



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 18TH DAY OF AUGUST, 2025

BEFORE

THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

REGULAR FIRST APPEAL NO. 100065 OF 2017 (SP-)

C/W

REGULAR FIRST APPEAL NO. 100069 OF 2017

IN RFA NO. 100065 OF 2017

BETWEEN:

1. PRUTHVIRAJ S/O. TORASA MISKIN,
AGE: 62 YEARS, OCC: BUSINESS,
R/O: 8TH CROSS, KALYAN NAGAR,
DHARWAD-580007.

...APPELLANT

(BY SRI. SHRIKANT T. PATIL, ADV)

AND:

1. ACHUTANAND S/O. VAIKUNTHA RAO ANVEKAR,
AGE: 56 YEARS, OCC: BUSINESS,
R/O: GANESH NAGAR, KHANDALA MORECEL,
GOA-403107.
2. SMT. MEERA W/O. MOHAN PAUSKAR,
SINCE DECEASED BY HER LR'S.,
- 2a. SMT. ANURADHA D/O MOHAN PAUSKAR
AGE: 50 YEARS, OCC: HOUSEHOLD WORK
R/O: GURUSAMRUDHI HEIGHTS,
SANPADA, NAVI MUMBAI-400001.
- 2b. SHRI. DEEPAK S/O MOHAN PAUSKAR,
AGE: 49 YEARS, OCC: BUSINESS,
R/O: 25, JAYANAGAR, SAIDEEP
NEW OSMANPURA, AURANGABAD-431005.
3. MISS. SAROJINI D/O. VAIKUNTHA RAO ANAVEKAR,
SINCE DECEASED BY HER LRS.,

MOHANKUMAR
B SHELAR


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MOHANKUMAR B
SHELAR

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4. ASHWINI D/O. ACHUTANAND ANAVEKAR,
AGE: 22 YEARS, OCC: STUDENT,
R/O: NARAYANPUR KOTANUR, DHARWAD.

(NOTE: AS PER THE V/O. DATED 22.08.2023
THAT THE R1, R2 AND R4 HEREIN ARE THE
ONLY SURVIVING LR'S OF DECEASED R3 HEREIN)

...RESPONDENTS

(BY SRI. DINESH M KULKARNI, ADV FOR R1,
SRI. RAGHAVENDRA A. PUROHIT, ADV FOR R4,
R2 & R3 ARE DECEASED; R2(B) IS SERVED,
NOTICE TO R2(A) IS HELD SUFFICIENT)

THIS RFA IS FILED U/SEC. 96 OF CPC., AGAINST THE
JUDGMENT AND DECREE DATED 17.12.2016 PASSED IN O.S
NO.158/2008 ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND
CJM, DHARWAD, PARTLY DECREERING THE SUIT FILED FOR SPECIFIC
PERFORMANCE OF CONTRACT.

IN RFA NO.100069/2017

BETWEEN:

1. ACHYUTNAND
S/O VAIKUNTHA RAO ANAVEKAR,
AGE: 63 YEARS,
OCC: BUSINESS, R/O: GANESH NAGAR,
KHANDALA MORCEL, GOA-403107.

...APPELLANT

(BY SRI. DINESH M KULKARNI, ADV)

AND:

1. PRUTHVIRAJ S/O TORASA MISKIN,
AGE: 61 YEARS, OCC: BUSINESS,
R/O: 8TH CROSS, KALYAN NAGAR,
DHARWAD-580003.
2. SMT. MEERA W/O. MOHAN PAUSKAR,
SINCE DECEASED BY HER LR'S.,
- 2a. ANURADHA D/O MOHAN PAUSKAR
AGE: 49 YEARS, OCC: HOUSEHOLD
R/O: GURUSAMRUDHI HEIGHTS,
SANPADA, NAVI MUMBAI-400001.



NC: 2025:KHC-D:10359
RFA No. 100065 of 2017
C/W RFA No. 100069 of 2017

- 2b. DEEPAK S/O MOHAN PAUSKAR,
AGE: 49 YEARS, OCC: BUSINESS,
R/O: OSMANAPURA, AURANGABAD-431005.
3. MISS. SAROJINI D/O VAIKUNTHA RAO
ANAVEKAR, SINCE DECEASED BY HER LRS.,
ALREADY ON RECORD AS APPELLANT AND
RESPONDENT NOS. 2 & 4.
4. MISS. ASHWINI D/O VAIKUNTHA RAO ANAVEKAR,
AGE: 29 YEARS, OCC: STUDENT,
R/O: NARAYANPUR, KOTANUR,
BENGALURU-560016.

