

IN THE COURT OF THE SENIOR CIVIL JUDGE AND JMFC AT SEDAM

**PRESENT:**

SRI.SAGAR GURUGOUDA PATIL

Senior Civil Judge & JMFC., Sedam <sup>B.A., LL.B(Spl).</sup>

**DATED THIS THE 10<sup>th</sup> DAY OF JULY-2023.**

**ORIGINAL SUIT No.49/2022.**

**PLAINTIFF:**

Vijaykumar

(Sri.V.J.M.Advocate)

**( V E R S U S )**

**DEFENDANTS:**

Poornima and another

(Deft.1 by Sri.S.S.A. Advocate)  
(Advocate for deft.2 by Sri.TVP.)

**I.A.No.VI**

Vijaykumar

Applicant/Plaintiff

//Versus//

Poornima & another

Opponents/Defts

**Orders on IA No.VI U/O 14 Rule 5 of CPC**

The plaintiff has filed this application U/O 14 Rule 5 of CPC and sought to delete issues 1 to 3 and 5.

**2.** The plaintiff has sworn to an affidavit in support of IA and stated that the defendant No.1 has filed the written statement and admitted the execution of agreement of sale dated 29.5.2014 and receipt of sale consideration amount and also the execution of supplementary deed dated 2.4.2020 and receipt of Rs.5,00,000/- in the month of 2020. Therefore issues 1 to 3 and 5 does not arise. Hence prays to allow this application.

**3.** The defendant No.2 has filed objections to IA and stated that he has already filed objections to IA filed by the plaintiff U/O 18 Rule 1 and 2 of CPC and prays to consider the said objections. The defendant No.2 has contended that the plaintiff and defendant No.1 have filed the collusive suit to extract amount from the defendant No.2. He has further contended that he did not enter into agreement of sale dated 28.12.2020. He had not signed the said document. The defendant no.1 executed another registered agreement of sale dated 20.1.2021 in favour of the defendant No.2. The defendant No.1 and her husband created agreement of sale dated 28.12.2020 by forging the signature of this defendant. The defendant No.1 or her husband never disclosed about the alleged agreement of sale executed in favour of the plaintiff and also the supplementary agreement of sale dated 29.5.2014. The plaintiff is required to prove the agreement of sale. Hence prays to dismiss the IA.

**4.** Perused the records. Heard arguments.

5. The following points that arise for my consideration:
1. Whether the plaintiff has made out a case to delete issue No.1 to 3 and 5?
  2. What Order?
6. My findings to the above points are as under:  
Point No.1: Partly in the Affirmative.  
Point No.2: As per final order, for the following:

### **REASONS**

7. **Point No.1:** The plaintiff has filed this suit for the relief of specific performance of contract of sale alleging that the defendant No.1 being the owner of the suit property entered into sale transaction with the plaintiff and executed unregistered agreement of sale dated 29.5.2014 and supplementary agreement of sale dated 2.4.2020. He has further alleged that during subsistence of the agreement of sale, the defendant No.1 sold the suit property to defendant No.2 on 1.7.2021.

8. After service of suit summons the defendant No.1 and 2 appeared through their counsels and filed separate written statements. The defendant No.1 in his written statement at para No.3 has stated that he signed some papers on 2.4.2020 without knowing its contents. On perusal of the entire written statement of the defendant No.1 no where has specifically admitted the execution of agreement of sale dated 29.5.2014 and supplementary agreement dated 2.4.2020. In para 3 of the plaint he has pleaded that he received Rs.5,00,000/- from the defendant No.1. But he has not pleaded when he received the said amount i.e., in the month of March 2020 or on some other day. Therefore the plaintiff is required to prove issues 1, 2 and 5.

**9.** The execution of the sale deed dated 1.7.2021 by defendant No.1 in favour of defendant No.2 is not in dispute. Therefore the said issue is not necessary and it has to be deleted. Hence I answer point No.1 partly in the Affirmative.

**10. Point No.2:** For the foregoing reasons, I proceed to pass the following:

**ORDER**

The application filed by the plaintiff U/O  
14 Rule 5 of CPC is hereby partly allowed.

Issue No.3 is hereby deleted.

(Dictated to the Stenographer directly on computer and corrected, signed and then pronounced by me, in the open Court on this the **10<sup>th</sup> day of July-2023**, at Sedam)

(Sagar Gurugouda Patil)  
Senior Civil Judge & JMFC.,  
Sedam.