

ORDER BELOW EXH.151 IN Spl.C.S. NO.06/2015

(Passed on 04/12/2024)

This is application for permission to deposit Rs.15 lacs in court as per terms and conditions of agreement of sale dated 25/12/2014.

2. In short it is application the plaintiffs have submitted suit for specific performance. Rs.70 lacs is decided consideration out of it at the time of agreement of sale Rs.55 lacs are paid and remaining consideration of Rs.15 lacs was to be paid at the time of sale deed. The plaintiffs are ready to pay remaining consideration to defendant. Therefore, permission may be granted to deposit Rs.15 lacs in the court.

3. To this application defendants No.2 and 3 have submitted say below Exh.152 that plaintiffs have not mentioned in their evidence that from last 9 years they are ready to deposit Rs15 lacs. From last 9 years such application is not submitted. Defendants have denied that plaintiffs have paid Rs.55 lacs to defendant No.1. To fill up the lacuna present application is submitted. Hence, application may be rejected

4. Heard learned advocate of both sides. Learned advocate of plaintiffs submits that plaintiffs wants to deposit remaining consideration of Rs.15 lacs. Therefore, permission may be granted. By deposit of the amount no prejudice will be caused to defendant. On the other hand, learned advocate of

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defendants No.2 and 3 submits that from last 9 years plaintiffs have not taken such steps. Therefore, the present application may be rejected. Learned advocate of defendant submits that plaintiffs have not paid Rs.55 lacs to defendant No.1. Therefore, application may be rejected.

5. This suit is for specific performance of contract based on agreement of sale. Plaintiffs have submitted this application with a view to show their readiness and willingness to perform their part of contract. A consideration amount of Rs.55 lacs is paid or not is a matter of evidence. At this stage, by filing this application it will not be presumed that plaintiffs have paid Rs.55 lacs to defendant No.1 unless proved. It is submissions of learned advocate of defendant from last 9 last years such steps are not taken. But it is not necessary to file the application at the initial stage of the suit and at this stage also because to show a readiness and willingness it is not necessary to carry the amount from the date of suit, to the date of decree or to deposit amount in the court. Only plaintiffs have to prove their capacity to pay a consideration from the date of agreement of sale till final disposal of suit. Hence, in the result, I pass the following order:-

ORDER

1. The application is rejected.
2. No order as to cost.

Sd/-

Date-04/12/2024.

(U.V.Joshi)
Civil Judge Senior Division,
Malshiras.