...RESPONDENTS

(BY SRIYUTHS. SHRIKANT T. PATIL & ROHIT S. PATIL,
ADVS FOR R1, SRI. RAGHAVENDRA A. PUROHIT,
ADV FOR R4, NOTICE TO R2(A & B) ARE SERVED)

THIS RFA IS FILED U/SEC.96 OF CPC., AGAINST THE
JUDGMENT & DECREE DTD:17.12.2016 PASSED IN OS NO.158/2008
ON THE FILE OF THE PRL. SENIOR CIVIL JUDGE AND CJM,
DHARWAD, PARTLY DECREETING THE SUIT FILED FOR SPECIFIC
PERFORMANCE OF CONTRACT.

THESE APPEALS, COMING ON FOR FINAL HEARING, THIS DAY,
THE JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI

ORAL JUDGMENT

(PER: THE HON'BLE MR. JUSTICE ASHOK S. KINAGI)

These appeals arise out of a judgment and decree
dated 17.12.2016 passed in OS No.158/2008 by the
learned Principal Senior Civil Judge and CJM, Dharwad
(The 'Trial Court' for short).



2. For convenience, the parties are referred to as per their rankings before the Trial Court. In RFA No.100065/2017, the appellant was the plaintiff and the respondents were the defendants. In RFA No.100069/2017, the appellant was Defendant no.1 and the respondent were the plaintiff and the other defendants.

3. Brief facts leading rise to the filling of these appeals are as follows:

3.1 The plaintiff filed a suit against the defendants for the specific performance of a contract. It is a case of the plaintiff that defendant No.1 is the absolute owner of the suit schedule property; he is residing in Goa and doing business there. The plaintiff is a businessman and is permanently residing in Dharwad. The suit schedule property consists of four small tenements, wherein the tenants were residing in the suit property. Since defendant No.1 is residing in Goa, the suit property has become



useless for him. Further, defendant No.1 has legal necessities and intend to sell the suit property. The plaintiff came to know about the intention of defendant No.1 regarding the sale of suit property. The plaintiff approached defendant No.1 and expressed his willingness to purchase the suit schedule property. Defendant No.1 executed a general power of attorney ('GPA' for short) on 19.02.2002, in favour of his brother's daughter, named Smt. Kovida W/o Uday Mankame, resident of Dharwad. In the presence of the said GPA, negotiations took place regarding the suit schedule property and she entered into a sale agreement on 05.12.2002 and agreed to sell the suit schedule property for consideration of Rs.12,90,000/- and accordingly, the plaintiff paid Rs.3,90,000/- towards the advance sale consideration, through demand draft for Rs.2,00,000/- drawn on SBI, Dharwad on 05.12.2002 and cash of Rs.1,90,000/-. It was agreed that the balance sale consideration amount shall be paid at the time of registration of the sale deed and the sale transaction to be



concluded within a period of six months. It was also agreed that defendant No.1 shall evict all the tenants from the suit property and hand over the physical possession of the suit schedule property at the time of registration of the sale deed. It is contended that, defendant No.1 was unable to evict his tenants from the suit schedule property within the time specified in the agreement. Defendant No.1 executed a supplementary sale agreement on 01.12.2005 and it was agreed that, from 01.12.2005, within a period of six months, defendant no.1 shall evict his tenants from the suit schedule property and thereafter, execute a registered sale deed in favour of the plaintiff. The said supplementary agreement of sale was attested by the GPA holder of defendant No.1. Defendant No.1, who was unable to evict his tenants from the suit property, had again executed another supplementary agreement of sale on 26.06.2006 in the presence of GPA holder of defendant No.1 and extended the time for a period of ten months, to evict the tenants and execute a registered sale deed.



