Karnataka Civil Judge (Mains) 2012 (CJR 1/2010)

Law Paper II · compulsory paper

Framing of Issues and writing of Judgment in Civil Case · Date: 14.04.2013 · Time: 10.00 AM to 1.00 PM · Max Marks: 100 · Option is given to the candidates to write answers either in English or in Kannada.

I. Frame proper & necessary issues with the following Pleadings: 25 Marks

PLAINT

Plaintiff: Boraiah son of Cheluvaiah, Aged about 50 years, Resident of No.40, V Block, Rajajinagar, Bangalore.

Vs.

Defendant: Lingaiah son of Thimmaiah, Aged about 50 years, Resident of No.20, I Block, Banashankari I Stage, Bangalore.

1. The plaintiff is the absolute owner of the suit schedule landed property; as the same was settled in favour of him by one Smt.Chowdamma D/o Karisidda of Bevinahalli village, Kothathi Hobli, Mandya Tq. The settlement deed was executed by Smt.Chowdamma on 3.8.1951 and it was registered at Mandya Sub-Registrar's office the same day in No.2046/1951-52. Annexure-I is the certified copy of the registered settlement deed dated 3.8.1951. Annexure-II is the record of rights (Certified Copy) of the suit land.

2. The defendants are not having any semblance of right, title or interest in the suit schedule land.

3. Smt.Chowdamma the settler of the suit property passed away on 9.3.1990. Since the date of the settlement deed dated 3.8.1951 till this day the suit property is in continuous possession and enjoyment of the plaintiff. Only after the death of Smt.Chowdamma on 9.3.1990, the defendants for reasons best known to them started interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule property. The second defendant is a very powerful person in the village. The first defendant is a distant relative of late Smt.Chowdamma D/o Karisidda. Plaintiff being a very poor Adi-Karnataka person, is not in a position to resist the onslaught of the defendants without the help of this Hon'ble Court. Hence the plaintiff humbly prays to institute the above suit for judgment and decree as prayed below.

4. The cause of action for the suit arose on 3.9.1990 at Bevanahalli village, Kothathi Hobli, Mandya Taluk with the jurisdiction of the Hon'ble Court.

5. The settler late Smt.Chowdamma was grand paternal-aunt of the plaintiff. The relationship is well described in the registered settlement deed dated 3.8.1951.

6. The valuation of the suit property for the purpose of court fee and jurisdiction is as given in the separate valuation sheet and the court fee is paid accordingly.

7. Prayer for judgment and decree:

The plaintiff humbly prays the Hon'ble Court for judgment and decree in his favour and against the defendant.

a) for declaration that the plaintiff is the absolute owner of the suit schedule property.

b) Consequently for permanent injunction restraining the defendants or anybody on their behalf from interfering with plaintiff's peaceful possession and enjoyment of the suit schedule land.

c) For court costs and such other reliefs the Hon'ble Court deems fit to grant under the circumstances of the case.

SCHEDULE

Wet land situated in Kothathi village, Mandya Taluk bearing Sy.No.148/3 total extent 48 guntas (excluding 13 guntas of Kharab Land) bounded on East: Land of Dasi Jogaiah (This land was owned by Ramanahalli Mancha in the year 1951) West: Land of Kothathi Kambaiah (This land was owned by Ramanahalli Bora in the year 1951), North: Channel South: Land of Kari Gandaiah (This land was owned by one Gowdagere Sidda in the year 1951).

Advocate for the plaintiff Plaintiff

VERIFICATION

What are all stated above are all true to the best of my knowledge, information and belief and in token where of I have affixed my thumb impression at Mandya on this 8th day of October, 1990. Plaintiff

WRITTEN STATEMENT OF THE DEFENDANTS UNDER ORDER 8 RULE 1 OF THE C.P.C.

1. The defendants do not admit the several averments made in the plaint except those that are expressly admitted here under and as such the plaintiff is put to strict proof of the same.

2. The allegations made in para-2 of the plaint that the plaintiff is the absolute owner of the suit schedule landed property and the same was settled in his favour by one Chowdamma under the alleged settlement deed dated 3.8.1951 are all absolutely false and untenable. Allegation that the defendants have no semblance of right, title, interest in the suit property is absolutely false and untenable.

