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O.S. 129/2024

Dw-01

Witness called and duly sworn on 04.04.2026.

Cross examination : Smt. S.B., advocate for the plaintiffs:

19. It is true to suggest that as on today Phodi proceedings of Sy. No. 112 i.e., suit "B" schedule property is not yet completed. It is true to suggest that, in my chief affidavit I have stated from year 2022 I have been attempting to rectify the survey documents pertaining to the suit "B" and "C" schedule properties and continuously approaching Offices of Tahasildar, ADLR, DDLR and DC. It is true to suggest that, according to me existing Tippani and Akarband do not reflect the correct extent of the suit "C" schedule property. I have not produced corrected Tippani and Akharband before this Court.

20. It is true to suggest that, as per Ex.P-8 which is now shown to me bears the extent of suit “C” schedule property as 8 acre 8 guntas. Witness volunteers that the JDLR as directed the ADLR to report correct extent of suit “C” schedule property as per my representation but, the ADLR has given incorrect report as per Ex.P-8. I have challenged the report submitted by the ADLR as per Ex.P-8 before the Higher Authority. It is false to suggest that JDLR has directed the Tahasildar as per Ex.P-10 to correct the extent in the RTC extract pertaining to suit “C” schedule property as per report submitted by the ADLR in Ex.P-8.

21. It is false to suggest that, I am personally not aware about the entire affair of the transaction and suit schedule properties.

22. It is true to suggest that, as per the joint memo filed by the parties the Court Commissioner came to be appointed in this case. The Court Commissioner in his report opined that the correct extent of the suit “C” schedule property is 9 acre 37 guntas inclusive of 1 acre 29 guntas of Karaba land. It is true to suggest that I have subscribed my signature to the report and Mahazar prepared by the Court Commissioner in the spot. Witness volunteers that, due to my health condition I could not able to walk around the Court commissioner while surveying the property.

23. It is true to suggest that, I have filed Writ Petition before the Hon'ble High Court of Karantaka challenging the findings/report submitted by the Court commissioner. I can not depose filing number of the Writ Petition because it is in process of filing. It is false to suggest that, Rs.3,76,25,000/- is paid to me in respect of suit "A" schedule properties as per Ex.P-2. It is false to suggest that I have no full knowledge about the sale consideration paid to my wife in respect of suit "A" schedule property as Ex.P-2.

24. It is true to suggest that, according to my own case, I have not received full consideration in respect of suit "A" schedule properties. It is true to suggest that I have not filed any suit on the ground that my wife has not received entire sale consideration made mentioned in the Ex.P-2.

25. It is false to suggest that, since Limitation period is expired seeking cancellation of Ex.P-2 on the ground that my wife has not received entire sale consideration I have not concocted the false story saying that I have to still receive balance sale consideration made mentioned in the Ex.P-2.

26. **Question:** According to my case I have to receive Rs. 52,00,000/- per 1 acre?

Answer: Yes. Witness further volunteers that YES according to document it was fixed at Rs. 52,00,000/- per 1 acre.

27. It is true to suggest that in para No. 45 of my written statement submitted that as per the Agreement dated 15.05.2022, the sale consideration was fixed at Rs. 52,00,000/- per 1 acre. I do not remember whether I have produced Agreement dated 15.05.2022 referred in Para No. 45 of my Written statement. The Agreement dated 15.05.2022 is unregistered one. The said Agreement dated 15.05.2022 is stamped document. I have not filed suit for Specific Performance of contract seeking enforcement of obligations recited in the Agreement dated 15.05.2022. Witness volunteers that, the matter is in still in process so, why should I file suit.

28. It is true to suggest that, according to my own case the consideration in respect of suit “B and C” schedule perperties is to be paid as per the current market value. There is no caluse in the sale agreement at Ex.P-1 which allows me seek payment of consideration as per current market value of the properties. It is true to suggest that, there is no clause in the any of the agreements entered into by the buyer and seller which allows to seek payment as per the current market value. Witness volunteers that he is please see the paucity of time which has been taken complete the trasaction.