Again on 18.06.2007, one more supplementary agreement of sale was executed, extending the time for eviction of the tenants and to execute a registered sale deed. Defendant No.1 has evicted three tenants and only one tenant is to be evicted. Defendant No.1 was unable to complete the sale transaction even after considerable time. It contained that on 10.12.2007 and on 05.02.2008, D1, received 60,000 from the plaintiff, without providing any written proof for the same. Defendant No.1 executed a supplementary agreement on 23.10.2008 and received Rs.40,000/- from the plaintiff and the said supplementary agreement was attested by his GPA holder. It was agreed that the balance to be paid at the time of registration of sale deed. It is contended that, the plaintiff was/is always ready and willing to perform his part of contract, but the defendants were not ready and willing to perform their part of contract. Hence, a cause of action arises for the plaintiff to file a suit for specific performance of a contract. Hence, prays to decree the suit.



3.2 Defendant No.1 filed a written statement denying the averments made in the plaint and also denied the execution of GPA in favour of Smt. Kovida and receiving of Rs.3,90,000/-. It is also denied that, defendant No.1 had agreed to sell the suit schedule property for consideration of Rs.12,90,000/- and contended that, the value of the suit property as of the date of alleged sale agreement was Rs.30,00,000/-. It is contended that, the suit schedule property was acquired by Late. Vaikuntarao Anvekar, i.e., father of Defendant no.1 and said Vaikuntarao Anvekar he had two daughters viz., Sarojini Anvekar i.e., Defendant no. 3 and Meera i.e., Defendant no.2. Defendant No.1 had one son and one daughter, who have also a share in the suit schedule property. It is contended that, the plaintiffs have created an alleged sale agreement and supplementary agreements. It is contended that, defendant No.1 never executed a GPA in favour of Smt. Kovida. It is contended that, defendant No.1 does not know about the readiness and willingness of the plaintiff to



pay the balance consideration. Defendant No.1 has no right to sell the suit schedule property as his two sisters have a share in it and his son and daughter also have a share in the suit schedule property. It is contended that there is no cause of action to file a suit and the cause of action shown in the plaint is false and imaginary. Hence, prays to dismiss the suit.

3.3 Defendant No.3 filed her written statement and denied that, defendant No.1 is the only owner of the suit schedule property and is residing in Goa. It is contended that, defendants No.2 to 4 have an equal rights in the suit schedule property. It is denied that, defendant No.1 agreed to sell the suit schedule property due to legal necessities. It is denied that, defendant No.1 executed a GPA in favour of Smt. Kovida on 19.02.2002. It is contended that, defendants are the joint owners of the suit schedule property. It is denied that, defendant No.1 received Rs.3,90,000/- towards earnest money. It is contended that, defendants No.2 to 4 are not parties to



the alleged sale agreement and supplementary agreements and the alleged sale agreement is not binding on them. It is contended that, suit filed by the plaintiff is barred by limitation and it is also contended that the plaintiff has failed to establish he was/is always ready and willing to perform his part of contract. There is no cause of action against defendants No.2 to 4 and hence, prays to dismiss the suit.

3.4 Defendants No.2 and 4 filed a memo adopting the written statement filed by defendant No.3.

4. The Trial Court, based on the pleadings of the parties, framed the following issues:

- 1. Whether the plaintiff proves that the first defendant agreed to sell the suit schedule property for Rs.12,90,000/ and executed an agreement of sale on 19.02.2002 through his General Power of Attorney holder Smt.Kovida W/o Uday Mankame by receiving an advance Consideration of Rs.3,90,000/?*
- 2. Whether the plaintiff proves that the defendant has executed supplementary agreement of sale on 01.12.2005 by receiving an amount of Rs.30,000/?*



3. Whether the plaintiff prove that the first defendant has executed supplementary agreement of sale on 26.06.2006?

4. Whether the plaintiff proves that the defendant No.1 has executed supplementary agreement of sale on 18.06.2007?

5. Whether the plaintiff proves that the first defendant received a sum of Rs.60,000/ on 10.12.2007?

6. Whether the plaintiff proves that the first defendant received Rs.40,000/ on 23.10.2008 and executed a document on stamp paper?

7. Whether the plaintiff proves that he has been always ready and willing to perform his part of contract?

8. Whether the first defendant proves that he has taken Rs.2 lakhs only from the plaintiff as hand loan for his business purpose?

9. Whether the defendants 2 to 4 prove that the suit schedule property is not the absolute property of the first defendant alone and they have got interest in the same?