3. It is true that Chowdamma has passed away. But the allegation that since the date of alleged settlement deed dated 3.8.1951 up to this day the suit property is in continuous possession and enjoyment of the plaintiff is absolutely false and untenable. Allegation that the defendants are interfering with the alleged plaintiff's peaceful possession and enjoyment of the suit schedule property is also absolutely false. The 2nd defendant is not a rich and powerful person as alleged in the plaint by the plaintiff. Allegation that the 1st defendant is the distant relative of Chowdamma is not correct. In fact the said Chowdamma is nearest relative of the defendant No.1, that is she was the paternal aunt of the father of defendant-1.

4. Sy.No.148/3 totally measured 2 acres 1 gunta of land inclusive of 9 guntas of karab land. Chowdamma the daughter of Karisidda was the owner in possession of this entire 2 acres 1 gunta inclusive of 9 guntas of karab land. The entire property has been bifurcated by the nala whereby an extent of 24 guntas is situated on the northern side of the nala and the remaining 48 guntas of land is situated on the southern side of the nala. The defendants have learnt that the aforesaid Chowdamma settled in favour of the plaintiff only an extent of northern 38 guntas of land out of the aforesaid 48 guntas of land situated on the southern side of the nala. The extreme southern 10 guntas of land and the land measuring 24 guntas situated on the northern side of the nala were not at all settled in favour of the plaintiff. Thus the plaintiff at best might have become the owner to the extent of aforesaid northern 38 guntas of land out of the total extent of 48 guntas of land situated on the southern side of the nala.

5. The aforesaid Chowdamma then as the absolute owner in possession of the said extreme southern 10 guntas of land out of 48 guntas situated on the southern side of the nala and also 24 guntas of land situated on the northern side of the nala settled the same in favour of the defendant-1 who was a minor

then represented by his father Javaraiah as his minor guardian under a registered settlement deed dated 26.2.1975 and constituted the defendant-1 as the owner in possession of the same. Eversince this settlement deed executed by the then lawful owner in possession of the property namely Chowdamma, the defendant-1 was in possession and enjoyment of the said property. Subsequently Gangadhara, the defendant-1 attained majority. Thereafter in his individual capacity the defendant-1 was in possession of the said 34 guntas of land as full owner thereof. Thereafter defendant-1 sold the said 34 guntas of land in favour of the defendant No.2 under a registered sale deed dated 15.5.1989 for a valuable consideration and put the 2nd defendant in possession of the said property. Thus the 2nd defendant has become the owner in possession of the land measuring 24 guntas situated on the northern side of the nala and the extreme southern 10 guntas of land out of the 48 guntas of land situated on the northern side of the nala.

6. Recognizing the lawful ownership and possession of defendant-1, the competent revenue authorities had also changed the katha to the name of the defendant-1 and also made out the entries in the relevant columns of the RTC. After purchase the khata and the RTC entries have been made out lawfully in the name of the defendant-2.

7. The plaintiff has absolutely no manner of right, title interest whatsoever in or any portion of this 34 guntas of land settled by Chowdamma in favour of the defendant-1 and subsequently sold by defendant-1 to the defendant-2. The plaintiff has never been in possession and enjoyment of this 34 guntas of land.

8. The plaintiff now has filed the present suit in respect of the property which is described in the plaint schedule by including the said 34 guntas of land purchased by defendant-2 from defendant-1 in the extent. But while describing the boundaries of the land, the plaintiff has included the extreme southern portion measuring 10 guntas purchased by the defendant-2 from the defendant-1 out of the 48 guntas of land situated on the southern side of the nala. Thus the schedule given by the plaintiff is most misleading and does not actually depict the correct description of the property in respect of which the plaintiff has sought for the relief of declaration and injunction.

9. The suit of the plaintiff, without properly describing the property in the schedule, is not at all maintainable in law. The suit brought by the plaintiff by including the land purchased by defendant-2 from the defendant-1 without there being any semblance of right, title or interest whatsoever in or over the same land without there being his possession over the same, is not at all maintainable in law.

10. The plaintiff, viewed from any angle is not at all entitled to succeed to have the relief from the hands of this Hon'ble Court as claimed by him in his prayer portion.

11. The document relied upon and produced by the plaintiff do not depict or establish that the plaintiff is the owner in possession of the property as described in the plaint schedule.

