

IN THE COURT OF THE CIVIL JUDGE AND J.M.F.C. AT HUNSUR.

PRESENT: Sri. C. VEERABADHRAIAH, **M.A., LL.B.**,
Civil Judge and J.M.F.C., Hunsur.

DATED: THIS THE 19TH DAY OF DECEMBER 2015.

O. S. No. 242/ 2014

PLAINTIFF/s : Smt. C.Kamakshi
W/o J.Kumara,
Aged about 34 years,
R/at: E.W.S-No.4, K.H.B.Colony,
Kalkunike Extension,
Hunsur Town

(Rep. by Sri. S.S.G., - Advocate)

V/s

DEFENDANT/S: 1. Sreenivasanayaka
S/o Late. Thimappa,
2. Ramalakshmi
W/o Sreenivasanayaka,
3. Mohana
S/o Sreenivasanayaka,
4. Veena
D/o Sreenivasanayaka,

All are R/at: Medarakeri,
Behind Police Station,
Periyapatanna.

(Rep. by Sri. P.R.R.,- Advocate)

* * * * *

Date of institution of the suit : 08.07.2014

Nature of the suit (Suit on Pronote, suit for declaration and possession suit for injunction, etc.)	:	SPECIFIC PERFORMANCE OF CONTRACT		
Date of the commencement of recording of the evidence	:	19.02.2015		
Date on which the Judgement was pronounced	:	19.12.2015		
		Year/s	Month/s	Day/s
Total duration	:	-01-	-05-	-11-

Civil Judge & J.M.F.C.,
Hunsur.

:: J U D G E M E N T ::

This is suit filed by the plaintiff against the defendants, seeking judgment and decree for the relief of Specific Performance of Contract dated 08.11.2012 and delivery of possession of the suit schedule property, with cost of the suit.

2. The case of the plaintiff is in nutshell as below:-

It is stated that the defendant No.1 to 4 are the owners of the land in Sy.No.71 and New Sy.No.71/1 measuring 2.2½ guntas, situated at Naganahalli village, Hanagodu Hobli, Hunsur Taluk. The defendants had offered to alienate the suit schedule property to rescue them from legal necessity. By that time, she has agreed to purchase the suit schedule property. After negotiation, the sale consideration was finalized for a sum of Rs.3,00,000/-. The defendants have received the advance sale consideration of Rs.2,50,000/- and have executed the agreement of sale on 08.11.2012. The defendants have authorized her to discharge the mortgage created on the suit schedule property by paying

Rs.30,000/-, out of the balance sale consideration to one Dasappa S/o Kullichannaiah. The defendants have further agreed to execute the sale deed within 6 months by receiving balance sale consideration of Rs.20,000/-. She is/was ever ready and willing to perform her part of contract by paying mortgage premium of Rs.30,000/- to Dasappa and as well as she is/was ready and willing to pay the balance sale consideration of Rs.20,000/- to the defendants and get execution of the sale deed. The defendants have showing negligence to perform their part of contract, by one or the other pretext. She has made several request and demand with the defendants, but they have not shown positive response to her call. The defendants have assigned reason that they have to rectify the extent of the suit schedule property in RTC. However, on her effort the extent and new survey number is took place in the RTC. When the defendants have not responded positively, she has issued legal notice on 21.01.2014, by calling upon the defendants to execute the sale deed. For the said legal notice, the defendants have caused untenable reply, but they have not come forward to execute the sale deed. The said circumstance was forced her to file the present suit for the relief sought. Accordingly, she prayed to decree the suit with cost.

3. After institution of the above suit, this court has taken cognizance and registered the suit as numbered above and also issued the suit summons to the defendants. In pursuance of service of the suit summons, the defendants have appeared before the court through their counsel and got filed their written statement. Wherein the defendants have admitted the service of legal notice on them, except this admission all other plaint averments denied as false and called upon the plaintiff to prove the same. It is further contended by the defendants that the suit of the plaintiff is not maintainable either under law or on fact. They have never executed any contract as

contended by the plaintiff. They have borrowed a loan for a sum of Rs.1,50,000/- from the plaintiff to perform marriage of the defendant No.4 by executing a document as guarantee. They have agreed to repay the said loan amount with interest at the rate of 2% P.M. The plaintiff has created the agreement in question and has filed the present suit with intention to knock off the suit schedule property. Accordingly, they prayed to dismiss the above suit with exemplary cost.

4. Upon the aforesaid pleading, this court has framed following issues:

::I S S U E S ::

1. *Whether the plaintiff proves that the defendant No1 to 4 have jointly executed agreement to Sale dated 08.11.2012 in her favour by agreeing to sell the suit schedule property for total sale consideration of Rs.3,00,000/-?*
2. *Whether the plaintiff proves that the defendant No1 to 4 have received advance amount of Rs.2,50,000/-out of sale consideration and agreed to execute sale deed by receiving balance sale consideration amount within 6 months.?*
3. *Whether plaintiff proves that he is/was ever ready and willing to perform his part of the contract.?*
4. *Whether the plaintiff is entitled for the relief as claimed.?*
5. *What order or decree.?*

5. In order to discharge her burden, the plaintiff got examined herself as PW-1. In support of her evidence, she got exhibited 13 documents as Ex.P-1 to 13. In addition to her evidence, the plaintiff got examined two attested witness and scribe as PW-2 to

4. The defendants have not prompt intention and chosen to adduce their side evidence, hence their side evidence was taken as nil.