10. Is the plaintiff entitled for the relief sought for in the suit?

11. What Order or decree?



5. The plaintiff, to substantiate his case, examined himself as PW-1 and also examined three witnesses as PWs-2 to 4 and marked fifteen documents as Exs.P1 to P15. In rebuttal, defendant No.1 was examined as DW-1 and marked two documents as Exs.D1 and D2. The Trial Court after recording the evidence, hearing both sides and assessing the verbal and documentary evidence, answered issues No.1 to 4, 6, 7 and 9 in the affirmative, issues No.5 and 8 in the negative, issue No.10 partly in the affirmative and issue No.11 as per the final order. The suit of the plaintiff was partly decreed with costs. Defendant No.1 was directed to execute a registered sale deed in favour of the plaintiff in respect of his share in the suit property within a period of three months from the date of the order. It is declared that the earnest money paid by the plaintiff to defendant No.1 for sale consideration amount is justified to the share of defendant No.1's share. The plaintiff, aggrieved by the dismissal of the suit in respect of share of defendants No.2 to 4, filed an appeal in RFA



No.100065/2017. Defendant No.1, aggrieved by the decree for the specific performance of a contract, filed an appeal in RFA No.100069/2017.

6. Heard the arguments of the learned counsel for the plaintiff and the defendants.

7. Learned counsel for the plaintiff submits that, defendant No.1 was acting as a *Kartha* and he agreed to sell the suit schedule property for legal necessity and entered into a sale agreement with the plaintiff. The sale agreement executed in favour of the plaintiff is binding on the other defendants. He also submits that defendant No.1 executed Exs.P4 and P5 i.e., supplementary agreements. He also submits that, when the defendants have taken a specific defence that the plaintiff has got created the sale agreement and supplementary agreements, the burden is on the defendants to establish that the plaintiff has obtained the signature by force. He submits that, defendant No.1 had not lodged a complaint



against the plaintiff for obtaining signature by force. He also submits that, defendants No.2 to 4 have not entered the witness box and have failed to prove their defence. He also submits that, the plaintiff has proved that he is always ready and willing to perform his part of a contract. He submits that, the Trial Court, placing reliance on Exs.D1 and D2, committed an error in dismissing the suit for specific performance regarding the shares of defendants No.2 to 4. He submits that, the plaintiff herein is not a party in FDP No.3/2012, which was filed by Defendant no.2 to Defendant no 4 against Defendant no 1. He submits that, during the pendency of the instant suit, defendant No.1 entered into a sale agreement, marked as Ex.P14, in favour of one Sri. Madivalappa. He submits that, Ex.P14 is in respect of suit schedule property and it is clear that defendants No.1 to 4, in collusion with each other, have created Ex.P14 to defeat the legal rights of the plaintiff. Hence, he submits that, the Trial Court has committed an error in decreeing the suit for a specific



performance only to the extent of defendant No.1's share.
To buttress his arguments, he has placed reliance on the judgments of the Hon'ble Apex Court in:

- i. ***Sri Narayan Bal and Others Vs. Sridhar Sutar and Others¹***;
- ii. ***Kehar Singh (Dead) Through LRs and Others Vs. Nachittar Kaur and Others²***;
- iii. ***Beereddy Dasaratharami Reddy Vs. V. Manjunath and Another³***;
- iv. ***N.S. Balaji Vs. Presiding Officer, Debt Recovery Tribunal and Others⁴***;

Hence, on these grounds, he prays to allow the appeal filed by the plaintiff and dismiss the appeal filed by the defendants.

8. *Per contra*, the learned counsel for the defendants submits that, defendant No.1 never executed a GPA in

¹ (1996) 8 SCC 54

² (2018) 14 SCC 445

³ (2021) 19 SCC 263

⁴ 2023 SCC OnLine SC 1266



favour of Smt. Kovida and he also submits that, the plaintiff has not produced the GPA alleged to have been executed by defendant No.1 in favour of Smt. Kovida. He submits that, the alleged sale agreement was executed on 05.12.2002 and as per the terms and conditions of alleged sale agreement, the sale to be concluded within six months from the date of sale agreement. He submits that, the plaintiff did not perform his part of contract within the time specified in the alleged sale agreement dated 05.12.2002. He also submits that, the plaintiff got created the supplementary agreement. He also submits that, the plaintiff by force, obtained the signatures of Smt. Kovida and defendant No.1 on the sale agreement dated 05.12.2002 and Exs.P4 and P5. He submits that, the suit filed by the plaintiff is barred by limitation as the time was the essence of the contract. The plaintiff has filed the suit after the lapse of six years from the date of execution of alleged sale agreement. He also submits that, the plaintiff has not taken any steps calling upon defendant No.1 to