12. The suit of the plaintiff is not a bonafide one. It is filed only with the malafide intention to grab the property purchased by the 2nd defendant from the 1st defendant if possible.

13. There is no cause of action for the suit and the one alleged in para-5 of the plaint is the pure concoction and imagination of the plaintiff.

14. The plaintiff viewed from any angle is not entitled for any relief as sought for by him.

15. The other allegations of the plaint which are not specifically denied but contrary to the spirit of the defence taken by the defendants in this written statement are hereby denied as false and untenable.

The defendants, therefore, prays that this Hon'ble Court be pleased to dismiss the suit of the plaintiff with exemplary costs in the interest of justice and equity.

Advocate for defendants Defendant

VERIFICATION

What is stated above is true and correct to the best of my knowledge, belief and information.

Mandya Defendant

II. Write a judgment on the basis of the following pleadings, issues & evidence: 75 Marks

In the City Civil Court at Bangalore
Original Suit No.1/1993

Boraiah, son of Cheluvaiah, Aged about 50 years, Resident of No.40, V Block, Rajajinagar, Bangalore. .. PLAINTIFF

V/s

Lingaiah, son of Thimmaiah, Aged about 50 years, Resident of No.20, I Block, Banashankari I Stage, Bangalore. .. DEFENDANT

Under Order VII Rule 1 of CPC, the Plaintiff states as hereunder:

1. The Plaintiff is represented by his Advocate Sri. Umesh, No.5, Balepet, Bangalore. The address for service on the Defendant is as mentioned above.

2. It is submitted that the defendant is the owner of the property bearing No.20 situated in I Block, Banashankari I Stage, Bangalore which is more-fully described in the schedule hereunder and hereinafter referred to as the schedule property.

3. The suit property was allotted to the defendant by the BDA and it is his self-acquired property.

4. The defendant, for his legal necessity and for family benefit agreed to sell the schedule property in favour of the plaintiff for a total sale consideration of Rs.10 lacs and the plaintiff also agreed to purchase the same. Accordingly, an agreement of sale came into existence on 13.4.1990.

5. On the date of the agreement plaintiff paid a sum of Rs.6 lacs out of Rs.10 lacs as sale consideration and he agreed to pay balance sale consideration within a period of six months subject to the defendant satisfying the following terms and conditions:

i. the defendant shall obtain absolute sale deed from the BDA and deliver vacant possession;
ii. the defendant shall produce nil encumbrance from the date of allotment till the date of agreement;
iii. he shall furnish up-to-date tax paid receipts and the khata certificate issued by the BDA and the BBMP, Bangalore.

6. Though the plaintiff was ready and willing to perform his part of the contract within the period of six months, defendant did not obtain the sale deed from the BDA and he did not produce the documents as agreed upon in the agreement. When the plaintiff approached the defendant to complete his part of the obligation, the defendant started evading the plaintiff with an ulterior motive.

7. In the circumstances plaintiff got issued a legal notice calling upon the defendant to receive the balance sale consideration and to execute the sale deed by putting him in possession and also to deliver all documents as agreed upon.

8. Defendant instead of complying with the demand of the notice, has sent an untenable reply. Therefore plaintiff has approached this court for redressal.

9. Plaintiff has been ready and willing to perform his part of the contract. He was ready with the balance sale consideration right from the inception of the agreement. Even now he is ready to deposit the amount before the court if he is so directed.

10. Cause of action for the suit arose on 13.4.1990 on which date the defendant agreed to sell the suit property and subsequently at Bangalore within the jurisdiction of this Hon'ble Court.

11. For the purpose of court fee and valuation, suit is valued at Rs.10 lacs. Accordingly, advalorem court fee has been paid.

12. Therefore, the plaintiff prays that this Hon'ble court may be pleased to grant a judgment/decree directing the defendant to execute the sale deed by receiving the balance sale consideration and to deliver all documents of title and to put him in possession of the property, failing which to execute the sale deed through court or in the alternative to direct the defendant to refund the advance amount of Rs.6 lacs with interest at 24% p.a. from the date of the agreement till the date of payment along with costs of the suit in the interest of justice.

