

**IN THE COURT OF II ADDL. SENIOR CIVIL JUDGE &
J.M.F.C., AT MANDYA.**

DATED: THIS THE 31st DAY OF JULY- 2015

PRESENT :

Sri. Sridhara Gopalakrishna Bhat, LL.B.,
II Addl. Senior Civil Judge and
Addl. MACT, Mandya.

O.S.No.159/2011

Plaintiff : H.B.Ramesh S/o H.M.Basappa
Shetty, Aged about 50 years, R/o
Door No.1275,
Krishnamurthypuram, Chamaraja
Mohalla, Mysore.
(By Sri.P.K.-Adv.,)
/VS/

Defendant : M.V.Prasanna S/o
S.M.Vishwanatha Rao, Aged about
38 years, R/o Door No.2847/9C,
9th cross, 4th Main, Jayanagara,
Chamaraj Mohalla, Mysore.

(By Sri.B.L.G.-Adv.,)

Date of institution of the suit : 12-12-2011

Nature of the suit : Specific performance

Date of commencing of evidence : 16-07-2012

Date of closing of evidence : 13-01-2015

Judgment pronounced on : 31-07-2015

Total duration : 3 years 7 months 19 days

JMFC II Addl. Sr. Civil Judge &
Mandya

J U D G M E N T

1. The plaintiff has approached this court with this suit praying for judgment and decree in his favour directing the defendant to execute register sale deed in respect of the suit schedule property and to deliver the possession of the same after receiving the balance sale consideration of Rs.3,00,000/- in pursuance of the sale agreement dated:28.06.2011 and if the defendant fails to execute the registered sale deed, get the registered sale deed through process of court and for such other reliefs as this court may deem fit to grant under the circumstances of the case with cost in the interest of justice and equity.

2. The brief facts of the plaintiff's case are that, the suit schedule property is self acquired property of the defendant,

which he had purchased through public auction conducted by Principal Civil Judge (Sr.Dn) on 05.07.2010 in Execution case No.9/2000 and since from date of purchase the defendant has been in lawful possession and enjoyment of the said property as its absolute owner. It is further case of the plaintiff that, he entered into an agreement of sale with defendant on 28.06.2011 agreeing to purchase the suit schedule property i.e., property bearing Sy.No.20/12 measuring 0.32 guntas situated at Kalenahalli village, Kothathi Hobli, Mandya Taluk and the defendant agreed to sell the said property for consideration of Rs.13,00,000/-. On the date of execution of the agreement of sale, the plaintiff paid a sum of Rs.10,00,000/- towards advance to the defendant and the defendant had agreed to execute the sale deed within 02 months from the date of said agreement by receiving remaining sale consideration of Rs.3,00,000/-

3. It is further case of the plaintiff that, he was and is ever ready and willing to perform his part of obligation by

arranging remaining consideration amount of Rs.3,00,000/- and even he had approached the defendant personally by showing his willingness and readiness and also requested him to fix the date for registration of the suit schedule property. However, the defendant started to dodge the matter on one or other pretext and ultimately the plaintiff without having any other option issued legal notice dated:27.08.2011 demanding the defendant to execute registered sale deed with regard to the suit schedule property as per the terms of sale agreement. The said notice though served on the defendant on 02.09.2011, the defendant neither come forward to perform his part of contract nor replied to the said notice. Under this attending circumstances, the plaintiff without having any other course constrained to file the present suit for the reliefs as sought for and accordingly on these grounds prayed for judgment and decree in his favour with cost of the suit.

4. In response to the summons issued, the defendant has put up his appearance through his counsel and filed his detail written statement inter-alia denying the execution of the sale agreement in favour of the plaintiff, receiving of the advance amount, cause of action for this suit, demand made by the plaintiff to execute the register sale deed as pleaded by the plaintiff. However, he has admitted that, the suit schedule property was purchased by him through public auction conducted in Execution case No.9/2000, but contended that, the said property is not his self acquired property and he had purchased the said property out of the joint family nucleus and as such the joint family members have got right, title over the said property.

5. It is further case of the defendant that, at no point of time, he had negotiated or transacted with the plaintiff. The plaintiff, defendant and one H.S.Vallaba Shasthri were known to each other and they were very close friends. The said Vallaba Shasthri had borrowed loan of Rs.4,00,000/- from the

plaintiff agreeing to repay the same with 12% interest and as security for the said loan transaction, the plaintiff had obtained signature of the defendant on some blank paper without disclosing anything about the agreement for sale. After obtaining the signature of the defendant on the blank paper, the plaintiff concocted and created the agreement of sale in his favour. Th said H.Vallaba Shasthri could not repay the loan amount in time due to some financial crisis and later he has paid principal as well as interest. It is further averred that, since there is no any sale transaction between the plaintiff and himself, the question of executing registered sale deed in favour of the plaintiff does not arise and he is ready to persuade H.S.Vallaba Shasthri to pay the loan amount with interest.