6. Heard arguments, perused the material available on records.

7. My findings to the above issues, on the materials on record as follows:

Issue No.1	:	In the Affirmative
Issue No.2	:	In the Affirmative
Issue No.3	:	In the Affirmative
Issue No.4	:	In the Affirmative
Issue No.5	:	As per the final order
for the following	:	

: REASONS :

8. Point No.1 to 4: These issues are taken together for common discussion, in order to avoid repetition of the facts and circumstances. It is explicit contention of the plaintiff is that the defendants are owners of the suit schedule property and they have executed agreement of sale dated 08.11.2012, by receiving the advance sale consideration of Rs.2,50,000/- and also by admitting the terms of contract. But, the defendants have failed to keep up their promise in the later period as agreed. The defendants have agreed to alienate the suit schedule property for their legal necessity so as to perform marriage of the defendant No.4 and other reason. Per contra, the defendants have denied the execution of agreement of sale by receiving advance sale consideration of Rs.2,50,000/-. Their defense is that they have raised a loan for a sum of Rs.1,50,000/-for solemnized the marriage of the defendant No.4. They never agreed to alienate the suit schedule property and they

never executed contract in question. They have only executed a guarantee document by agreeing to repay the loan amount availed by them with interest at the rate of 2%. Thereby, aforesaid issues were emerged and called upon the plaintiff to prove the same by placing burden on the plaintiff. The plaintiff has come up with oral and documentary evidence, which identified as PW-1 to 4 and the Ex.P-1 to 13. The defendants have failed to come forward with adduced their evidence, in spite of provided sufficient opportunity. Thereby, the evidence of the defendants' side is taken as nil. As such, the pleading of the plaintiff denied by the counter pleading, but the defendants have failed to substantiate with their plea by letting any their evidence.

9. On careful scrutiny of the material put forwarded by the plaintiff, it is crystal clear that the plaintiff has consoled her stand in her oral evidence by reiterating the plaint averments. The plaintiff has categorically deposed in her evidence that the defendants have offered to alienate the suit schedule property for their legal necessity, by that time, she has accepted offer of the defendants, after negotiation the sale consideration of the suit schedule property was determined or materialized for a sum of Rs.3,00,000/-. The defendants have executed the sale contract on 08.11.2012 by receiving advance sale consideration of Rs.2,50,000/- and have agreed to execute the sale deed within 6 months. Further the defendants have authorized her discharge the mortgaged encumbrance created on the suit schedule property in favour of Dasappa S/o Kullichannaiah. According to the terms of contract, she was/is ever ready and willing to perform her part of contract. The defendants have disputed the execution of contract by receiving advance sale consideration of Rs.2,50,000/-. It is well settled law that when the contract is disputed on the other hand, it is bound and duty

of person who depend on the said contract, establish the same in accordance with law. It is relevant bear in mind that the defendants have admitted their signatures, but their lonely contention is that they have executed the guarantee deed. Further the defendants have admitted the passing of amount from the plaintiff to them for their legal necessity, but at the same time their contention is that they have received amount of Rs.1,50,000/- only and the said amount was received by them as loan and they have agreed to repay the said amount with interest. Mean to say, the signatures of the defendants available on the disputed document are undisputedly belongs to the defendants, but contents of the said instrument is disputed. Thereby, it is burden on the plaintiff to substantiate with the said aspect.

10. In order to prove the Ex.P-12 and discredit the plea urged by the defendants, the plaintiff has got examined two attested witnesses and one scribe as PW-2 to 4, in addition to her evidence. The witnesses examined at PW-2 to 4 have completely supported the stand of the plaintiff. The PW-2 and 3 who are the attestors have deposed that the defendants have executed the sale contract in their instance by admitting the terms of contract. Further the PW-4, who is scribe of the contract in question, has vehemently deposed that the defendants have executed the sale contract in question by admitting the terms of documents. The stand of the PW-2 to 4 is clearly against the defence raised by the defendants. The attestors and scribe have states that after preparing the document, the defendants have put their signatures in their instance. Then, contemplation of the document marked at Ex.P-12 is purely in the line of the plaintiff stand and the said recital was corroborated by the plaintiff and as well as her witnesses.

11. The defendants have no point of time disputed as to they are the owner of the suit schedule property and their right to alienate the same. The plaintiff has contended that the defendants have created mortgage on the suit schedule property in favour of one Dasappa S/o Kullichannaiah. This aspect is not substantially disputed by the defendants. The contention of the plaintiff is that the defendants have shifted the burden of discharging the mortgage in her favour, out of the balance sale consideration. It is most relevant to take into consideration that the defendants have nowhere disputed the financial capacity of the plaintiff. Further they have distinctly admitted that they were need of finance at that relevant point of time. Corroborating the stand of the plaintiff, the defendants have themselves contended that at the relevant point of time, they have obligated by marriage of the defendant No.4. Most importantly, the defendants have admitted passing of amount in their favour from the plaintiff, at the same time the defendants have urged their defence that the amount of Rs.1,50,000/- was only passed in their favour and the said amount passed as a loan and not as a sale consideration. Even the defendants have introduced a document was also executed for the said amount as a guarantee. But, the defendants have not produced any piece of documents against the Ex.P-12 to show or substantiate that they have only executed document as a guarantee to the alleged loan.