produce the alleged GPA. The Trial Court could have drawn an adverse influence under Section 114(g) of the Indian Evidence Act, 1872 for non-production of alleged GPA. He also submits that, the plaintiff has not complied with the provisions of Section 16(c) of the Specific Relief Act, 1963. To buttress his arguments, he has placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Vasathi v. Venugopal (D) through LRs***, reported in **(2017) 4 SCC 723**.

9. He also submits that, there is no privity of contract between the plaintiff and defendants No.2 to 4. The suit filed by the plaintiff against defendants No.2 to 4 is not maintainable. But, the Trial Court without examining the said aspect, committed an error in decreeing the suit of the plaintiff to the extent of defendant No.1's share. He also submits that, the Trial Court decreed the suit only on the ground that defendant No.1 has not taken any steps to lodge a complaint against the plaintiff for fabricating the documents and defendant No.1 had admitted his signature



on Exs.P4 and P5. Hence, on these grounds, he submits that, the judgment and decree passed by the Trial Court is perverse, arbitrary and erroneous. Hence, accordingly, prays to dismiss the appeal filed by the plaintiff and allow the appeal filed by the defendants and consequently, dismiss the suit.

10. Perused the records and considered the submissions of the learned counsel for the parties. Points that arise for consideration are as follows:

- (1) Whether the plaintiff proves that defendant No.1 agreed to sell the suit schedule property for consideration of Rs.2,90,000/- and executed a sale agreement on 05.12.2002 through his GPA holder and received Rs.3,90,000/- towards the advance sale consideration amount?*
- (2) Whether the plaintiff proves that, defendant No.1 has executed supplementary agreements dated 01.12.2005, 26.06.2006, 18.06.2007, and 23.10.2008?*



- (3) Whether the plaintiff proves that, he was/is always ready to willing to perform his part of contract?*
- (4) Whether defendants No.2 to 4 prove that, the suit schedule property is not the absolute property of defendant No.1 and have got entrust in the same?*
- (5) Whether the plaintiff and defendants prove that, the judgment and decree passed by the Trial Court is perverse and arbitrary?*
- (6) What order or decree?*

Point No.1:

11. The plaintiff, to prove his case, examined his son - the GPA holder of the plaintiff as PW-1. He deposed that as, defendant No.1 is the absolute owner of the suit schedule property. He was in need of money and he expressed his intention to sell the suit schedule property. The plaintiff approached defendant No.1 and expressed his willingness to purchase the suit schedule property for consideration of Rs.12,90,000/-. Defendant No.1 agreed to sell the suit schedule property for the aforesaid consideration amount through the GPA holder and



accordingly, the plaintiff paid advance sale consideration of Rs.3,90,000/- through D.D. and cash, to the GPA holder of Defendant no.1, and the GPA holder executed a sale agreement on 05.12.2002 and it was agreed that the balance sale consideration amount to be paid within six months from the date of execution of the sale agreement dated 05.12.2002. It was also agreed that, defendant No.1 should evict the tenants from the suit schedule property before the registration of the sale deed and deposed that, defendant No.1 did not evict the tenants from the suit schedule property and executed a supplementary agreement on 01.12.2005, 26.06.2006, 18.06.2007, and 23.10.2008. Thus, defendant No.1 in all, received Rs.3,90,000/-. To prove the execution of sale agreement, the plaintiff has produced the following documents:

12. Ex.P1 is the property register card which discloses that defendant No.1 is the holder of the suit schedule property; Ex.P2 is the GPA executed by the



plaintiff in favour of his son to depose on his behalf in the instant suit; Ex.P3 is the sale agreement executed by the GPA holder of defendant No.1 on 05.12.2002; Ex.P4 is the supplementary agreement dated 01.12.2005, which discloses that defendant No.1 received Rs.30,000/- under Ex.P4 and GPA holder of defendant No.1 of which her signature on Ex.P4; similarly, Ex.P5 is the supplementary agreement dated 18.06.2007 which discloses that the defendant No.1 extended the time for execution of a registered sale deed on the ground that defendant No.1 could not evict the tenants from the suit schedule property; Ex.P6 is the sketch map of the suit schedule property; Exs.P7 and P8 are the nil encumbrance certificates of the suit schedule property; Ex.P9 is the certified copy of the ME extract ruled card which discloses that defendant No.1 is the owner of the suit schedule property; Ex.P10 is the copy of legal notice got issued by the plaintiff to the Senior Sub-Registrar, Dharwad on 01.03.2011 intimating the Sub-Registrar regarding the



injunction order passed in the instant suit stating that, the Sub-Registrar has registered the sale agreement executed by defendant No.1 and Sri. Madivalappa on 27.10.2010 despite there is an order of temporary injunction; Ex.P10 is the copy of acknowledgement; Ex.P11 is the notice issued by the plaintiff to the Senior Sub-Registrar, Dharwad on 18.03.2011; Ex.P11(a) is the postal acknowledgement; Ex.P12 is the extract from the property register card which discloses that defendant No.1 is the holder of the CTS No.356/A/C; Ex.P13 is the receipt for having received a sum of Rs.40,000/- by defendant No.1 from the plaintiff and the alleged GPA holder of defendant No.1 affixed her signature as a witness to Ex.P13 and her signature was marked as Ex.P13(a) and the signature of defendant No.1 was marked as Ex.P13(b); Ex.P14 is the registered sale agreement executed by defendant No.1 in favour of a third-party, the said agreement is registered on 27.10.2010. Ex.P15 is the encumbrance certificate



which discloses that, the plaintiff executed a registered sale agreement in favour of intending purchaser.

13. PW-1 in the cross-examination, has stated that, he is not having a personal knowledge regarding the alleged sale transaction between the plaintiff and defendant No.1. It is the plaintiff is having a personal knowledge regarding the plaintiff and defendant No.1. The plaintiff himself got examined as PW-4 and he reiterated the plaint averments in the examination-in-chief. In the cross-examination, it is suggested that, the defendant No.1 is in a Government job in Goa. The said suggestion was denied and witness volunteers that, defendant No.1 is doing a business in Goa and hometown of defendant No.1's parents is Dharwad and suit schedule property belongs to defendant No.1 and he do not know the defendant is planning to live in the suit schedule property with his family after his retirement and he pleads ignorance that the defendant No.1 visits Dharwad to meet his sister and in-laws. It is suggested that the suit



schedule property is in the heart of the city and he admits that he himself had prepared the sale agreement. PWs-2 and 3 have affixed their signatures as attesting witnesses. It is denied that, the stamp paper was purchased in the name of defendant No.1 by misrepresentation. He admits that, he had not issued any legal notice to defendant No.1 showing that, he was/is always ready and willing to perform his part of contract. He admits that, he has not produced any documents to show that he was ready to pay the remaining balance consideration amount.

14. The plaintiff examined PW-3. He deposed that, the GPA holder of defendant No.1 agreed to sell the suit schedule property for consideration of Rs.12,90,000/- and accordingly, she executed a sale agreement dated 05.12.2002 and it was agreed that the sale transaction to be concluded within six months from the date of execution of a sale deed and the GPA holder has affixed her signature on Ex.P3. He admits that, the alleged GPA holder has not shown the GPA mentioned in the



examination-in-chief and he has not seen it. The plaintiff also examined one Abdul Munaaf as PW-3, who has deposed in the same line of PW-2. In cross-examination, he admits that, he worked in the Survey Department and he is not allowed to write a private records as a Government Servant. He has seen the GPA mentioned in the examination-in-chief and it is denied that defendant No.1 never executed a GPA in favour of any person. Further it is deposed that he is unable to tell how many documents he has signed as a witness.