6. It is further case of the defendant that, the plaintiff is money lender doing money transaction and as such he has to produce money lending license as well as accounts

without which the present suit is not maintainable. It is also contended that, absolutely there was no necessity to the defendant to sell the suit schedule property in favour of the plaintiff. One H.S.Vallabhashasthri and his wife including the plaintiff approached the defendant and requested him to put his signature on two rupees document sheet on the blank papers promising him to make use of the same as security for the loan and further promised to clear all the debts contracted by them from others. Believing words of said H.S.Vallabhashasthri and his wife, the defendant put his signature on the blank paper and subsequently the said H.S. Vallabhashasthri and his wife colluding with the plaintiff fraudulently created and concocted the alleged agreement to sell, which apparent from the document itself. It is further contended that, the defendant had purchased the suit schedule property with view to start granite industry and made serious effort in that regard, which will clearly disclose that, he had no intention to sell the valuable property for

meager sum as alleged in the agreement. It is also averred that, there is no merit in the suit and the same is barred by limitation and the court has no jurisdiction to entertain the suit and accordingly on these grounds prayed for dismissal of the suit with exemplary cost in the interest of justice and equity.

7. On the basis of the pleadings of the parties the following had been framed:

ISSUES

1. Whether the plaintiff proves that the defendant is the absolute owner of the suit schedule property?
2. Whether the plaintiff further proves that on approach of the defendant, he has agreed to purchase the suit schedule property and entered into an agreement of sale with the defendant on 28.06.2011 for total sum of Rs.13,00,000/-?
3. Whether the plaintiff further proves that, the defendant has agreed to sell the suit schedule

property in favour of the plaintiff, thereby he has executed an agreement of sale in the name of plaintiff on 28.06.2011 and received a sum of Rs.10,00,000/- towards advance amount?

4. Whether the plaintiff further proves that the defendant has agreed to execute regular sale deed in favour of the plaintiff within two months from the date of agreement of sale after receiving remaining consideration amount of Rs.3,00,000/-?
5. Whether the plaintiff further proves that he was ever ready and willing to perform his part of contract, but the defendant started to dodge the matter on one pretext or other?
6. Whether the plaintiff further proves that, he has issued a legal notice to the defendant on 27.08.2011 demanding him to execute the registered sale deed?
7. Whether the plaintiff proves the cause of action arose for the suit as alleged at para 5 of the plaint?

8. Whether the defendant proves that, one H.Vallabhashasthri had borrowed a sum of Rs.4,00,000/- from the plaintiff agreeing to repay the same with interest @ 12% per annum and towards security of the said loan, the plaintiff had obtained signature of the defendant on some blank papers?
9. Whether the defendant proves that, the plaintiff has concocted and created agreement of sale and there is no any sale transaction between the plaintiff and defendant in connection with the suit schedule property?
10. Whether the defendant proves that, suit is barred by limitation and the court has no jurisdiction to entertain the suit?
11. For what relief the parties are entitled to?
12. What decree or order?

8. Out of the above said issues, issue No.10 was treated as preliminary issue. However, the said issue is not tried as

preliminary issue and all issues were taken up together for consideration by holding full fledged trial.

9. In order to prove the case of the plaintiff, the plaintiff himself examined as P.W.1 and got marked as many as 03 documents as per Ex.P.1 to Ex.P.3 and also examined the 02 witnesses as P.W.2 and P.W.3 and got marked the signature found in Ex.P.1 and closed his evidence. On the other hand, the defendant himself is examined as D.W.1 and got marked 04 documents as per Ex.D.13 to 16 and got marked 12 documents as per Ex.D.1 to Ex.D.12 during cross-examination of P.W.1 and also examined one witness as D.W.2 and closed his evidence and thereby the evidence of the parties concluded.

10. Heard the arguments of the learned counsels. The counsel for the plaintiff and defendant also filed their written argument. On perusal of the oral and documentary evidence coupled with pleading of the parties and also on hearing

arguments of the learned counsels with the various decisions cited, the above issues are answered as under:

Issue no.1 : In affirmative

Issue no.2 : In affirmative

Issue no 3 : In affirmative

Issue no 4.: In affirmative

Issue No.5: In affirmative

Issue no.6 : In affirmative

Issue no.7 : In affirmative

Issue no 8 : In negative

Issue no 9.: In negative

Issue no.10 : In negative

Issue no.11 : In affirmative holding that the plaintiff is entitled for the relief claimed

Issue No.12 : as for the final order for the

following:

REASONS

11. **Issue No.1 to 4, 8 and 9:-** Since these issues are inter -linked and to avoid repetition, they are taken together for discussion.

It is specific contention of the plaintiff that, the defendant having purchased the suit schedule property in the court auction, become its absolute owner and being absolute owner of the suit schedule property entered into an agreement of sale on 28.06.2011 with plaintiff agreeing to sell the suit schedule property for total consideration of Rs.13,00,000/- and on executing the sale agreement in favour of the plaintiff received a sum of Rs.10,00,000/- towards advance amount agreeing to execute regular sale deed in favour of the plaintiff within 02 months from the date of agreement of sale by receiving remaining consideration amount of Rs.3,00,000/-. On the other hand, the defendant has denied the case of the plaintiff as to execution of the sale agreement in favour of the plaintiff and it is the positive case of the defendant that, one

H.S.Vallabha Shasthri borrowed some of Rs.4,00,000/- from the plaintiff agreeing to repay the same with interest at the rate of 12% p.a. and towards security of the said loan, the plaintiff had obtained his signature on some blank papers and thereafter concocted and created the agreement of sale, though there was no any sale transaction between himself and the plaintiff.