12. It is most essential to take into consideration the foregoing aspect to test veracity of defence that when the defendants have filed their original written statement, they have urged their defense that: *the plaintiff somehow created the said document and making false claim just to have unlawful gain and to harass this defendant. The defendant No.3 never borrowed any amount from plaintiff and the defendant No.3 has never executed any sale agreement as alleged by plaintiff at any point of time. And plaintiff is stranger to this defendant. Hence, there is no question of executes the regular sale deed in*

favour of plaintiff. Subsequently, the defendants brought amendment to their pleading and contended that: *The defendant never executed sale agreement to the plaintiff, but it is true that the defendant has borrowed money from the plaintiff to perform the marriage of the defendant No.4. The defendant borrowed a sum of Rs.1,50,000/- from the plaintiff to perform clear the loans availed at the time of marriage of the defendant No.4. The defendant never executed the alleged sale agreement to the plaintiff and the defendant executed only document to guarantee and repayment of loan amount from the plaintiff and it is agreed that the defendant has to pay 2% per month interest on the loan amount availed from the plaintiff.*

13. The later or subsequent plea of the defendants is altogether different, than their original stand. On considered the later plea the defendants have admitted their signatures on the document, which executed in favour of the plaintiff. At the same time the defendants have nowhere specifically or substantially pleaded, when exactly the said document was come into existence and who are all the attested witnesses and scribe. Further it is not at all their stand that the plaintiff has obtained their signatures on the blank paper and created the Ex.P-12. Apart from that prior to filing the present suit the plaintiff has issued legal notice by explaining the Ex.P-12. The service of the notice on the defendants is distinctly admitted on the part of the defendants. Further the defendants have not opted to issue any reply to the said notice and the defendants have nowhere made statement as to they have issued substantial replay to the notice. In the documentary list no replay is tagged and the counsel for defendants has not touched upon this aspect in her cross-examination. Even after their silent conduct, the defendants have immediately taken their defense by denying the execution of any document in favour of the plaintiff and passing of any amount in their favour from the plaintiff, when they immediately appear before the

court. Further the defendants have denied with the relation or introduction of the plaintiff by stating that the plaintiff is stranger. That apart, the defendants have contended in their early pleading that the plaintiff has concocted or forged the contract in question. Later they have expressed some probability of truth in the claim of the plaintiff. The defendants have nowhere expressed any impediment, why they have missed or evaded by issuance of relay to the legal notice. Out of total examined witnesses in favour of the plaintiff, the defendants have only put the PW-1 into the cross-examination. Wherein the defendants have nothing is elicited from the mouth of PW-1 during her cross-examination, to disbelieve the stand of the plaintiff as to relied contract and passing of the advance sale consideration. The PW-1 keep consistency in her stand even in her cross examination and more over she substantiated her stand by reacting that:

1ನೇಪ್ರತಿವಾದಿ ನನ್ನ ಮಾವ. 2ನೇಪ್ರತಿವಾದಿ ನನ್ನ ಅತ್ತೆ. ಮೂರು ಮತ್ತು ನಾಲ್ಕನೇ ಪ್ರತಿವಾದಿ ನಾದಿನಿ ಮತ್ತು ಮೈದನಾ. ನಾನು ಗೃಹಿಣಿ. ನಿಮಗೆ ಯಾವುದಾದರೂ ಆದಾಯ ಬರುವ ಮೂಲ ಇದೆಯಾ ಎಂದರೆ ಶಾಕ್ತಿ ನನಗೆ ಆದಾಯ ಬರುವ ಆಸ್ತಿ ಇದೆ ಎಂದಿದ್ದಾರೆ. ನನ್ನ ಹೆಸರಿನಲ್ಲಿ 2 ಎಕರೆ 2ವರೆ ಗುಂಟೆ ಜಮೀನು ಇದೆ. ಸದರಿ ಆಸ್ತಿ ನನ್ನ ಗಂಡನ ತಂದೆಯಿಂದ ಬಂದಿದೆ. ದಾವಾ ಸ್ವತ್ತು ಮತ್ತು ಹಿಸ್ಸೆಗೆ ಬಂದಿದೆ ಎಂದು ಹೇಳಲಾದ ಆಸ್ತಿ ನನ್ನ ಮಾವ ಮತ್ತು 1ನೇಪ್ರತಿವಾದಿಯ ಪಿತೃಜೀವ ಸ್ವತ್ತುಗಳು ಎಂದರೆ ಸರಿ. ನನ್ನ ಮಾವನ ಒಟ್ಟು ಕುಟುಂಬದ ಆಸ್ತಿಗಳನ್ನು 1ನೇಪ್ರತಿವಾದಿ ಮತ್ತು ನನ್ನ ಮಾವ ಹಿಸ್ಸೆ ಮಾಡಿಕೊಂಡಿದ್ದಾರೆ ಎಂದರೆ ಸರಿ. ದಾವಾ ಸ್ವತ್ತನ್ನು ಬಿಟ್ಟರೆ 1ನೇಪ್ರತಿವಾದಿಗೆ ಬೇರೆ ಆಸ್ತಿಗಳು ಇಲ್ಲ ಎಂದರೆ ಸರಿ. ಶಾಕ್ತಿ ಮುಂದುವರಿದು ಅವರು ಬೇರೆ ಕಡೆ ವಾಸ ಇದ್ದಾರೆ, ಬೇರೆ ಆಸ್ತಿ ಇದೆಯೋ ಏನೋ ನನಗೆ ಗೊತ್ತಿಲ್ಲ ಎಂದಿದ್ದಾರೆ. ದಿ:8-11-2012ರಂದು ಪ್ರತಿವಾದಿಗಳು ಹಣ ಬೇಕು ಎಂದು ಹೇಳಿದರು. ಹಣ ಕೇಳಲು ಪ್ರತಿವಾದಿಗಳೆಲ್ಲ ಬಂದಿದ್ದರು. ನನಗಿರುವ ಜಮೀನಿನಲ್ಲಿ ಹತ್ತಿ ಕಾಳು ಬೆಳೆಯುತ್ತಿದ್ದೇನೆ. ವ್ಯವಸಾಯದಿಂದ ನನಗೆ ವಾರ್ಷಿಕವಾಗಿ ಒಂದು ಲಕ್ಷದಷ್ಟು ವರಮಾನ ಇದೆ. ಪ್ರತಿವಾದಿಗಳು ನನ್ನನ್ನು ಮತ್ತು ನನ್ನ