Advocate for the Plaintiff Plaintiff

VERIFICATION

I, Boraiah son of Cheluvaiah, plaintiff herein do solemnly affirm and state as hereunder:
The averments made in paragraphs 1 to 12 are true and correct to the best of my knowledge and I believe them to be true and the documents relied upon are the true copies of the original documents.
Date:
Bangalore Plaintiff

IN THE CITY CIVIL COURT AT BANGALORE
ORIGINAL SUIT NO.1/1993

Boraiah son of Cheluvaiah, Aged about 50 years, Resident of No.40, V Block, Rajajinagar, Bangalore. .. PLAINTIFF

V/s

Lingaiah son of Thimmaiah, Aged about 50 years, Resident of No.20, I Block, Banashankari I Stage, Bangalore. .. DEFENDANT

UNDER ORDER-VIII RULE-1 OF CPC DEFENDANT BEGS TO FILE HIS WRITTEN STATEMENT AS HEREUNDER

1. The address for service of summons etc. is stated in the cause title and he may also be served on his advocate Mr.Raja Rao, No.1, Cottonpet, Bangalore.

2. The averments made in the plaint are hereby denied except those which are specifically admitted hereunder.

3. It is true that defendant is the owner of the plaint schedule property. But it is false to say that he had agreed to sell the property for a sum of Rs.10 lacs under an agreement dated 13.4.1990. The defendant has not executed any agreement of sale agreeing to sell the property for Rs.10 lacs, because on the date of agreement of sale the value of the property was more than Rs.25 lacs and that the said document has come into existence under threat and coercion. It is submitted that the defendant was in need of hand loan of Rs.6 lacs in order to celebrate his daughter's marriage. When approached, plaintiff

insisted to execute the document as desired by him. Accordingly the defendant was compelled to execute the agreement and based on such document the present suit is filed by the plaintiff for specific performance of the contract. Hence the suit is not maintainable.

4. The defendant alternatively contends that if this court were to come to the conclusion that the suit document is an agreement of sale not intended to be a document executed as security for due repayment of the loan of Rs.6 lacs, defendant contends that time was the essence of contract. Plaintiff did not possess balance sale consideration of Rs.4 lacs and the allegation that he was ready and willing to perform his part of the contract is false because he had no money to take the sale deed at his costs. The very fact that he has not deposited money before this court, at the time of filing the suit and that he has not placed any material to show that he had money with him disentitles for a decree for specific performance.

5. It is further submitted that as stated supra the defendant did not anticipate that the suit would be filed for enforcing the agreement. If the suit were to be decreed the defendant and his family members would be put to untold hardship and his valuable property of Rs.25 lacs will be lost by him. Since time was the essence of contract as the plaintiff has not approached this court within a period of six months from the date of the agreement or immediately thereafter, the plaintiff is not entitled for the relief of specific performance.

6. Wherefore the defendant prays this Hon'ble Court to dismiss the suit with exemplary costs.

Advocate for the Defendant Defendant

VERIFICATION

I Lingaiah son of Thimmaiah do hereby solemnly affirm and state that what is stated in paragraphs 1 to 5 are true to the best of my knowledge.

Date: Defendant

IN THE CITY CIVIL COURT AT BANGALORE
ORIGINAL SUIT No.1/1993
Boraiah s/o Cheluvaiah .. PLAINTIFF
V/s
Lingaiah s/o Thimmaiah .. DEFENDANT
ISSUES

1. Whether the plaintiff proves that the defendant executed the suit agreement on 13.4.1990 agreeing to sell the property for a sum of Rs.10 lacs?

2. Whether the defendant proves that the agreement dated 13.4.1990 was not intended to be an agreement of sale but was executed as security for the repayment of loan?

3. Whether the plaintiff was ready and willing to perform his part of the contract and was ready with the balance sale consideration?

4. Whether time was the essence of the contract?

5. Whether the plaintiff is entitled for a decree of specific performance or in the alternative for refund of money?

6. What decree or order?

I Addl. City Civil Judge, Bangalore.

IN THE CITY CIVIL COURT AT BANGALORE
ORIGINAL SUIT No.1/1993 · PW1

Deposition of: Boraiah · Father's name: Cheluvaiah · Age: 50 years · Occupation: · Residence: Rajajinagar, Bangalore. · Duly sworn on:
Examination-in-Chief by: Mr.Umesh

I am the plaintiff in the above suit. Defendant is the owner of the suit property. On 13.4.1990 defendant approached me agreeing to sell the suit property for a sum of Rs.10 lacs. Accordingly, an agreement came into existence between us. The same is marked as Ex P-1. On the date of agreement I have paid Rs.6 lacs as advance. I was ready to pay the balance of Rs.4 lacs. Defendant had agreed to obtain absolute sale deed from the BDA. He had also agreed to pay up-to-date taxes to the BBMP and to produce khata certificate and nil encumbrance certificate from the date of allotment of the site.