12. In the light of the rival contention of the parties, the materials placed before this court are looked into, in order to prove the case of the plaintiff, the plaintiff being P.W.1 reiterated the plaint averments as to execution of sale agreement, receiving of Rs.10,00,000/- by the defendant towards sale consideration as advance amount out of total consideration amount of Rs.13,00,000/- undertaking to execute the regular sale deed within 02 months by receiving remaining sale consideration of Rs.3,00,000/-. In addition to that, the plaintiff has produced the original sale agreement dated:28.06.2011 as per Ex.P.1 and legal notice got issued

by him to the defendant and postal acknowledgment for having served the said notice on the defendant as per Ex.P.2 and Ex.P.3. In addition to that, the plaintiff also examined the witnesses to Ex.P.1 as P.W.2 and P.W.3 and got marked their signature found in Ex.P.1 as Ex.P.1(c) and (d).

13. From the pleadings of the parties, one thing is clear that, the suit schedule properties was being purchased by the defendant in the public auction held in Execution case No.9/2000 and thereby acquired right and possession over the said property. It is also not in dispute that, the signatures found in Ex.P.1 sale agreement is the signature of the defendant himself and the same is marked as Ex.P.1(e) to (g). In addition to the evidence of P.W.1 with regard to due execution of Ex.P.1, the evidence of P.W.2 and P.W.3, who are found to be witnesses to Ex.P.1 is looked into, P.W.2 and P.W.3 in their examination in-chief by way of affidavit specifically stated as to due execution of Ex.P.1 by the defendant in favour of the plaintiff by receiving

Rs.10,00,000/- towards sale consideration amount of Rs.13,00,000/- as advance amount and they have also specifically stated as to how the defendant has acquired right over the suit schedule property. The evidence of P.W.2 and P.W.3 also disclose that, the defendant agreed to execute the registered sale deed in favour of the plaintiff with regard to the suit schedule property by receiving remaining amount of Rs.3,00,000/- within 02 months. P.W.2 and P.W.3 specifically stated as to their presence at the time of execution of sale agreement and as to putting of their signatures as witness to the said Ex.P.1.

14. The evidence of P.W.2 further disclose that, the defendant himself contacted him to sell the suit schedule property for his legal necessity and also furnished the documents of the suit schedule property. P.W.2 further deposed that, he had discussed the said matter with the plaintiff and on 20.06.2011 himself and defendant went to the office of the plaintiff and discussed about the sale

consideration and the plaintiff agreed to purchase the property for Rs.13,00,000/- and accordingly on 28.06.2011, the agreement to sell was executed by the defendant. P.W.2 also stated that, the defendant has sought for 02 months time to execute the registered sale deed as katha of the suit schedule property was not changed in his name. P.W.2 further stated that, on 08.07.2011, the plaintiff got franked Ex.P.1 for Rs.200/-. Thus, ongoing through the examination in chief of P.W.2 and P.W.3, it is clear that, they support the evidence of P.W.1 as to execution of Ex.P.1 by the defendant agreeing to sell the suit schedule property in favour of the plaintiff for Rs.13,00,000/- and also receiving of advance amount of Rs.10,00,000/- out of total sale consideration of Rs.13,00,000/-.

15. At this stage, the cross-examination of P.W.1 to P.W.3 is looked into, though the learned counsel for the defendant cross-examined P.W.1 to P.W.3 in length, nothing much was elicited from their mouth so as to disbelieve their

evidence as to execution of Ex.P.1 by the defendant in their presence in favour of the plaintiff as put up by the plaintiff. It appears that, P.W.2 himself acted as middle man between the plaintiff and defendant in the sale transaction in question. Even during cross-examination also P.W.1 to P.W.3 have specifically stated as to due execution of Ex.P.1 by the defendant and also as to receiving of advance amount of Rs.10,00,000/- out of total agreed sale consideration of Rs.13,00,000/-. Ongoing through the evidence of P.W.1 to P.W.3 in toto, their evidence appears to be natural and there are no grounds to disbelieve the same. No doubt, as argued by the learned counsel for the defendant, P.W.1 during his cross-examination stated that, the stamp paper for Ex.P.1 was being brought by the defendant and P.W.2 and they got drafted Ex.P.1 sale agreement. But P.W.2 in his cross-examination stated that, the stamp paper was being brought by the plaintiff himself and after negotiation, the plaintiff himself got drafted Ex.P.1 through document writer. But only

on that ground, the case of the plaintiff cannot be disbelieved in the light of the totality of the evidence of P.W.1 to P.W.3. Added to that, the defendant himself admitted his signature found in Ex.P.1. Thus, considering the contents of Ex.P.1 along with the evidence of P.W.1 to P.W.3 their remains no doubt as to due execution of sale agreement by the defendant in favour of the plaintiff as contended.