ಗಂಡನನ್ನು ಹಣ ಬೇಕು ಎಂದು ಕೇಳಿದರು. ಪ್ರತಿವಾದಿಗಳು ನಮ್ಮ ಮನೆಗೆ ಬೆಳಿಗ್ಗೆ 10.00 ಗಂಟೆಗೆ ಬಂದಿದ್ದರು. ಪ್ರತಿವಾದಿಗಳು ರೂ.3ಲಕ್ಷ ಹಣ ಕೇಳಿದರು. ಪ್ರತಿವಾದಿಗಳು ಜಮೀನು ಮಾರಾಟ ಮಾಡುವುದಾಗಿ ಹೇಳಿ ಹಣ ಕೇಳಿದ್ದರಿಂದ ನಾವು ಅದಕ್ಕೆ ಒಪ್ಪಿಕೊಂಡೆವು. ಪ್ರತಿವಾದಿಗಳು ಹಣ ಕೇಳಲು ಬಂದ ದಿನದಂದೇ ಮಾತುಕತೆಯನ್ನು ಮುಗಿಸಿ ಹಣ ಕೊಟ್ಟೆವು. ಪ್ರತಿವಾದಿಗಳಿಗೆ ಹಣ ಕೊಟ್ಟು ಕಾಲಕ್ಕೆ ಪ್ರತಿವಾದಿಗಳು, ಸಾಕ್ಷಿದಾರರಾದ ನಾಗರೆಡ್ಡಿ, ರಮೇಶ್ ಮತ್ತು ಚೆಲುವಯ್ಯ ಇದ್ದರು. ಮಾರಾಟ ಪ್ರತಿಫಲದ ಪೈಕಿ ರೂ.2,50,000 ಮುಂಗಡ ಹಣವಾಗಿ ಕೊಟ್ಟೆ. ಉಳಿದ ರೂ.50,000ಗಳ ಪೈಕಿ ರೂ.30,000ಗಳನ್ನು ದಾವಾ ಸ್ವತ್ತನ್ನು ದಾಸಪ್ಪ ಎಂಬುವವರಿಗೆ ಭೋಗ್ಯ ಮಾಡಿದ್ದು ಅವರಿಗೆ ಕಟ್ಟಿ ಜಮೀನು ಬಿಡಿಸಿಕೊಳ್ಳುವಂತೆ ಮತ್ತು ಉಳಿದ ರೂ.20,000ಗಳನ್ನು ಕ್ರಯಪತ್ರದ ನೋಂದಣಿ ಕಾಲಕ್ಕೆ ಪಡೆಯುವುದಾಗಿ ಮಾತುಕತೆ ಆಯಿತು. ದಾಸಪ್ಪ ಇವರಿಗೆ ದಾವಾ ಸ್ವತ್ತು ಭೋಗ್ಯ ಆಗಿರುವ ವಿಚಾರವನ್ನು ಪ್ರತಿವಾದಿಗಳೇ ಹೇಳಿದರು. ಭೋಗ್ಯಪತ್ರವನ್ನು ಪ್ರತಿವಾದಿಗಳು ನನಗೆ ಕೊಟ್ಟಿಲ್ಲ. ಪ್ರತಿವಾದಿಗಳಿಗೆ ಕೊಟ್ಟೆ ಎಂದು ಹೇಳಲಾದ ಹಣ ಎಲ್ಲರಿಂದ ಬಂದಿತ್ತು ಎಂದರೆ ಸಾಕ್ಷಿ ಹತ್ತಿ ಮಾರಾಟ ಮಾಡಿದ್ದರಿಂದ ರೂ.1ಲಕ್ಷ ಬಂದಿತ್ತು. ಉಳಿದ ರೂ.1,50,000ಗಳನ್ನು ನನ್ನ ತಂದೆ ಮನೆಯಿಂದ ಸಾಲ ಪಡೆದಿದ್ದೆ. ರೂ.1ಲಕ್ಷ ಹಣ ಹತ್ತಿಯಿಂದ ಬಂದಿತ್ತು ಎಂದು ತೋರಿಸಲು ನನ್ನ ಬಳಿ ಯಾವುದೇ ರಸೀದಿ ಇಲ್ಲ. ಕರಾರುಪತ್ರವನ್ನು 2.00 ರಿಂದ 3.00ಗಂಟೆಯಲ್ಲಿ ಬರೆಯಲಾಯಿತು. ಚಾಪ ಕಾಗದವನ್ನು 1ನೇಪ್ರತಿವಾದಿ ತಂದರು. ಚಾಪ ಕಾಗದವನ್ನು ಬೆಳಿಗ್ಗೆ 11.00 ಗಂಟೆಗೆ ತಂದರು. ಕ್ರಯದ ಮಾತುಕತೆ ಬೆಳಿಗ್ಗೆ 10.00 ರಿಂದ 10.30 ಗಂಟೆ ವರೆಗೆ ಆಯಿತು. ರೂ.500ರ ಮುಖ ಬೆಲೆಯ ಚಾಪ ಕಾಗದವನ್ನು ಪ್ರತಿವಾದಿ ತಂದರು. ಅಲ್ಲದೇ ಮೂರು ದಸ್ತಾವೇಜು ಪತ್ರಗಳನ್ನು ಸಹ ತಂದಿದ್ದರು. ದಾಸಪ್ಪ ನಮಗೇನು ಸಂಬಂಧಿಯಲ್ಲ. 6 ತಿಂಗಳ ಒಳಗೆ ಕ್ರಯಪತ್ರ ನೋಂದಣಿ ಮಾಡಿಕೊಡುತ್ತೇನೆಂದು ಹೇಳಿದ್ದರು. 6 ತಿಂಗಳ ಒಳಗೆ ಪ್ರತಿವಾದಿಗಳಿಗೆ ನೋಟಿಸ್ ಕೊಟ್ಟರಾ ಎಂದರೆ ಸಾಕ್ಷಿ ನಾನು 2-3 ಬಾರಿ ಹೋಗಿ ಕ್ರಯಪತ್ರ ಬರೆದುಕೊಡಿ ಎಂದು ಕೇಳಿದೆ, ಅವರು ಬರಲಿಲ್ಲ ಎಂದಿದ್ದಾರೆ. 6 ತಿಂಗಳ ಒಳಗೆ ಪ್ರತಿವಾದಿಗಳಿಗೆ ನೋಟಿಸ್ ಕೂಡಲು ನಿಮಗೇನಾದರೂ ತೊಂದರೆ ಇತ್ತಾ ಎಂದರೆ ಸಾಕ್ಷಿ ತೊಂದರೆ ಏನು ಇರಲಿಲ್ಲ, ಸಂಬಂಧಿಗಳಾದ್ದರಿಂದ ಕ್ರಯಪತ್ರ ಬರೆದುಕೊಡುತ್ತೇನೆಂದು ನಂಬಿದ್ದೆ ಎಂದಿದ್ದಾರೆ.