29. It is true to suggest that, in para No. 45 of my Written statement I have stated that the consideration of Rs. 1,29,80,000/- which was received by me from the plaintiff

was returned back to him. I have proof to show that I have returned Rs. 1,29,80,000/- to the plaintiff. It is false to suggest that income tax return of my wife consists of entries about the receipt and payment of Rs. 1,29,80,000/-. Witness volunteers that, if receipt and payment taken place in the same financial year there is no question reflecting the said entries in the income tax returns file.

30. It is false to suggest that according to my own case I have not received any advance sale consideration in respect of suit "B and C" schedule properties. It is false to suggest that as per Ex.P-21 I have received Rs. 4,93,95,000/-.

31. It is true to suggest that, Ex.P-21/Modified sale agreement came to impounded by this Court owing to the fact that said document is insufficiently stamped. I have not challenged that Ex.P-22. I have not taken any steps to cancel that Ex.P-1 and 21 on the ground that I have not received consideration made mentioned therein. Witness volunteers that I never thought I will end up with litigation. It is true to suggest that first time in my chief affidavit at Para No. 52 stated that I am ready to repay the whatever consideration received under Ex.P-21 to the plaintiffs.

32. It is true to suggest that, according to my case the plaintiffs has no financial capacity to complete the sale transaction. Witness volunteers that right from the year 2021 plaintiff is telling him that he has to raise loan from the

Banking Institutions. It is true to suggest that I have personal access to the plaintiff finances. Witness further volunteers that I do possess endorsements issued by the banks saying that plaintiff has no sufficient balance in his bank accounts. I have not issued any demand notice calling upon the plaintiffs to make good payment of the money. I can not depose and remember date of cheques issued by the plaintiff. It is true to suggest that there is no criminal cases under NI Act filed by me against the plaintiff. It is false to suggest that, I have no personal to state that any of the cheques issued by the plaintiff to me ever dishonoured. It is true to suggest that I have not produced any banking documents to show that plaintiff has no financial capacity to complete the sale transactions.

33. It is true to suggest that, in my chief affidavit I have deposed that Ex.P-16 and 23 are fraudently and collusively obtained by the plaintiff. I do not possess any documents to show that Ex.P-16 and 23 are fraudently and collusively obtained by the plaintiff. It is true to suggest that I have not summoned the author of Ex.P-16 and 23 to prove before the court they are fraudently and collusively obtained by the plaintiff.

34. It is true to suggest that as per Ex.P-21/Modified sale agreement at clause No. 1 to 4, the sale consideration of Rs. 75,00,000/- per acre was mutually fixed in respect of suit "B and C" schedule properties.

35. It is false to suggest that I have deposed false in my Written statement at Para No. 45 and para No. 47 of my chief affidavit that Rs. 52,00,000/- per acre was fixed in respect of suit "A, B and C" schedule properties. It is true to suggest that land bearing Sy. No. 142 is abutting to National Highway whereas, suit "A" schedule properties are situated rear side of the survey number 142. It is false to suggest that suit "C" schedule property is the only access to the suit "A" schedule properties. It is true to suggest that in general commercial prudent man will not give up his claim in respect of properties where he has purchased rear side properties instead of road facing properties.

36. It is false to suggest that, as per the Court commissioner report there is no alternative access to the suit "A" schedule property except the suit "C" schedule property. It is true to suggest that wife has received legal notice at Ex.P-11. It is true to suggest that I have not come forward to execute sale deed in respect of "B" and "C" schedule properties. Witness volunteers that because I have called upon plaintiff to get the sale deed executed in respect of 8 acre 8 guntas. It is true to suggest that I have not come forward to execute sale deed in respect of suit "B and C" schedule properties because I failed to get rectify the Akharband and Tippani.

37. It is true to suggest that my wife has not fixed any specific date and time seeking performance of the contract. It is false to suggest that I have failed to fulfil obligations as agreed under Ex.P-1 and 21.

Re-examination: Nil.

Typed to my dictation in the open Court.

R.O.I. & A.C.

Senior Civil Judge & JMFC,
Mulbagal.