16. As discussed supra, since the plaintiff has placed sufficient evidence to prove the due execution of Ex.P.1 as contended, now in the light of the defence taken by the defendant burden is on the defendant to establish his contention that, his signature was taken on the blank stamp paper and thereafter Ex.P.1 was created by the plaintiff as put up by him. As already stated, the defendant admitted his signature found in Ex.P.1. It is also clear from the material placed before this court that, the defendant is well educated and he is the civil engineer by profession. Such being the

fact, it is difficult to accept the contention of the defendant that, his signature was taken on the blank stamp paper, unless the defendant proves the same with clear and cogent evidence.

17. The material placed before this court in support of the contention of the defendant is analysed, the defendant himself examined before this court as D.W.1 and also examined one witness as D.W.2. The defendant in his examination in-chief by way of affidavit specifically stated as to contention taken in the written statement in toto. However, his cross-examination is looked into, in his cross-examination he has specifically stated that,

£Á£ÄÄ J`Áè zÁR`ÁwUÀ¼Ä£ÄÄß Nç w½zÄÄPÉÆEaqÄÄ ,À» ¢ÀiÁqÄÄvÉÛÃ£É JAzÀgÉ ,Aj, Nç w½zÄÄPÉÆ¼ÄîzÉÃ ,À» ¢ÀiÁqÄÄ¢ÄÄç ®è JAzÀgÉ ,Aj.

18. This version of the D.W.1 makes it clear that, he used to sign any documents only after knowing its contents. It is also clear from its evidence that, he is Mechanical

Engineer and used to have written contract with owner of the flats before contracting the same. This shows that, the defendant is well versed with the written contract. Under this attending circumstances, it is very difficult to accept the contention of the defendant that, he had signed on blank stamp paper as put up by him. It is specific pleading of the defendant that, one H.S.Vallaba Shasthri borrowed sum of Rs.4,00,000/- from the plaintiff agreeing to repay the same with interest at the rate 12% P.A. and as security to the said loan, the plaintiff had obtained his signature on the blank papers and later concocted and created the agreement of sale. When the defendant takes contention of concoction and creation of the document, heavy burden on his shoulder to establish the same. In this regard, the evidence available on behalf of the defendant is looked into, the defendant has not examined the said H.S.Vallaba Shasthri at whose instance he claims to had signed the blank stamp paper. In the light of the defence taken by the defendant, the said

Vallaba Shasthri should have been best witness in support of the case of the defendant. But the defendant has not examined him in support of his contention for the reason best known to him.

19. It is also to be noted that, the contents of the written statement filed by the defendant in this regard also found to be inconsistent. In para No.4 of the written statement, the defendant contended that, Vallaba Shasthri borrowed loan of Rs.4,00,000/- from the plaintiff and the plaintiff has obtained his signature on some blank paper as security for the said loan without disclosing anything about the alleged sale agreement. But in para No.4(a) of the written statement, which is subsequently introduced by way of way of amendment, he has contended that, the said Vallaba Shasthri and his wife Smt.Nagashree approached him and requested him like anything to put his signature on 2/- rupees document sheet blank papers, promising him to make use of the same as security for the loan etc., including

the plaintiff and promised to clear all debts contracted by them from others and believing their words, he put his signatures on the blank papers. Hence, in one breath, the defendant contents that, it is the plaintiff, who had taken his signature on the blank paper and in another breath, he says that, it is the Vallaba Shasthri and his wife, who had taken his signature on 2/- rupees document sheet blank papers. Even he has stated in his cross-examination that, he had given signed blank papers to Vallaba Shasthri and not to the plaintiff. This itself makes it clear that, the defendant has put forward unbelievable theory. In the light of the defence taken by the defendant, the said Vallaba Shasthri and his wife were best witnesses for the defendant. But he has not examined them and non-examination of the said witnesses, is fatal to the defence taken by the defendant. As already stated, though the learned counsel for the defendant cross-examined P.W.1 to P.W.3, he could not elicit anything from

their mouth so as to accept the contention of the defendant to any remote extent.

20. It is also noticed that, in the evidence, the defendant has stated that, the plaintiff and himself purchased one site at Dattagahalli in the name of the plaintiff in the auction conducted by the Canara bank and they have paid amount equally in respect of the said site with an understanding to construct the house in the said site. But the plaintiff without knowledge of the defendant, sold the said property to third person and utilized entire amount including profits earned and in this regard, the defendant has given police petition to the Commissioner of Police and in enquiry held, the plaintiff agreed to give the share of the defendant. Since, he has filed police petition in that regard, the plaintiff with malafide intention in collusion with Vallaba Shasthri and his wife created false agreement and filed false case. But the said evidence is without pleading and even contrary to the defence taken in his

written statement. Added to that, during his cross-examination, he has specifically admitted that, in the auction conducted by the Canara bank himself and the plaintiff attended the auction, but he had not bid for auction and he had not paid any amount to the bank on behalf of the plaintiff and the plaintiff himself paid Rs.5,40,000/- to the bank with regard to the site purchased in the said auction. This version again goes against the evidence of the defendant in his examination in-chief and the said contention of the defendant is also false. However, ongoing through the evidence of D.W.1, one thing is very certain that, the plaintiff and defendant are well known to each other and there was transactions between them. As argued by the learned counsel for the defendant, the plaintiff in his evidence deposed as to strained relationship between himself and the defendant since 2010 onwards. Under this circumstances, it appears that, it is P.W.2 who acted as middle man between the plaintiff and defendant.