ಕರಾರುಪತ್ರದ ಒಕ್ಕಣೆಯನ್ನು ಪ್ರತಿವಾದಿಗಳೇ ಹೇಳಿ ಬರೆಸಿದರು. ರೂ.20,000 ಹಣವನ್ನು ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ನಾನು ಠೇವಣಿ ಇಟ್ಟಿಲ್ಲ. ಪ್ರತಿವಾದಿಗಳು ನನ್ನ ಸಂಬಂಧಿಗಳಾದ್ದರಿಂದ ಸಾಲ ಬೇಕು ಎಂದು ಕೇಳಿದ್ದರೂ ಎಂದರೆ ಸರಿಯಲ್ಲ. ದಾವಾ ಸ್ವತ್ತಿನ ಚೆಕ್ಕುಬಂಧಿ ಪೂರ್ವಕ್ಕೆ ನಮ್ಮದೇ ಜಮೀನು, ಪಶ್ಚಿಮಕ್ಕೆ ಶಂಕರಪ್ಪರವರ ಜಮೀನು ಉತ್ತರಕ್ಕೆ: ಈರೇಗೌಡರ ಮಕ್ಕಳ ಜಮೀನು, ದಕ್ಷಿಣಕ್ಕೆ ಸರ್ಕಾರಿ ಓಣಿ ಇದೆ. ಪ್ರತಿವಾದಿಗಳು ನನ್ನಿಂದ ರೂ.1,50,000 ಸಾಲ ಮಾತ್ರ ಪಡೆದಿದ್ದು, ಯಾವುದೇ ಬರೆದು ಕೊಡಲು ಒಪ್ಪಿರಲಿಲ್ಲ ಎಂದರೆ ಸುಳ್ಳು, ಸಾಲ ಕೊಟ್ಟ ಸಂಬಂಧ ನಾನು ಪ್ರತಿವಾದಿಗಳ ಸಹಿಯನ್ನು ಖಾಲಿ ಪೇಪರ್ ಮೇಲೆ ಪಡೆದಿದ್ದೆ ಎಂದರೆ ಸುಳ್ಳು. ದಾವಾ ಸ್ವತ್ತು ನಮ್ಮ ಸ್ವತ್ತಿಗೆ ಲಗತ್ತಾಗಿರುವುದರಿಂದ ಅದನ್ನು ಲಪಟಾಯಿಸಬೇಕೆಂದು ನಿಶಾನೆ ಪಿ-1 ಕರಾರು ಪತ್ರ ಸೃಷ್ಟಿ ಮಾಡಿಕೊಂಡಿದ್ದೇನೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಪ್ರತಿವಾದಿಗಳಿಗೆ ರೂ.1,50,000 ಮಾತ್ರ ಸಾಲದ ರೂಪದಲ್ಲಿ ಸಂದಾಯವಾಗಿದೆ ಎಂದರೆ ಸರಿಯಲ್ಲ. ಪ್ರತಿವಾದಿಗಳು ತಾವು ಪಡೆದಿರುವ ಸಾಲವನ್ನು ತೀರಿಸಲು ಬದ್ಧರಿದ್ದಾರೆ ಎಂದರೆ ಸರಿಯಲ್ಲ.

14. On overall or completely read the aforesaid cross examination testimony of PW-1 in full, it is crystal clear that no point of time the defendants have put forth anything or any clinching aspect from the mouth of the PW-1, in order to uproot the entire plea of the plaintiff or in support of their plea. On careful consideration of the aforesaid testimony of the PW-1, it clearly shows that the plaintiff has upheld the contents or recital of the contract and factuality behind the contract or surrounding circumstance of the contract. The defendants have nowhere disputed the financial capacity of the plaintiff. Further the defendants have themselves admitted that the passing of amount from the plaintiff to defendants and no other aspect of plea is introduced by them in this regard. The PW-1 has emphatically disputed the plea of the defendants. The defendants have nowhere taken stand as to whatever document executed by them is not the Ex.P-12 and the document executed by them is deferent. The counsel for defendants has urged his stand in the

