

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL  
JUDGE AND CJM, RAMANAGARAM**

**Dated This 29<sup>th</sup> day of January 2018**

**PRESENT:**

**Smt.M.Anitha**

**B.Sc., LL.B.,**

**Prl., Senior Civil Judge and CJM,  
Ramanagara.**

**O.S 429/2013**

**Plaintiff:- Sri.Vijayakumar**

**(By Sri. L.N.C., Advocate)**

**V/s**

**Defendants :- Smt.Vinutha and others**

**(By Sri. H.B.C., Advocate)**

**\* \* \* \***

**ORDERS ON I.A-6 DATED 01.07.2014**  
**FILED BY PLAINTIFF**  
**U/O 14 RULE 5 R/W SEC.151 of CPC**

The prayer made in the present application is to delete Issues No.1 and 2.

2. In the affidavit anent to the application, the plaintiff prayed to read the plaint averments as part and parcel of his affidavit. Besides, he deposed that, he and the 2<sup>nd</sup> defendant are friends. The defendants 1 and 2 are husband and wife and

the 3<sup>rd</sup> defendant is their minor son. He has filed the suit against the above defendants for Specific Performance of Contract in respect of suit schedule property. The defendants in the earlier part of their written statement have denied the execution of agreement and subsequently in paragraph No.8 of the written statement, they stated as under:-

*“The defendants 1 and 2 submit the true facts are that after entering into the sale agreement dated 22.02.2010 -----”.*

Virtually the defendants have admitted the Agreement in the subsequent paragraph. Hence, Issues No.1 and 2 will become redundant in view of clear admission made by the defendants in subsequent paragraph of their written statement. Hence, the burden shifts to the defendants. Therefore, the Issue No.1 and 2 is to be deleted on allowing the present application or otherwise the plaintiff will be put to hardship.

3. The defendant No.2 resist the application on filing his objection statement to the following effect:-

This defendant stated that, as averred in the plaint at paragraph No.4, the 1<sup>st</sup> defendant is the owner of the suit schedule property and in order to discharge the debts incurred by her was a need of money and accordingly the defendants have offered to sell the suit schedule property and the plaintiff accepted the same and consequentially, the defendants have executed the registered agreement of sale dated 22.02.2010 agreeing to sell the suit schedule property for Rs.17,00,000/-. Further, as averred in the plaint, on the date of execution of the said agreement, the defendant received a cash of Rs.16,00,000/-. But the defendants 1 and 2 in their written statement denied the execution of the said sale agreement and receipt of the advance sale consideration amount. Based on the said pleadings, this court has rightly framed issues No.1 and 2. The plaintiff is required to prove the Issues on his own footing and he cannot depend on the lacuna of the defendants. Hence, the question of deleting the Issues No.1 and 2 does not arise. Besides, the plaintiff has filed the suit for wrongful gain and the present application is filed to drag on the matter. As such, the application is liable to be dismissed with costs.

4. In view of rival contention of the parties, the following point emerge for consideration:-

*Whether the plaintiff made out a ground to delete the Issues 1 and 2 as prayed?*

5. Having heard the arguments of both the counsels, the court scrutinized the application in the backdrop of pleadings of the parties and the issues on record. Now, answer of the court on the point is in the “Affirmative” for the following:-

**REASONS**

6. The plaintiff has instituted this suit for the Specific Performance of Contract dated 22.02.2010 with regard to the plaint schedule landed property. According to plaintiff, the defendants have executed the said registered Agreement of Sale in his favour agreeing to sell the suit schedule property for sale consideration of Rs.17,00,000/- and has received an advance sale consideration of Rs.16,00,000/- on the date of agreement. It is the allegation leveled against the defendants that, despite the receipt of legal notice, the defendants have not come forward to perform their part of

contract and on the other hand, they sent an untenable reply stating that, they have paid amount to the plaintiff.

7. The defendants filed their detailed written statement. The close and careful reading of the written statement filed by defendants 1 and 2 made it clear that, they have not denied the execution of the registered sale agreement dated 22.02.2010. Indeed, these defendants stated at paragraph No.5 of their written statement that, the allegations made in paragraph No.4 of the plaint is partly correct. Further, they stated in the same paragraph of the written statement as under:-

All the defendants have not agreed to sell the suit schedule property. The defendants 2 and 3 are not the owners of the suit schedule property. Further, the defendants 1 and 2 have agreed to sell the suit schedule property for a meager amount to meet their immediate legal requirements and at the request of plaintiff, the defendants 1 and 2 and Nihal Sagar Redddy i.e., the 3<sup>rd</sup>

defendant have also entered into an agreement of sale with the plaintiff for the sale of the suit schedule property and the plaintiff is specifically agreed to complete the sale transaction within six months from the date of sale agreement dated 22.02.2010 which expired on 21.08.2010 and plaintiff was unable to pay balance sale consideration and to get the sale registered in his name, which clearly goes to show that, plaintiff has not performed his part of contract by paying the balance sale consideration amount and hence not performed his part of contract and in this regard it is required to be noted the revenue records which are required for the registration of the sale deed and the suit schedule property was stood in the name of 1<sup>st</sup> defendant as on the date of entering into the said sale agreement dated 22.02.2010 itself.