21. The defendant in support of his contention examined one witness as D.W.2, who in his examination in-chief stated that, in the month of May 2011, when he had been to house of the defendant, one H.S.Vallaba Shasthri and his wife Smt.Nagashree came to the house of the defendant and they disclosed their intention to take loan of Rs.4,00,000/- from the plaintiff and for the security of the said loan asked the defendant to put his signature on blank sheet, which will be used as security for the loan to be taken from the plaintiff and the said papers will be returned back immediately after clearing the loan as early as possible. It is also deposed by him that, believing their words, the defendant had signed four blank document sheets in his presence. But it is pertinent to note that, ongoing through his cross-examination, it is crystal clear that, he is interested person with the defendant and he is the tutored witness. It is clear from his cross-examination that, he is not aware of any alleged intended loan transaction. It is also stated by that,

he has not seen the defendant putting his signature on the blank stamp papers personally, but he came to know about it from the defendant, which is quite contrary to his examination in-chief. Thus, the evidence of D.W.2 is no way helpful to the defendant and on the other hand, it appears that, he is interested witness with the defendant and his evidence is cannot be believed to any extent.

22. It is also interesting to note that, before filing the suit, the plaintiff had got issued legal notice dated:27.08.2011 i.e., Ex.P.2 taking all such contentions as pleaded by him in the present suit requesting the defendant to execute the registered sale deed in pursuance of Ex.P.1. Admittedly, the said notice was served on the defendant on 02.09.2011 as per Ex.P.3. The defendant has not opted to give any reply to the said notice. If at all the contentions of the defendant is true, definitely he would have issued reply notice to Ex.P.2 being prudent person. This makes it clear that, the defence taken by the defendant is only after

thought. Added to this it is also interesting to note that, as already stated, the defendant is well educated and having knowledge of various transaction in his day to day affairs and if at all his signature was taken on the blank stamp papers, he would have demanded for returning the same from the concerned and if not returned he should have taken proper legal steps in that regard, which was also not done. This circumstances again makes it clear that, the contention of the defendant is only after thought. As already stated, though the defendant has taken as specific defence, he has not placed any relevant and available evidence in support of his contention. Thus, the evidence placed before the court as to execution of Ex.P.1 is concerned, the case of the plaintiff is required to be accepted.

23. As argued by the learned counsel for the defendant, in this case, the plaintiff also not examined the said H.S.Vallaba Shasthri in support of his contention, though he is also found to be one of the attesting witnesses to the

Ex.P.1. But it is pertinent to note that, it is not necessary that, all attesting witnesses are required to be examined before the court in support of Ex.P.1. Admittedly, the plaintiff has examined 02 attesting witnesses in support of Ex.P.1 and under this attending circumstances, non-examination of said Vallaba Shasthri cannot be made much against the plaintiff. On the other hand, as stated earlier, non-examination of the said Vallaba Shasthri is fatal to the defence taken by the defendant. As argued by the learned counsel for the defendant, in this case, though the plaintiff claims to have paid Rs.10,00,000/- to the defendant as advance amount, the said amount was not paid either in negotiable instrument or through demand draft. But it is pertinent to note that, just because, the said amount is not paid in the said form, that does not defeat the case of the plaintiff when the plaintiff proves the contents of Ex.P.1. As submitted by the learned counsel for the defendant, the plaintiff has not produced any proof to show that, he was

having Rs.10,00,000/- as on the date of execution of Ex.P.1. But there is clear the oral evidence available on behalf of the plaintiff as to how he has collected the said amount and there is clear evidence as to payment of the said amount to the defendant as on the date of Ex.P.1. Added to that, Ex.P.1 also clearly reveals as to payment of the said amount to the defendant and receiving of the same by the defendant. Hence, under the existing evidence, this court does not find any substance in the contention of the learned counsel for the defendant in this regard.

24. So for as the ownership of the suit schedule property is concerned, admittedly, the said property was purchased by the defendant in the public auction conducted in Execution case No.9/2000 on the file of Prl.Civil Judge, Mandya on 05.07.2010 and subsequently, he got registered the sale deed on 27.01.2011 in his name. This makes it clear that, the suit schedule property was purchased by the defendant in the public auction and thereby acquired right

over the same. No doubt, the defendant has contended that, he had purchased the said property from the income of his joint family and his joint family members are having right over the same, but absolutely, there is no convincing and acceptable evidence to accept the said contention. As argued by the learned counsel for the plaintiff, in the light of the available evidence, it appears that, such contention is being taken by the defendant only to mess-up the matter and to avoid the claim of the plaintiff. Admittedly, the defendant is aged about 37 years and he is mechanical engineer having various contractual business. Under this attending circumstances, the contention of the defendant that, the suit schedule property was purchased by him out of the joint family income is not acceptable one and on the other hand, it is clear that, the defendant being purchaser of the suit schedule property in the court auction became absolute owner of the said property. Even in this regard, the contents of the Ex.P.1 is looked into, in Ex.P.1 it is clearly

stated as to how the defendant has acquired the suit schedule property, when it was registered and also that, it is the absolute self-acquired property of the defendant himself.