cross-examination of the PW-1 that she has concocted the contract in question by obtaining the signatures of the defendants. In the amended written statement, the defendants used connotation that *The defendant never 'executed' the alleged sale agreement to the plaintiff and the defendant 'executed' only document to guarantee.* Considered the said phrase, it is clearly against the stand that the signatures of the defendants obtained on the blank paper. The defendants have nowhere contended that they are no knowledge of reading and writing kannda language or in the other sense they nowhere stated that they are uneducated. On plain glance over the disputed document, on bare eye it clearly appears or even the said document placed before any prudent man to practical examination, it can definitely come to opinion or he will defiantly/firmly come to view that the defendant No.3 and 4 are educated or they knowledge or known with the reading and writing skill of the kannda, since they have put their signatures on the disputed document in the language of English. Even the defendant No.1 also put his signatures appears to be he is knowledge of reading and writing of the kannda. On careful looked into the Ex.P-12, the recital of the said document executed/reduced into writing by way computer typing. The signatures of the defendants are available on the disputed document, where the place meant or prescript for executants' signatures. By showing the Ex.P-12 to any prudent man and entrusted task to chalk out that whether the signatures obtain before printing out the recital of the document or whether the signatures available were affixed after the document was take printout. On the basis of the placement of the signatures and style of them and structure of the recital, the said person will defiantly come to conclusion that the signatures available on the documents put on the said document after printing out the document. The said aspect is very clearly appears to bare eye and no doubt/suspect will create in this regard in any manner.

Thereby on the said illustration or view it can say that the defendants have taken false plea in this regard. The said circumstances demonstrates that the defendants have knowing or acquainted with the contents/recital of the document and put their signatures by voluntarily admitting the terms of the contract and they were completely sensible knowledge of the executed document was contract of sale. Thereby it shows that the defendants have taken false plea with intention to escape from their liability. On careful examine the conduct of the defendants, in urging their inconsistent stand through their deferent stretch of pleading is itself demonstrates that the defendants have adopted with unfair mode to face the claim of the plaintiff and consequently it can clearly feel and the same is shows that the defendants have taken false plea under deferent context.

15. The defendants have nowhere disputed the income capacity of the plaintiff and further the plaintiff has come up with the RTC, which stands in her name. Further the plaintiff has distinctly explain that how did she arranged the advance sale consideration and paid the same to the defendants without leaving or reasoning to any suspect. Even the defendants have admitted the receiving of the amount directly from the plaintiff. The plaintiff is very firm or definite in payment or passing of the contemplated the entire advance sale consideration. The said testimony of the plaintiff is reinterpreted the entire terms of the contract. It is very apparent that the notice to the defendants duly served and they have not issued any replay notice before they appeared before the court. Then, it demonstrates that the plea urged by the defendants is after thought with consultancy of their counsel. Most importantly, though the defendants have urge with inconsistent plea before the court, in order to face the claim of the plaintiff, but there is no truthness in the said plea and the same is

not supported by any iota of material. More over, the defendants have filed their pleading with the drastic instability or inconsistent in their time to time contention. In the early or in the original pleading, the defendants have completely denied the claim of the plaintiff and they taken stand that the plaintiff is stranger and no manner of transaction relation between them and the plaintiff. In the subsequent pleading, the defendants have admitted the passing of loan from the plaintiff in favour of them and execution of instrument in the half mind manner or partially contracting. The immediate question will arise that what impediment was caused them to urge the said pleading at original stretch. That apart, of course the defendants have come up with instability plea before the court, but the defendants have withheld them from appearance in the witness box to get tested the credibility of their plea. This court has provided them anomalous opportunity, but they failed turn before the court to let their side evidence or they have not at all made any effort to keep transparent in their plea to create credibility. The defendants have failed to give evidential character to their plea. It is well settled law that untested testimony shall not act upon and the same is liable to be rejected or ignorable. When the defendants have failed to appear in the witness box to offer them to cross examine them on their plea, then it accountable to draw adverse inference by acting under Sec.114 of the Evidence Act. It is benefit to relay upon a decision reported in *AIR 1999 SC 1441, (Vidhyadhar Vs. Mankikrao and another)*, wherein it was held that:

Evidence Act- Sec.114- adverse inference- Party to suit- Not entering the witness box- give rise to inference adverse against him. Where a party to the suit does not appear into the witness box and states his own case on oath and does not offer himself to be cross examined by the other side, a presumption would arise that the case set up by him is not correct.

The aforesaid principle of law is aptly applicable to the conducts of the defendants. They preclude from adducing their evidence and offer to put them into the cross-examination by the plaintiff on their inconsistent stand.

16. It is most important to take into consideration that the plaintiff has come up with PW-2 to 4, in order to prove the contract in question. The said witnesses have categorically stated that the Ex.P-12 was executed in their instance. On considered the evidence of the PW-2 to 4, their stand is crystal clear that except Ex.P-12 no other document was executed by the defendants in their instance. Further according to their stand that the defendants have received the advance sale consideration and put their signatures on the written document and the defendants have themselves given dictation to draw up the contract. Even, just for a movement brushing aside the testimony of the PW-1 and considered the testimony of the PW-2 to 4 alone in order to examine or test the credibility of the claim of the plaintiff, it clearly appears that the Ex.P-12 contract is genuine and on the genuine contract, the plaintiff has setout prompt claim. No way create any inch of doubt or suspect on the claim of the plaintiff. The PW-2 to 4 have played vital role to prove the Ex.P-12 contract. Despite of that, the defendants have no prompt stretch of attempt made to put the PW-2 and 3 into the cross-examination. Though this court provided sufficient opportunity, the defendants have failed to make use of the said opportunity promptly or honestly. The defendants have not at all made any attempt to secure the PW-4 to put the said witness into the cross-examination. On considered the conduct of the defendants, which shows in this regard, it clearly appears that the defendants have not contested the matter in fair manner and they have shown casual approach. As such, the said conduct of the defendants is liable to draw adverse inference that no

case to defendants to face the claim of the plaintiff. It is benefit to relay upon a decision reported in *AIR 2007 AP 137, (Peddavandla Vs. Peddasani)* wherein it was held that: *Witness is examined. Defendant did not take any step to procure the attendance of the said witness.* So evidence of the witness remains unrebutted. To secure the PW-4 no step was taken by the defendants, hence the aforesaid principle is aptly applicable to the said circumstances. The evidences of the PW-2 to 4 are remained as uncontroverted and therefore their evidence is liable to trustworthy.

