

KAMS410009732024



**IN THE COURT OF PRINCIPAL CIVIL JUDGE & JMFC.,
KRISHNARAJANAGAR**

PRESENT

Sri. Chandan S, B.Com., LL.B
Prl. Civil Judge & JMFC, Krishnarajanagara.

DATED 02ND DAY OF JUNE 2025

O.S. No. 261/2024

Plaintiff : Shivaramgowda S/o Late. Ramegowda,
Aged about 68 years,
R/at Maragowdanahalli Village,
Hebbal Hobli, K.R.Nagar Taluk,
Mysuru District.

(Rep. By Sri. L.V.R., Advocate)

- V/s -

Defendant:

1. Sannaswamichari
S/o Late. Puttaswamychari,
Aged about 45 years,
2. Lokeshachari S/o Sannaswamichari,
Aged about 45 years,

Both are R/at Maragowdanahalli Village,
Hebbal Hobli, K.R.Nagar Taluk,
Mysuru District.

(Rep. By Sri. C.L.M., Advocate)

ORDERS ON PRELIMINARY ISSUE NO.5

This Court has framed issue No.5 on 03.04.2025 and treated the Issue No.5 as Preliminary Issue. Issue No.5 is as under;

- 1.** Whether the suit is bad and not maintainable for want of proper cause of action?
- 2.** The suit has been preferred by the plaintiff stating that, the defendant No.1 being the owner of the schedule property bearing Sy.No. 47/1 measuring 0.30 guntas of land out of 2 acres 2 guntas of land has been agreed to be sold towards the plaintiff herein. Wherein the defendant agreed and also consented to sell the property of 30 guntas towards the plaintiff herein for the total sale consideration of Rs.30,000/- for his legal necessity. Thereafter, the defendant No.1 executed and also preferred the sale agreement towards the plaintiff on 11.11.2002 and on the date of the execution of the sale agreement, he has collected the entire sale consideration of Rs.30,000/- in the presence of the witnesses. Further, agreed to execute the absolute and regular sale deed obtaining necessary documents, but he has

failed to do so or to adhere strict sense of the sale agreement terms. Further the defendant is under the obligation created on account of the agreement of sale executed towards the plaintiff. But, the defendant No.1 violating and disobeying and also tarnishing his own undertakings, he has failed to execute the absolute and regular sale deed in spite of notice being issued through the recognized agent of the plaintiff herein seeking for enforcement and also execution of the sale deed as per the agreement. Hence, the plaintiff is before this court with present the suit.

3. However upon service of summons, the defendants agitating and also immune the said views, the written statement came to be filed, wherein in the statement of objections, the tittle of the defendants over the property has been admitted. However, the remaining paragraphs pertaining to the other accusation and perpetration have been clearly inhabited and inculpated in their statements. Further according to the defendants, as per their pleadings, they have taken different contentions which further divulges

and postulates that, the plaintiff herein offered and also lent loan of Rs.20,000/- towards the defendants and he has obtained the signatures of the defendant No.1 on a blank paper as a mode of security and to protect the said debt. Wherein the defendants were also agreed to pay the interest on the said sum of Rs.20,000/-. On the said loan transactions, the defendants paid the interest as also the principal amount which is borrowed. When the said documents when it was sought to be returned, it was answered and replied that, the said document was lost and it will be returned soon after and immediately once it is secured and recovered. Accordingly, the right and title of the defendants over 2 acres 2 guntas of land in Sy.No. 47/1 is sufficiently proved by the plaintiff, since it has not been declined or immune by the defendants who have filed their statements. Hence, even on the same ground the defendants have sought for dismissal of the suit.

4. Heard both sides, perused the documents available on record.

5. The points that would arise for consideration of the Court is:

1. Whether the suit is bad and not maintainable for want of proper cause of action?

6. Findings to the above point is as under:

Point No. 1 : Negative for the following:

REASONS

7. **POINT NO.1:**

Admittedly it is the case of the plaintiff that, as per the pleadings, contemplation and averments which has been enshrined and submitted by the plaintiff that, the defendant No.1 being the owner of the schedule property an agreement of sale dated 11.11.2002 has been entered upon and executed by the defendant No.1 towards the plaintiff herein. Wherein the said defendant No.1 as per the covenant and agreement, he has undertaken to execute the deed of sale in favour of the plaintiff and undertaken to dispose the schedule property in favour of the plaintiff. Further it has been adverted and submitted in the plaint that, in spite of the said deed of agreement of sale has been executed in

favour of the plaintiff and the possession of the said property is being delivered in favour of the plaintiff as per the agreement of sale, the defendant in unlawful connection, alliance and colluding with the 2nd defendant in order to defeat and deplete the right of the plaintiff accrued an account of the unregistered sale agreement in favour of the plaintiff, behind the plaintiff, without the knowledge and notice, in order to defeat and deceive the right of the plaintiff, he has executed the gift deed dated 29.03.2023.