25. Another limb of the argument of the learned counsel for the defendant is that, the Ex.P.1 is materially altered and as such the said document is not binding on the defendant. In this regard the learned counsel for the defendant also relied upon the ruling of our Hon'ble High court reported in ILR 2014 KAR 233 (Smt.Padmini Raghavan Vs Mr.H.A.Sonnappa, since dead by his L.Rs and others). In the light of the argument addressed if the contents of Ex.P.1 are looked into, in page No.2 of Ex.P.1, there is one alteration as to duration of the agreement. It is noticed that, in the place of 'one' it is altered as 'two'. But ongoing through the contents of said document, the said alteration cannot be regarded as material alteration under the facts and circumstances of the case. Even there is evidence of P.W.1 to P.W.3 in that regard, P.W.2 in his evidence

specifically stated that, the plaintiff was ready to get the registered sale deed within one month, but since katha was not effected in the name of the defendant, the defendant himself sought for 02 months time as to execute the registered sale deed and accordingly, the same is stated in Ex.P.1. Even P.W.3 also deposed as to 02 months time as found in Ex.P.1. It is also noticed that, evidence available in that regard is remained unchallenged. It is also to be noted that, it is not the case of the defendant that, P.W.2 and P.W.3 are interested to depose against him falsely. Even the defendant in his evidence stated that, he had not seen P.W.2 and P.W.3 and also not aware of them. However, the cross-examination of D.W.1 is looked into, though he has stated in his examination in-chief that, he had not seen and not aware P.W.2 and P.W.3 during his cross-examination stated that, P.W.2 was known to him since 4 years. This again disclose that, the defendant is trying to put up falsehood and making every attempt to take all possible contentions to defeat the

case of the plaintiff. The matter would have been different if the defendant having admitted the execution and contents of Ex.P.1 taken contention that, subsequently, the said document is materially altered, then there would have been some substance in the contention of the defendant.

26. This court is also being guided by the ruling relied by the learned counsel for the defendant in this regard, which gives clear guidelines on many aspects with regard to the suits of this nature. However, under the facts and circumstances of the case, the said ruling cannot be made applicable to the facts of the present case so as to say that, the document is materially altered and thereby it is not binding on the defendant. Under this attending circumstances, this court does not find any much substance in the argument of the learned counsel for the defendant.

27. The learned counsel for the defendant also forcefully argued contending that, the suit schedule property

was/is having very high market value, there was no necessity to the defendant to sell the said property for meager amount of Rs.13,00,000/- as stated in Ex.P.1 and the defendant is intended to do his own business in it. But in this regard also if the evidence of D.W.1 is looked into, it is clear that, the defendant had purchased the suit schedule property in the court auction for Rs.11,50,000/- on 05.07.2010 which was registered in his name on 27.01.2011. Ex.P.1 is dated:28.06.2011 and the sale consideration was fixed at Rs.13,00,000/-. If this aspect is taken into consideration, one cannot accept that, the sale consideration amount is meager amount as contended. On the other hand, it appears to be reasonable if the date of registration of the suit schedule property in the name of the defendant and date of execution of Ex.P.1 are looked into. Hence, this court once again does not find much weight in the argument of the learned counsel for the defendant.

28. Another contention of the defendant is that, the plaintiff is the money lender and he is doing money transaction as provided under Money Lenders Act and as such he has to produce money lending licence as well as the accounts as required under the said Act. In this regard, even the defendant has produced many documents i.e., certified copy of the complaint filed by the plaintiff against the different persons for the offences punishable under Section 138 of N.I.Act and its order to sheet as per Ex.D.1 to Ex.D.12 and also produced certified copy of the F.I.R. and P.F. relating to crime No.147/2014 registered by the Devaraja Police Station as per Ex.D.12 and Ex.D.15 and also copy of the petition given by the one Vallaba Shasthri to the Police Commissioner, Mysore as per Ex.D.16. But it is pertinent to note on the basis of the said document, one cannot say that, the plaintiff is money lender as contended by the defendant. The evidence of the plaintiff disclose that, he is having rice business, doing L.I.C. agency and also Tours and Travels in

the name of his wife and such being the fact, naturally there will be money transactions and just because the plaintiff has filed many private complaints for offence punishable under Section 138 of N.I.Act, that will not prove that, he is doing money lending business. Similarly the contents of Ex.D.12 and Ex.D.15 are looked into, the said documents relating to the year 2014 and they are sufficient to hold that, the plaintiff was running many loan business as on the date of Ex.P.1. Hence, only on the basis of Ex.D.1 to Ex.D.11, one cannot accept the contention of the defendant that, the plaintiff is money lender as contended.