17. The plaintiff is contended that she is/was ever ready and willing to perform her part of contract. The defendants were failed to keep up their promise as agreed in the contract. In spite of her demand by issuing notice, the defendants have failed execute the sale deed. The defendants have denied the aforesaid plea of the plaintiff. But at the same time, the defendants have admitted the service of notice. It is relevant to express here that the plaintiff has made statement that the defendants have caused untenable replay to the notice issued by her. But the relay notice is not available before the court and even the defendants have nowhere stated that they have issued replay notice and they have not made any effort to place any replay notice before the court. On considered the non-availability of any replay notice, it shows that the defendants have not at all issued any replay and the plaintiff made such statement by oversight. However, on considering the conduct of the defendants, originally they have disputed the entire averments of the plaint, but later they admitted the receive of amount of Rs.1,50,000/- from the plaintiff, for that the contention of the defendants that the said amount was passed to them as loan and they have executed the guarantee deed. Even after appearance before the court the defendants have not made any effort to specify the dispute and

nowhere in their pleading express their readiness and willingness to settle the dispute. According to the contention of the plaintiff, some obligation was placed on the defendants through the contract so as to rectification of the extent of the suit schedule property in its revenue record within the prescriptive period to enforce the contract. It is substantially made clear by the plaintiff that when the defendants have failed or they have not shown any interest, she has done the said obligation and got correction in the revenue record of the suit schedule property. The said aspect is very clear from the Ex.P-3.

18. As per contract the defendants have to supply with the sketch and other necessary document purpose of registration. In this regard the defendants have not discharged with their obligation in any manner and also not made any effort. The contract has imposed some condition on the plaintiff towards balance sale consideration that out of balance sale consideration, Rs.30,000/- to be paid to lessee and Rs.20,000/- to be paid to the defendants at the time of the registration. According to the contention of the plaintiff, she is every to comply with the said obligation. Even the plaintiff has issued notice by making alarm to the defendants towards their obligation and by expressing her readiness and willingness. It can be seen from the record and attending circumstances that inaction or stagnant act of the defendants towards the contract in question and they have totally neutral from their obligation. The question of the counsel for defendants is that the plaintiff has to be issued notice within 6 month from the date of contract and she should have made deposit of Rs.20,000/- before the court. The plaintiff made substantial explanation that the defendants are very close relative and approached them many times to execute the sale deed and the defendants did not handover the lease deed. It is benefit to relay

upon a decision reported in (2004) 6 SCC 649 (*D Souza Vs. Shondrillo Naidu*), wherein it is held that:

“ readiness and willingness cannot be treated as a straitjacket formula and the issue has to be decided keeping in view that facts and circumstances relevant to the intention and conduct of the party concerned.”

It is law laid down in the decision reported in AIR 2012 SC 2035 (*Narenderjit Singh Vs. North Star Estate Promoters Limited*), that:

To adjudge whether the plaintiff is ready and willing to perform his part of the contract, the court must take into consideration the conduct of the plaintiff prior and subsequent to the filing of the suit along with other attending circumstances. The amount of consideration which he has to pay to the defendant must of necessity be proved to be available. Right from the date of the execution till date of the decree he must prove that he is ready and has always been willing to perform his part of the contract. As stated, the factum of his readiness and willingness to perform his part of the contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the plaintiff was ready and was always ready and willing to perform his part of the contract.

The balance sale consideration payable to the defendants is meager one and the plaintiff has made demand with the defendants before filing the suit.

19. Of course, in the contract the time fixed for performance of contract. But at the same time, the flexibility relaxation of the said term also included. More over, as obligation imposed the defendants have not complied anything. On considering the conduct of the defendants, it clearly shows that the defendants have not shown their honest energy and intention to perform their part of contract. The defendants have nowhere disputed the income capacity of the

plaintiff and they distinctly admitted the service of legal notice. The defendants have disputed the execution of the contract. Then it goes to show that the defendants are at fault with dishonesty towards discharge of their obligation. It is beneficial to rely upon a decision reported in 2009(1) Property Law Decisions 158 (Kar) (Parvatagouda Ningegouda Patil and Othes Vs/ Guddappa and Another) wherein it is held that:

Suit for specific performance-Ready and Willingness of plaintiff - Proof of - Defendants not disputing financial status of plaintiff -Plaintiff averring in plaint that he is ready and willing - Also reiterating in his evidence-Defendants not seriously challenging the same-Plaintiff in his notice calling upon defendants to receive balance amount and to execute sale deed-Beyond this, plaintiff need not count balance sale consideration before court to show his ready and willingness to perform his part of contract.

It is also relevant to remember with the law laid down in a decision reported in LAWS(SC)-2006-9-111=ALT(SC)-2006-6-28" (FAQUIR CHAND VS. SUDESH KUMARI), wherein it was held that

Sec.16. Personal bars to relief:- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance which has been prevented or waived by the defendant. Explanation -- For the purposes of clause (c) -- (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court; (ii) the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction."