8. Further according to the plaintiff, for the reasons and averments made therein in the plaint, when the plaintiff requested the defendants to execute the regular and absolute sale deed, the defendants replied arrogantly and they have refused to execute the deed of sale pertaining to the schedule property. Therefore as per the suit, the defendants are being sued for the purpose of specific enforcement of the agreement of sale, as per the covenant and the agreement which has been held and agreed upon by the defendants in the form of unregistered sale agreement. Therefore, the suit is filed so

as to direct the defendants to execute the sale deed towards the plaintiff as per the agreement to convey and to dispose of the schedule property in favour of the plaintiff.

9. However on the contrary and other side, repelling, assailing and confronting the said pleadings, which has been contended divulged and imprecated in the plaint, the defendants while preferring their defence in the form of statement of objections, it has been submitted in the statement that, the plaintiff herein has lent and offered loan of Rs.20,000/- towards the defendants and in order to secure the said debt, he has obtained the signatures of the 1st defendant on a blank paper. Wherein the defendants as per their undertakings, they were agreed and also undertaken to repay the said amount of Rs.20,000/- along with interest accrued there upon.

10. Further as per the said loan transaction initiated and strife off, the defendants repaid and returned the entire principal loan amount which has been procured, borrowed

and collected along with interest in favour of the plaintiff. The plaintiff even after the repayment of the loan amount, without handing over and returning the agreement, it was replied the said document has been lost and it will be returned once it is secured. However, the plaintiff embezzling and also wrongly appropriating the said document, the suit has been filed for wrongful and unlawful gain. Hence, prays for dismissal of the suit.

11. Further the another primary and important defence that has been postulated and intercalated by the defendants, the suit is bad and not maintainable for want of cause of action. According to the defendants, there is no cause of action has been caused to launch the suit and according to the defendants, the cause of action so coated and contemplated by the plaintiff is illusory, imaginary and created one.

12. Further the concept of cause of action introduced in Section 20 of the C.P.C. a cause of action is a legal claim that allow a legal party to seek judicial relief from another

party. It is the factual consideration that led to a dispute between the parties. Further, the cause of action is a defence and the basis for the plaintiff to claim certain pleadings and it is the burden again to prove the said pleadings and also the averments affirming in his statement. In the present case on hand, the plaintiff has taken specific plea that, the defendants though the deed of agreement of sale being entered upon and though as per the covenant and undertakings by the defendant No.1 so to convey dispose and sell the schedule property towards the plaintiff, he has violated infringed and disobeyed his own agreement terms as undertaken and behind the plaintiff in order to chouse defeat and depredate the interest created upon the plaintiff, he has executed gift deed dated 29.11.2023 in favour of the 2nd defendant which is unlawful, invalid and the same as no impact repercussion and implications on the deed of agreement of sale which was acted by the defendant No.1 towards the plaintiff herein. Hence it is according to the

plaintiff, the cause of action to launch the suit has arose on 06.05.2024.

13. Further, a cause of action is a set of fact that, gives raise for a legal claim or right to sue. As such the said cause to launch this suit is only to set up action and also the consideration under which leads the plaintiff to approach the court. However, again it is for the plaintiff alone or the person who approaches this court to produce and to lead all sort of evidence in support of the said pleadings and cause of action.

14. Hence, this court is of the opinion that, there is a cause of action which is clearly coated and averred in the pleadings of the plaint it is clear from the very bare and plain reading of the plaint and in respect of the remaining averments as discussed above are to be dealt in detail during trial. Hence, the additional issue framed by this court is answered in the **Negative** and court proceeds to pass the following:

ORDER

Issue No.5 is answered in the Negative.

Accordingly, the suit is maintainable.

(Dictated to the Stenographer transcribed by her, revised, corrected, signed and then pronounced by me in the open Court on this the 02nd day of June 2025)

(Chandan.S)
Prl. Civil Judge and JMFC,
K.R.Nagara.