29. Thus, for the reasons discussed above, from the materials placed before this court, it is crystal clear that, the plaintiff has clearly proved due execution of Ex.P.1 sale agreement by the defendant in his favour as contended. When the plaintiff has proved the due execution of Ex.P.1 by the defendant, naturally its contents are binding on the defendant. Thus, on conjoint reading of the oral and

documentary evidence coupled with pleadings of the parties, this court is firm view that, the plaintiff has prove that, the defendant is the absolute owner of the suit schedule property, agreed to sell the same in favour of the plaintiff and entered into an agreement of sale on 28.06.2011 agreeing to sell the suit schedule property in favour of the plaintiff for consideration of Rs.13,00,000/- and received Rs.10,00,000/- towards advance amount and also agreed to execute the regular sale deed in favour of the plaintiff within two months from the date of sale agreement as contended. On the other hand, the contentions of the defendant are not proved with clear and cogent evidence and the defence put up by the defendant is not acceptable one. Hence, issues No.1 to 4 are required to be answered in affirmative and issues No.8 and 9 are required to be answered in negative and answered accordingly.

30. Issue No.5 to 7:- Since these issues are inter-linked and to avoid repetition, they are taken together for discussion.

As discussed earlier, since the plaintiff has proved the contents of the Ex.P.1, it is clear that, he had already paid major portion of the sale consideration as on the date of agreement itself. As per the terms of Ex.P.1, the plaintiff has to get the register sale deed by the defendant within 02 months by making payment of remaining sale consideration of Rs.3,00,000/-. The plaintiff has specifically pleaded as to his readiness and willingness to get the sale deed registered by performing his part of obligation arising out of the agreement. The plaintiff has further contended that, he had approached the defendant personally for many times showing his willingness and readiness by arranging remaining consideration amount of Rs.3,00,000/- and even he had requested the defendant to fix the date for the purpose of registration of the suit schedule property, but the

defendant started to dodge the matter on one or other pretext and the request of the plaintiff resulted in vain. Since the defendant has not fulfilled his part of obligation, the plaintiff has got issued legal notice on 27.08.2011 demanding him to execute the registered sale deed in respect of the suit schedule property. In spite of the service of said notice, the defendant has not come forward to perform his part of contract and even he has not replied to the said notice and as such the plaintiff is constrained to file the suit. This version of the plaintiff is supported with his oral evidence. In addition to that, the plaintiff has produced legal notice got issued by him as per Ex.P.2, which was served to the defendant as found in Ex.P.3. It is clear that, in spite of the service of the said notice, the defendant had not complied with demands made therein. In Ex.P.2 also the plaintiff has specifically stated as to his readiness and willingness to get the registered sale deed and he is ready with remaining consideration amount of Rs.3,00,000/-. The

contents of Ex.P.2 clearly support the version of the plaintiff as to readiness and willingness to perform his part of obligation arising out of Ex.P.1. It is also noticed that, even the plaintiff had got issued notice to the defendant without any further delay i.e., within 02 months from the date of execution of Ex.P.1. Since, the defendant, inspite of service of notice did not come forward for registering the sale deed as per Ex.P.1, the plaintiff has filed this suit on 13.12.2011 i.e., within 04 months from the date of Ex.P.2. This conduct of the plaintiff makes it clear that, he has been ready and willing to get the registered sale deed from the defendant with respect suit schedule property by making payment of remaining sale consideration of Rs.3,00,000/-. It is clear from the contention of the defendant that, he is not ready and willing to perform his part of obligation arising out of Ex.P.1.

31. So for as the cause of action of this suit is concerned, the plaintiff has specifically pleaded when exactly cause of action arose for this suit and the same is

found to be acceptable in the light of the contents of Ex.P.1 to Ex.P.3. Thus, ongoing through the oral and documentary evidence placed before this court, it is crystal clear that, the plaintiff is ever ready and willing to perform his part of obligation and inspite of issuance of notice, the defendant had not fulfilled his part of obligation. Hence, issues No.5 to 7 are required to be answered in affirmative and answered accordingly. _____

32. Issue No.10:- The defendant in his written statement generally contended that, suit is barred by limitation and this court has no jurisdiction to entertain the suit and accordingly this issue has been framed. But this issue is not much pressed into service at the time of argument also. As provided under Article 54 of the Limitation Act, 03 years limitation is fixed from the date fixed for performance or if no such date fixed for filing suit for specific performance when the plaintiff has notice that, the performance is refused. In this case, Ex.P.1 came into

existence on 28.06.2011 and since the defendant has not executed the sale deed inspite of the request made by the plaintiff, the plaintiff got issued legal notice on 27.08.2011 and inspite of that, the defendant has not executed the sale deed. Hence, the plaintiff has filed this suit on 13.12.2011. Thus, viewed from any angle, the suit of the plaintiff is within limitation. So far as the jurisdiction is concerned, as per the description given in the schedule of the plaint, the property in question is situated within jurisdiction of this court. Hence, definitely, this court gets jurisdiction to entertain the suit. Absolutely there is no merit in the contention taken by the defendant in this regard. Hence, issue No.10 is required to be answered in negative and answered accordingly.

33. Issue No.11:- This issue is concerned, much discussion is not warranted as, the findings given on issues No.1 to 10 are having bearing on this issue. As discussed earlier, since the plaintiff has proved that, the defendant had executed sale agreement as per Ex.P.1 by receiving sale

consideration of Rs.10,00,000/- as an advance undertaking to execute the register sale deed within 02 months from the date of execution of Ex.P.1 by receiving remaining sale consideration, the defendant is bound to fulfill his part of obligation. As discussed earlier, it is clear that, the plaintiff is ready and willing to perform his part of obligation and the suit of the plaintiff is also found to be within limitation.