I approached the defendant on several occasions requesting him to receive the balance sale consideration and to execute a registered sale deed. The defendant went on postponing.

I got issued a legal notice as per Ex.P-2, for which he has sent an untenable reply as per Ex.P-3. I was ever ready to pay the balance sale consideration and take the sale deed in my favour at my costs.

Ramaiah and Krishnaiah have attested the agreement. The defendant has signed the agreement in my presence and in the presence of the attestors. The attestors' signatures are at Exs.P-1(a) and (b). Defendant has put his signature as per Exs.P-1(c) and (d).

Therefore I request this court to grant a decree as prayed for.

CROSS-EXAMINATION by: Mr.Raja Rao

I am not a money lender. It is false to suggest that defendant had approached me to lend a sum of Rs.6 lacs to him and that I have lent a sum of Rs.6 lacs on interest of Rs.24% p.a. It is false to suggest that I did not possess the balance sale consideration of Rs.4 lacs. It is further false to say that Ex.P-1 has been executed by the defendant as a security for due repayment of the loan amount of Rs.6 lacs. It is further false to suggest that time was the essence of contract. It is further false to say that the value of the property was more than Rs.25 lacs on the date of agreement. It is further false to say that if decree is passed the defendant and his family members would be put to untold hardship. It is further false to say that Krishnaiah and Ramaiah, the attestors to Ex.P-1 were not present when the defendant put his signature on Ex.P-1. It is further false to say that I am not entitled for a decree of specific performance and that the defendant is liable to pay only Rs.6 lacs with interest as agreed upon.

R.O.I. & A.C. · I Addl. City Civil Judge · Plaintiff

IN THE CITY CIVIL COURT AT BANGALORE
ORIGINAL SUIT No.1/1993 · PW-2

Deposition of: RAMAIAH · Father's name: Thimmappa · Age: 60 years · Occupation: · Residence: Banashankari I Stage, Bangalore. · Duly sworn on:
Examination-in-Chief by: Mr.Umesh

I know the plaintiff and the defendant as all of us are residing in the same locality. On 13.4.1990 defendant approached the plaintiff agreeing to sell his property for Rs.10 lacs and I was present in the house of the plaintiff. Accordingly, an agreement of sale came into existence. Plaintiff advanced Rs.6 lacs to the defendant in my presence. I have attested the agreement of sale. Ex P-1(a) is my signature.

Exs.P-1(c) and (d) are the signatures of the defendant. It is false to say that defendant had approached the plaintiff to borrow money and that I was not present when Rs.6 lacs was paid to the defendant.

It is true that plaintiff is equally close to me as that of the defendant because all of us are residing in the same locality. It is false to say that plaintiff has advanced loan to me also, therefore I am deposing falsely in favour of the plaintiff. It is false to suggest that I am not in good terms with the defendant. It is further false to say that defendant did not put his signature on Ex.P-1 in my presence and that I have put my signature on Ex.P-1 much later to the execution of Ex.P-1 by the defendant. It is further false to say that defendant had not agreed to sell the property and he had only borrowed loan from the plaintiff.

Cross-examination by: Mr.Raja Rao - Nil -

R.O.I. & A.C. · I Addl. City Civil Judge · Ramaiah

IN THE CITY CIVIL COURT AT BANGALORE
ORIGINAL SUIT No.1/1993 · DW-1

Deposition of: Lingaiah · Father's name: Thimmaiah · Age: 50 years · Occupation: · Residence: Banashankari I Stage, Bangalore. · Duly sworn on:
Examination-in-Chief by: Mr.Raja Rao

I am the defendant in the suit. I am the owner of the property. I have not executed Ex P-1 agreeing to sell the property for Rs.10 lacs to the defendant. I was in need of Rs.6 lacs as I had to perform the marriage of my daughter. Therefore I had approached the plaintiff to lend money.

Plaintiff being a financier coerced me to execute a document stating that such document was required as security for the loan advanced by him. As I was in immediate need of money I signed the document as per Ex. P-1.