8. Besides at paragraph No.6 of the written statement, the defendants 1 and 2 stated as under:-

*The defendants 1 and 2 submits that, the allegations made in para – 5 of the plaint that, the defendants are dodging and they have not paid the amount, even after exchange of the notice, is partly admitted as correct as far as non payment of any amount after exchange of Notices, as the plaintiff has already taken the entire advance sale consideration amount along with the interest accrued thereon and has issued proper receipts to that effect, the question of further paying the amount does not arise, and by this admission it is clear that, the plaintiff is not willing to perform his part of contract and he was curious in getting back his amount for the second time.*

9. Furthermore, in paragraph No.8 and 9 of the written statement, the defendants 1 and 2 stated as under:-

*The defendants 1 and 2 submits that, the true facts are that, after entering into the said Sale agreement dated 22.02.2010, plaintiff was unable to pay*

*the balance sale consideration amount and to complete the sale transaction and requested these defendants to repay the advance sale consideration amount and to cancel the sale transaction and these defendants have agreed for the same and in this regard these defendants have paid a sum of Rs.10,00,000/- by cash to the plaintiff on 10.10.2010 and the plaintiff has received the part advance sale consideration amount of Rs.10,00,000/- by cash, pertaining to the suit schedule property and plaintiff has issued a receipt dated 10.10.2010 to that effect and the plaintiff has requested these defendants to pay an interest at the rate of 2% per month on the balance advance sale consideration amount of Rs.6,00,000/-.*

*The defendants 1 and 2 submits that, on 11.06.2012, these defendants have paid and the plaintiff has received a sum of Rs.8,40,000/- by cash, being the balance advance sale consideration refund amount together with interest accrued*

*thereon at the rate of 2% per month as full and final settlement, pertaining to the suit schedule property which is the property covered under the Sale agreement dated 22.02.2010.*

10. The statement made by the defendants 1 and 2 in the written statement, which is extracted above per se made it clear that, they admitted the execution of the registered agreement of sale dated 22.02.2010 in favour of the plaintiff and also the receipt of part sale consideration of Rs.16,00,000/- The written statement filed by the defendants 1 and 2 is confined to their plea that, the plaintiff is already received back the entire advance sale consideration amount along with interest accrued thereon and therefore the question of plaintiff is willing to perform his part of contract does not arise. To be more precise, the plea taken by the defendants is that, they have already paid back the entire advance sale consideration amount along with interest accrued there on at the rate of 2% per month as full and final settlement pertaining to the suit schedule property, which is the property covered under the

sale agreement dated 22.02.2010 and therefore the suit is not maintainable. Besides, they put forth the plea that, the plaintiff is not willing to perform is part of contract and the plaintiff indeed, requested the defendants repay the advance sale consideration amount and to cancel the sale consideration and the defendants have agreed for the same and in this regard they have paid the amount of Rs.10,00,000/- on 10.10.2010 and Rs.8,40,000/- on 11.06.2012 respectively and the plaintiff has received the same.

11. When above being the defence of defendants, Issues 1 and 2 are really unnecessary Issues. To elaborate, the court imposed burden on the plaintiff to prove the execution of the registered agreement of sale dated 22.02.2010 and the payment of advance sale consideration of Rs.16,00,000/-. But the execution of the said agreement and the payment of advance amount are admitted facts. It is settled law that, admitted facts need not be proved. Therefore, it is totally irrelevant to burden the plaintiff by casting the burden of proving the agreement of sale and the

receipt of advance amount. Wherefore, the first two issues framed by predecessor are unnecessary issues. As such, I am inclined to hold the point is in the “Affirmative”. Resultantly, the following order is passed:-

**ORDER**

I.A No.6 dated 01.07.2014 filed by the plaintiff U/o 14 Rule 5 r/w Section 151 of CPC is allowed.

Resultantly, Issues No.1 and 2 are hereby deleted.

*(Dictated to the Stenographer, transcribed by him, the transcript corrected and then pronounced by me in the open Court on this the 29<sup>th</sup> day of January 2018)*

**Prl., Senior Civil Judge and CJM,  
Ramanagaram.**