will be caused to the plaintiff. The defendant filed present application in which prays to frame Additional issue no.6 that whether the plaintiff is entitled for specific performance of suit agreement. Hence this court also wants to add the sentence 'or alternative relief' hence if this additional issue no 6 is framed no hardship caused to plaintiff. It is the settled principles of law that, the court is required to frame issues regarding the disputed facts and regarding the question of law. Hence at this stage the framing of additional issue is necessary to adjudicate the matter in dispute.

15. The provision of law order 14 rule 5 clearly empowers this court to amend the issues or to frame additional issues at any stage of the suit before passing the decree. Therefore, this court comes to the conclusion that, the



applicant/defendant has made out sufficient grounds to frame additional issues regarding execution of agreement. Hence, **point No.1 is answered in the affirmative.**

16. **Point No.2:** In view of the discussions made above this court proceeds to pass the following:

ORDER

I.A.No.X filed by the defendant under Order XIV Rule 5 R/w Section 151 of CPC is hereby partly allowed.

(Dictated to the Stenographer directly on the computer, then corrected and pronounced by me in the open court on this date the 06th day of January, 2024)

Sd/-

(B.S.Rayannawar)

Senior Civil Judge and JMFC.,
N.R.Pura. Itinerate at Koppa.