It is very clear from the materials on record that the defendants have not issued legal notice. It shows that the defendants were kept silent by admitting the contract and when they have appeared

through their counsel they taken plea contrary to their previous silent after thought.

20. Of course, the contract is imposed the time fixation for the performance of contract. The plaintiff has come up with the present suit within time prescriptive as in the Art.54 of Limitation Act, when the defendants have shown stagnate act towards their obligation. It is worthwhile to relay upon a decision reported in LAWS(SC)-1997-2-1=AIR(SC)-1997-0-1751, (K.S.VIDYANADAM VS. VAIRAVAN), wherein it was held that:

Section 55 of the Contract Act is in three parts. For our purpose it is enough to notice the first two which reads:

"35. Effect of failure to perform at fixed time, in contract in which time is essential.- When a party to a contract promises to do a certain thing at or before a specified time, or certain thing at or before specified times, and fails to do so any such thing at or before the specified time, the contract, or so much of as it has not been performed becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.

Effect of such failure when time is not essential.- If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure".

Article 54 of the Limitation Act prescribes three years as the period within which a suit for specific performance can be filed. The period of three years is to be calculated from the date specified in the agreement for performance or in the absence of any such stipulation within three years from the date the performance was refused.

Sri Sivasubramaniam relied upon the decision of this Court in Satanarayan v. Yellogi Rao,

(1965) 2 SCR 221: (AIR 1965 SC 1405 at pp. 1408-09), wherein it has been held :

"As Art. 113 of the Limitation Act prescribes a period of 3 years from the date fixed thereunder for specific performance of a contract, it follows that mere delay without more extending up to the said period cannot possibly be a reason for a court to exercise its discretion against giving a relief of specific performance. Nor can the scope of the discretion, after excluding the cases mentioned in S. 22 of the Specific Relief Act, be confined to waiver, abandonment or estoppel. If one of these three circumstances is established, no question of discretion arises, for either there will be no subsisting right or there will be a bar against the assertion. So, there must be some discretionary field unoccupied by the three cases, otherwise the substantive section becomes otiose. It is, really difficult to define that field. Diverse situation may arise which may induce a Court not to exercise the discretion in favour of the plaintiff. It may better be left undefined except to state what the section says, namely, discretion of the Court is not arbitrary, but sound and reasonably guided by judicial principles and capable of correction by a Court of appeal."

SRI Sivasubramaniam then relied upon the decision in Dr. Jiwan Lal v. Brij Mohan Mehra, (1973) 2 SCR 230 : (AIR 1973 SC 559) to show that the delay of two years is not a ground to deny specific performance. But a perusal of the judgment shows that there were good reasons for the plaintiff to wait in that case because of the pendency of an appeal against the order of requisition of the suit property. We may reiterate that the true principle is the one stated by the Constitution Bench in Chand Rani, (1993 AIR SCW 1371). Even where time is not of the essence of the contract, the plaintiffs must perform his part of the contract within a reasonable time and reasonable time should be determined by looking at all the surrounding circumstances including the express terms of the contract and the nature of the property.

In the light of the aforesaid discussion, I am of the considered opinion that the plaintiff has filed the present suit within the prescribed time in accordance with law. View in any angle, it clearly appears that the

plaintiff has safely or successfully proved her case. No forbidden or legal lacuna caused to the claim of the plaintiff. Hence, I am of the considered opinion that the plaintiff has proved her case and he has legally entitled to the relief sought. Hence, I answered Issues No.1 to 4 in the **Affirmative**.

21. Issue No.5: For foregoing findings on issues No.1 to 4 and reasons assigned, I proceed to pass the following:

:: O R D E R ::

The suit of the plaintiff is hereby **Decreed** with cost.

The plaintiff is entitled to Specific Performance of Contract dated 08.11.2012.

The defendants are hereby directed to execute the Sale deed on the suit schedule property within 3 months, by receiving balance sale consideration. In the event, the defendants are failed to execute the sale deed, the plaintiff is at liberty to get execution of the sale deed in accordance with law.

Draw decree accordingly.

(Dictated to the Stenographer directly on the computer, typed by her, corrected, signed and then pronounced by me in open court on 19th Day of December 2015.)

(Sri. C.VEERABHADRAIHA)
Civil Judge & J.M.F.C.,
Hunsur.

ANNEXURE

Witnesses examined for the plaintiff/s:

P.W-1 Smt. C.Kamakshi
P.W-2 Nagareddy
P.W-3 Muchhaluvaiah
P.W-4 Srinivasamurthy

List of documents exhibited for the plaintiff/s:

Ex.P.1 RTC
Ex.P.2 to 4 Hakkubadalavane vahi
Ex.P.5 to 8 3-Postal receipts
Ex.P.9 to 11 3-Postal acknowledgements
Ex.P-12 Agreement to sale (08.11.2012)
Ex.P.13 Legal notice

Witnesses examined for the defendant/s:Nil.....

List of documents exhibited for the defendant/s:Nil.....

Civil Judge & J.M.F.C.,
Hunsur.

19.12.2015

For judgement

Order pronounced in the open court vide
separate judgement

:: O R D E R ::

The suit of the plaintiff is hereby
Decreed with cost.

The plaintiff is entitled to Specific
Performance of Contract dated 08.11.2012.

The defendants are hereby directed to
execute the Sale deed on the suit schedule
property within 3 months, by receiving
balance sale consideration. In the event, the
defendants are failed to execute the sale
deed, the plaintiff is at liberty to get
execution of the sale deed in accordance with
law.

Draw decree accordingly.

Civil Judge & J.M.F.C.,

Hunsur.