As on the date of agreement the value of the property was more than Rs.25 lacs. Plaintiff has not approached me within a period of six months with the balance of Rs.4 lacs.

Several months later, the plaintiff has sent the legal notice as per Ex.P-2 for which I have sent a reply as per Ex.P-3. If I am asked to execute the sale deed, I will be put to untold hardship. The discretionary relief cannot be granted to the plaintiff since he has not approached the court with clean hands and has suppressed the facts.

I am ready to repay the loan of Rs.6 lacs with interest. Ramaiah and Krishnaiah who are the attestors to Ex.P-1 were not present when I put my signature to Ex.P-1. Therefore I request this court to dismiss the suit.

CROSS-EXAMINATION by: Mr.Umesh

It is false to suggest that plaintiff is not a financier. It is false to suggest that I had agreed to sell the property for Rs.10 lacs.

I do not have any documents to show that the value of the suit property was more than Rs.25 lacs on the date of agreement. It is further false to say that though the value of the property was only Rs.10 lacs for the purpose of this case I am deposing falsely.

It is further false to say that plaintiff had met me on several occasions with balance sale consideration requesting me to execute the sale deed.

It is true that till now I have not obtained the sale deed from the BDA nor have secured the encumbrance certificate. (Witness volunteers since he had not agreed to sell, he has not obtained the encumbrance certificate and sale deed).

It is further false to say that I have signed the document in the presence of Ramaiah and Krishnaiah. Ramaiah and Krishnaiah are close friends of the plaintiff.

It is further false to say that Ramaiah is my cousin and I am deposing falsely. It is false to say that plaintiff had sufficient money with him to pay the balance amount to me within a period of six months. It is further false to say that if I am asked to execute the sale deed I will not be put to hardship.

I will be put to hardship because this is the only property to me.

It is true that BDA has allotted the site to me in the year 1970 and I have become the owner of the property after the completion of lease period of 10 years and there is no difficulty for me to obtain the sale deed from the BDA. There is also no impediment for the BDA to execute the sale deed in my favour.

R.O.I. & A.C. · I Addl. City Civil Judge · Defendant

Ex-P1

This indenture of agreement of sale made and executed on 13th day of April, 1990 at Bangalore.

BETWEEN:

Lingappa son of Thimmappa aged about 48 years, residing at No.20, I Block, Banashankari I Stage, Bangalore hereinafter referred to as the party of the I Part (which term shall mean and include his L.Rs., successors and assignees, etc.)

AND:

Boraiah son of Cheluvaiah aged about 50 years, residing at No.40, V Block, Rajajinagar, Bangalore hereinafter referred to party of the II Part.

WITNESSETH AS HEREUNDER:

Whereas the 1st Party is the full and absolute owner of property bearing No.20 situated at Banashankari I Stage, Bangalore which is more-fully described in the schedule hereunder and hereinafter referred to as the schedule property.

Whereas the schedule property was allotted to the party of I Part by the BDA under a lease-cum-sale agreement dated 2.1.1970 and that he has become the absolute owner after completion of the lease period and that the party of the I Part has also constructed a small house on the schedule property and living therein with his family members as absolute owner.

Whereas the party of the I Part has decided to sell the schedule property for his legal necessity (to celebrate his daughter's marriage) free from all encumbrances for a valuable sale consideration of Rs.10 lacs and the party of the I Part has agreed to purchase the same free from all encumbrances. Therefore, this agreement of sale witnesseth as hereunder:

1. It is agreed that party of the I Part shall sell and party of II Part shall purchase the schedule property free from all encumbrances for a sale consideration of Rs.10 lacs;

2. A sum of Rs.6 lacs has been given to the party of the I Part as advance sale consideration by the II Party in cash today and has agreed to pay the balance sale consideration of Rs.4 lacs within six months from today subject to the party of the I Part fulfilling the following conditions:

(i) Party of the I Part shall obtain absolute sale deed from the BDA;
(ii) he shall produce nil encumbrance certificate from 1970 till today;
(iii) he shall produce up-to-date tax paid receipts;
(iv) he shall produce khata certificate;
(v) he shall handover vacant possession of the property at the time of registration of the sale deed.