34. At this stage, this court is also being guided various rulings relied by the learned counsel for the defendant. As already discussed, in the judgment reported in the ILR 2014 KAR 233 our Hon'ble High Court has laid down guiding principle on various aspects relating to suit for specific performance. One cannot dispute that, principle laid down in the said decision. But it is pertinent to note that, facts of the present case are entirely different from the facts of the said case and the said decision cannot be made applicable to the facts of the present case. Similarly, this court also being guided by the ruling reported in ILR 2014 KAR 1252

(Sri.Munithyappa Vs. Krishnamurth and Another). As held in the said decision, the relief sought for by the plaintiff, in the present suit is also discretionary relief and discretion of the court shall not arbitrary and unreasonable, but to be guided by the judicial principles and capable of corrections. However, ongoing through the said decision, it is crystal clear that, the facts of the said case and present case are totally different. In this case, this plaintiff has placed enough material before the court to establish his case. On the other hand, it is clear that, the defendant has come up with false and untenable contention. The conduct of the both parties are concerned, it is the plaintiff, who is in much better position than the defendant as per the evidence available on record.

35. This court is also enlightened by the decision reported in ILR 1444 (A.G.Sheshappa & Another Vs. Basappa), HCR 2013 KAR 226 (G.N.Srinivasa Vs. D.G.Gurappa, dead by L.R.s and others), HCR 2012 KAR 886

(S.N.Muniyappa, Dead by LRs and Others). However, ongoing through the said decisions, no doubt the Hon'ble High court laid down guiding principle relating to suit for specific performance. But, the facts of the present case and facts of the said cases are entirely different and the defendant cannot take advantage of the said decisions in his favour so as to defeat the case of the plaintiff. Similarly this court is also being guided by the rulings of the Hon'ble Apex court reported in 2015 SCCR 39 (K.Prakash V/s B.R.Sampathkumar). However, ongoing through the said decision also, this court does not find applicability of the said decision to the facts of the present case in the light of available evidence. As discussed earlier in this case, the plaintiff has proved the execution of agreement to sell and the said agreement is found to be legal and valid and it is proved as required under law and there are no grounds to reject the relief sought for by the plaintiff. Even this court does not find any blemish conduct on the part of the plaintiff

so as to deny discretionary relief in his favour. Thus, the rulings as relied by the learned counsel for the defendant is not helpful to the defendant so as to non-suit of the plaintiff. As argued by the learned counsel for the plaintiff, the rulings reported in 2015 SCCR 39 is helpful to the plaintiff himself so as to get the relief of specific performance in his favour. It is clear from the said decision that, if once agreement to sell is legally and validly proved and further requirement for getting such decree is established, then court has to exercise discretion in favour of granting relief for specific performance. Hence, considering all these aspects, this court is of the considered view that, there are no grounds to disentitle the plaintiff, who knocked the door of the court seeking discretionary relief of specific performance of the agreement in his favour. Therefore, this court is of the considered view that, the plaintiff is entitled for the relief sought for in this suit. Hence, issue No.11 is required to be answered in affirmative and answered accordingly.

36. **Issue No.12**:- For the reasons discussed in connection with issue No. 1 to 11, this court proceeds to pass the following :

ORDER

The suit of the plaintiff is hereby decreed with cost.

The defendant is hereby directed to execute registered sale deed in favour of the plaintiff with regard to the suit schedule property within one month from the date of this order by receiving balance consideration of Rs.3,00,000/- and shall deliver the possession of the suit schedule property. If the defendant fails to execute the registered sale deed as ordered, the plaintiff is at liberty to get the registered sale deed through the process of court.

Draw decree accordingly.

(Dictated to the stenographer, then corrected and then signed and pronounced by me in the open court, on this the 31st day of July- 2015).

(Sridhara Gopalakrishna
Bhat)
II Addl. Senior Civil Judge &
JMFC,
Mandya.

ANNEXURE

List of witnesses examined for the plaintiffs :

PW.1 : H.B.Ramesh
P.W.2 : Thrishuladara. H.S.
P.W.3 : Riaz Ahamad

List of witnesses examined and marking of documents for the defendants :

DW.1 : M.V.Prasanna
DW.2 : Suresh

List of documents marked on behalf of the plaintiffs:

Ex.P.1 : Original sale agreement
Ex.P.1(a) to (d): Signature of the witnesses
Ex.P.2 : Office copy of the notice
Ex.P.3 : Postal receipt

List of documents marked on behalf of the defendants:

Ex.D.1 to 4 : Private complaints and order sheets
Ex.D.5 : Complaint against one Geetha
Ex.D.6 to 11 : Private complaints and order sheets
Ex.D.12 : F.I.R.
Ex.D. 13 : Certificate issued by Department of Industries and Commerce

-CT1026_O.S._159_2011_Judgment_.doc

ExD.14 : Acknowledgement

ExD.15 : Property list

Ex.D.16 : Copy of complaint

Bhat)

JMFC

(Sridhara Gopalakrishna

II Addl. Senior Civil Judge &

Mandya.

-CT1026_O.S._159_2011_Judgment_.doc

—

—

—