15. In rebuttal, defendant No.1 was examined as DW-1. He denied the execution of the alleged sale agreement in favour of the plaintiff by the alleged GPA holder and he has stated that, he has obtained Rs.2,00,000/- from the plaintiff as a hand loan for his business purpose and he took the signatures on the blank papers and misused the same. It is deposed that, defendant No.1 had no intention to sell the suit schedule property in favour of the plaintiff and the plaintiff got



created the sale agreements. It is deposed that defendant No.1 is the *kartha* of the family and he is taking care of the business of the family and he admits that he used to buy and sell the properties related to the family. It is suggested to DW-1 in the cross examination that he has taken a defense in the written statement that, on 23.10.2008, the plaintiff and his people took him and Smt. Kovida to their shop and forcibly obtained their signatures on all the documents. It is elicited that, the Town Police Station is in the market area and he went to the Police Station to lodge a complaint about the incident, but the Police have refused to lodge a complaint and directed them to approach the Civil Court.

16. From the perusal of the entire evidence on record, it is the case of the plaintiff that the GPA holder of defendant No.1 executed a sale agreement on 05.12.2002 and it was agreed that the sale transaction to be concluded within six months from the date of execution of the said sale agreement. Admittedly, the plaintiff has not



taken any steps after the expiry of six months from the date of execution of a sale agreement till 01.12.2005. It is contended that defendant No.1 executed the supplementary agreements on 01.12.2005, 26.06.2006, 18.06.2007 and 23.10.2008. Defendant No.1 denied the execution of sale agreement by the GPA holder and also denied the execution of GPA in favour of Smt. Kovida. Entire case is based on the GPA alleged to have been executed by defendant No.1 in favour of Smt. Kovida. The plaintiff has filed a suit for specific performance of a contract. The burden is on the plaintiff to establish that defendant No.1 has executed a GPA in favour of Smt. Kovida and she agreed to sell the suit schedule property for consideration of Rs.12,90,000/-. If really defendant No.1 had executed the alleged GPA in favour of Smt. Kovida, the plaintiff ought to have called upon defendant No.1 to produce the alleged GPA. The plaintiff has not taken any steps to summon to produce the original alleged GPA from defendant No.1. An adverse inference has to be



drawn against the plaintiff for not taking steps to summon defendant No.1 for securing the original alleged GPA alleged to have been executed by defendant No.1 in favour of Smt. Kovida. Thus, the plaintiff has failed to establish that, defendant No.1 executed a sale agreement on 05.12.2002 through his GPA holder Smt. Kovida and received an advance sale consideration of Rs.3,90,000/-. From the perusal of Ex.P3 i.e., the sale agreement alleged to have been executed by the GPA holder of defendant No.1, it discloses that, the sale transaction to be concluded within six months by paying the remaining balance sale consideration amount, but the plaintiff has not complied with the terms and conditions mentioned in Ex.P3. Thus, the plaintiff himself has committed a breach of contract in not performing his part of contract within the time specified in Ex.P3. Thus, the plaintiff has failed to prove the execution of sale agreement on 05.12.2002 through the GPA holder Smt. Kovida. In view of the above discussion, I answer point No.1 in the negative.



Point No.2:

17. Though the plaintiff contends that the defendant No.1 by receiving Rs.30,000/- on 01.12.2005, executed a supplementary agreements of sale on 01.12.2005, 26.06.2006, 18.06.2007, defendant No.1 has received Rs.60,000/- on 10.12.2007 and received Rs.40,000/- on 23.10.2008. It is a case of the plaintiffs that, as per the terms and conditions of the alleged sale agreement, it is contended that the tenants were in possession of the suit schedule property and it was agreed that defendant No.1 should evict the tenants from the suit schedule property and execute the registered sale deed. It is contended that defendant No.1 wanted extension of time for evicting the tenants and execution of the registered sale deed. Though the plaintiff has produced the supplementary agreement marked as Exs.P4 and P5 which disclose that defendant NO.1 himself has executed Exs.P4 and P5 and the GPA



holder affixed her signature on Exs.P4 and P5, though there s a reference of the alleged sale agreement dated 05.12.2002 in Exs.P4 and P5 as observed in point No.1 that the plaintiff has not produced the GPA alleged to have been executed by defendant No.1 in favour of Smt. Kovida, the entire case is based on the GPA alleged to have been executed by defendant No.1 in favour of Smt. Kovida. The plaintiff has failed to produce the GPA to establish that defendant No.1 had authorised Smt. Kovida to execute a sale agreement and received Rs.3,90,000/-. Defendant No.1 contended that he has taken Rs.2,00,000/- from the plaintiff as a hand loan for his business purpose and executed Exs.P4 and P5 as a security for the purpose of repayment of hand loan amount and the plaintiff has misused Exs.P4 and P5 and filed the present suit. Thus, the plaintiff has proved execution of Exs.P4 and P5 and receiving of amount by defendant No.1 from the plaintiff. In view of the above discussion, I answer point No.2 partly in the affirmative.