If the party of the I Part fulfills the aforesaid conditions within the stipulated period of six months but the party of the II Part fails to pay the balance sale consideration of Rs.4 lacs to get the sale deed registered, as the time is the essence of the contract, the party of I Part shall be entitled to cancel the agreement and forfeit the advance sale consideration of Rs.6 lacs paid by the party of the II Part. Similarly, if the party of the I Part fails to perform his part of the contract, the party of the II Part will be entitled to enforce the agreement for specific performance of contract at the costs of the party of the I Part.

SCHEDULE
Property bearing No.20, I Block, Banashankari I Stage, Bangalore measuring east-west 30' and north-south 40' along with 4 square RCC building constructed in the year 1975 with the following boundaries:
East .. Private property
West .. Private property
North .. Private property
South .. Road
Market value of the property is Rs.10 lacs.

In Witness whereof, both the parties have set their hands to this indenture of agreement at Bangalore on 13th day of April, 1990.

PARTY OF THE I PART · PARTY OF THE II PART
ATTESTORS: 1) RAMAIAH 2) KRISHNAIAH

Ex-P2

From: Mr.Umesh, Advocate, No.5, Balepet, Bangalore. · Date: 2.4.1992
To: Mr.Thimmappa, No.20, Banashankari I Stage, Bangalore.

NOTICE

Under instructions from my client Sri.Boraiah son of Cheluvaiah, residing at No.40, V Block, Rajajinagar, Bangalore, I issue this notice to you.

My client says that you are the owner of the property bearing No.20 situated in I Block, Banashankari I Stage, Bangalore. You have executed an agreement dated 13.4.1990 agreeing to sell the aforesaid property in favour of my client for a valuable sale consideration of Rs.10 lacs and on the same day you received a sum of Rs.6 lacs as advance. My client agreed to pay the balance sale consideration of Rs.4 lacs and take the sale deed at his cost within a period of six months from the date of agreement subject to you fulfilling certain conditions. According to the agreement, you are required to (i) obtain absolute sale deed from the BDA (ii) to produce encumbrance certificate from the date of allotment of the site till the date of agreement (iii) furnish up-to-date tax paid receipts, and (iv) obtain khata certificate. You agreed to hand over vacant possession of the property at the time of registration of the sale deed.

My client was ready and willing to pay the balance sale consideration and to take the sale deed at his cost. However, you have avoided to complete the transaction. In this connection, my client has approached you in person on many occasions but you have failed to execute the sale deed in terms of the agreement. In the circumstances, he has instructed me to issue this notice to you.

I hereby call upon you to receive the balance sale consideration from my client and to execute the sale deed by putting him in possession of the property at his cost, failing which legal action would be initiated against you holding you responsible for all the costs and consequences.

Yours faithfully,
(Umesh)
Advocate.

Ex-P3

From: Sri.Raja Rao, Advocate, No.1, Cottonpet, Bangalore. · Date: 8.4.1992
To: Sri.Umesh, Advocate, No.5, Balepet, Bangalore.

REPLY NOTICE

Your notice dated 2.4.1992 issued on behalf of your client Sri.Boraiah to my client Sri.Lingappa has been placed in my hands by my client with instructions to reply thereto as hereunder:

It is true that my client is the owner of property bearing No.20, I Block, Banashankari I Stage, Bangalore.

It is false to say that he has agreed to sell the property in favour of your client for a sum of Rs.10 lacs. According to my client, he was in dire need of money for his legal necessities to celebrate his daughter's marriage. Therefore he had approached your client to lend a sum of Rs.6 lacs as loan and agreed to repay the same with interest at 24% p.a. Your client insisted that my client should execute an agreement of sale for Rs.10 lacs even though the value of the property was more than Rs.25 lacs. Accordingly, my client was compelled to execute an agreement as he was in dire need of money. Therefore, the agreement dated 13.4.1990 cannot be termed as an agreement of sale but it is only a document executed by my client as security for due repayment of the loan. Hence, question of executing any sale deed will not arise. My client cannot be compelled to hand over possession of the property or the document as demanded by you in your notice. In the circumstances, my client has instructed me to issue this reply calling upon you to advise your client suitably to receive the loan amount from my client on easy instalments. Inspite of this reply if any legal action is initiated, your client will do so at his risk and peril and the same would be resisted by my client at the costs of your client.

Yours faithfully,
(Raja Rao)
Advocate.