Point No.3:

18. The plaintiff produced Ex.P3 i.e., sale agreement executed by Smt. Kovida as a GPA holder of defendant No.1. As per the terms and conditions of Ex.P3, time was the essence of contract. The sale transaction to be concluded within six months from the date of execution of the alleged sale agreement dated 05.12.2002. The plaintiff has not produced any records to establish that, he was/is always ready and willing to perform his part of contract. When time is the essence of contract, the plaintiff is required to perform his part of contract within the stipulated period and if the defendant commits a breach of contract, has to file a suit within three years from the date of denial as per Article 54 of the Limitation Act, 1963. Admittedly the plaintiff is placing reliance on the alleged supplementary sale agreements dated 01.12.2005, 26.06.2006, 18.06.2007. The plaintiff has



not explained why the plaintiff has not taken any steps after the expiry of six months till 01.12.2005 and further, the plaintiff has also not issued any legal notice calling upon defendant No.1 to receive the balance sale consideration amount and execute a registered sale deed and also calling upon defendant No.1 to evict the tenants from the suit schedule property. The plaintiff has filed the instant suit in the year 2008. Thus, the plaintiff has failed to prove that he was/is always ready and willing to perform his part of contract. The plaintiff has failed to comply with Section 16(c) of the Specific Relief Act. In view of the above discussion, I answer point No.3 in the negative.

Point No.4:

19. It is a case of the defendants that, the suit schedule property is owned and possessed by the defendants and defendant No.1 alone has no right to execute the alleged GPA and alleged sale agreement on 05.12.2002. Defendants No.2 to 4 being the family



members of defendant No.1, they have got an interest in the suit schedule property. Admittedly, defendants No.2 to 4 have not executed the alleged sale agreement on 05.12.2002 and also the GPA in favour of Smt. Kovida. The alleged GPA executed by defendant No.1 in favour of Smt. Kovida and alleged sale agreement is not binding on defendants No.2 to 4. The Trial Court was justified in dismissing the suit against defendants No.2 to 4. In view of the above discussion, I answer point No.4 in the affirmative.

Point No.5:

20. The Trial Court, without considering that the plaintiff has failed to produce the original GPA alleged to have been executed by defendant No.1 in favour of Smt. Kovida and also to establish that defendant No.1 has executed the sale agreement through the GPA holder, has decreed the suit on the ground that the defendants have not taken any steps to lodge a complaint against the plaintiff for creating the alleged sale agreement. Further,



the trial court without considering that the plaintiff has failed to comply with Section 16(c) of the Specific Relief Act and also that the suit filed by the plaintiff is barred by limitation, has proceeded to pass the impugned judgment. The impugned judgment passed by the Trial Court is perverse and arbitrary as defendant No.1 has admitted regarding receipt of Rs.2,00,000/- as a hand loan from the plaintiff. In view of the above discussion, the Trial Court ought to have dismissed the suit for specific performance of contract against defendant No.1 to the extent of his share. Thus, the Trial Court has committed an error in decreeing the suit for the specific performance of the contract to the extent of the share of Defendant no 1 in the suit schedule property. In view of the above discussion, I answer point No.5 partly in the affirmative, partly in the negative.

Point No.6:

21. In view of the above discussion, I proceed to pass the following:



ORDER

- i) RFA No.100065/2017 is ***dismissed***;
- ii) RFA No.100069/2017 is ***allowed-in-part***;
- iii) The judgment and decree 17.12.2016 in OS No.158/2008 passed by the Trial Court is set aside;
- iv) The Suit of the plaintiff for specific performance of the contract is ***dismissed***;
- v) Defendant No.1 is directed to refund the amount of Rs.3,90,000/- with interest at the rate of 12% p.a. to the plaintiff, from the date of filing of the suit, till the realization of the amount.

No order as to the costs.

In view of disposal of the appeals, pending interlocutory application(s), if any, disposed of, accordingly.

**Sd/-
(ASHOK S. KINAGI)
JUDGE**