Karnataka Civil Judge (Mains) 2015 (CJR 1/2014)

Law Paper II · compulsory paper

Framing of Issues and writing Judgment in Civil Case · Date: 13.09.2015 · Time: 10.00 AM to 1.00 PM · Max Marks: 100

Note: (1) Option is given to the candidates to write answers either in English or in Kannada. (2) If there is any discrepancy in the questions in English language and in Kannada language, the questions as framed in English language would prevail. (3) Frame necessary and proper issues on the basis of the pleadings i.e., plaint and written statement. (4) Write a considered judgement on the basis of oral and documentary evidence by giving valid and cogent reasons.

IN THE COURT OF THE SENIOR CIVIL JUDGE, BANGALORE RURAL DISTRICT AT BANGALORE
O.S. No.7788/2006

Plaintiff: Sri. S. Jayaram, S/o Late Patel Shettappa, aged about 62 years, residing at Tippu Sultan Road, Devanahalli Town, Bangalore Rural District.

V/s

Defendants: 1. Smt. B. Parvathamma, W/o M. Krishnappa, aged about 52 years. 2. Smt. Bhavani, D/o M. Krishnappa, aged about 28 years. 3. Sri. Gopi, S/o M. Krishnappa, aged about 26 years. 4. Sri. Prabhakara, S/o M. Krishnappa, aged about 25 years. All are residing at Gurrappanamata, Vijayapura Town, Devanahalli Taluk, Bangalore Rural District.

PLAINT UNDER ORDER VII RULE 1 OF THE CODE OF CIVIL PROCEDURE 1908

The plaintiff named above states as follows:

1. That the address of the plaintiff for the purpose of service of notice, summons from this Hon'ble Court is as stated in the cause title and also through their Counsel Sri. John Mathews, Advocate, No.143, Rangswamy Temple Road, Bangalore-53.

2. That the address of the defendants for the purpose of service of notice, summons from this Hon'ble Court is as stated in the cause title.

3. The plaintiff submits that the defendant No.1 is the absolute owner of the property bearing old Sy.No.159/16 and new No.159/P14 measuring 2 acres of Vijayapura, Vijayapura Hobli, Devanahalli Taluk, Bangalore Rural District, which is more fully described in the schedule hereunder and hereinafter called the SCHEDULE PROPERTY and the same was purchased by the defendant No.1 under a registered sale deed dated 09/11/1990 registered as Document No.422/90-91, pages 9 to 12, volume 1387, Book I in the office of the Sub Registrar, Devanahalli. Consequent upon the said purchase the mutation was effected in the name of the defendant No.1 in M.R.No.24/90-91 and all the revenue records were mutated in the name of the defendant.

4. The plaintiff submits that the defendants had agreed to sell the schedule property at the rate of Rs.11,60,000/- per acre, the total sale consideration of Rs.23,20,000/- and the plaintiff agreed to purchase the schedule property and in this regard the defendants executed a sale agreement dated 05/11/2005 in favour of the plaintiff and a copy of the sale agreement is herewith produced and marked as ANNEXURE 'A'.

5. The plaintiff submits that the suit property was purchased by the 1st defendant under a registered sale deed from M. Narayanaswamy and Lakshminaraya and the said property constitute self acquired

property of the 1st defendant and as such defendants No.2 to 4 have no right, title over the said property and the defendants Nos.2 to 4 are formal parties to the suit. It is submitted that the RTC records pertaining to the suit property stands in the name of the 1st defendant alone and hence it is obligatory in part of the 1st defendant to execute the sale deed in favour of the plaintiff.

6. The plaintiff submits that on 05/11/2005 the plaintiff has paid a sum of Rs.10,00,000/- to the defendant No.1 as advance amount. He has received and acknowledged the receipt of the advance amount and executed the aforementioned sale agreement dated 5/11/2005. As per the terms and conditions of this agreement, the transaction was to be completed within 90 DAYS from the date of agreement i.e., 05.11.2005, even though the plaintiff was always ready and willing to get the sale deed registered in his name by paying the balance sale consideration of Rs.13,20,000/- but the defendants failed to come forward to execute the sale deed and also failed to produce the original documents of the schedule property. Therefore, under the circumstances, the plaintiff demanded the defendants to execute the sale deed since the transaction could not be completed and subsequently the plaintiff issued a legal notice to the defendant No.1 on 23/01/2006 requesting him to receive the balance sale consideration amount and execute the sale deed in favour of the plaintiff and had also despatched a draft sale deed along with the legal notice. A copy of the legal notice and UCP are herewith produced and marked as ANNEXURES B and C. The defendant No.1 received the notice and given unwarranted reply to the said notice. A copy of the reply notice is herewith produced as ANNEXURE-D.

7. The plaintiff submits that the defendants failed to execute sale deed in favour of the plaintiff even after several oral requests and the defendant No.1 is postponing the same, even though the plaintiff is ready and willing to perform his part of the contract. It is submitted that the plaintiff demanded the defendant No.1 to execute the sale deed in favour of the plaintiff and receive the balance sale consideration, but the defendant No.1 intending to alienate the schedule property to the third parties and create third party interest in the schedule property in order to deprive the lawful rights of the plaintiff in respect of the suit schedule property.

8. The plaintiff submits that after lapse of a month the defendants herein have not shown any inclination to execute the sale deed in favour of the plaintiff in respect of the schedule property and therefore the plaintiff having no other option is approaching this Hon'ble Court for the relief of specific performance and hence, this suit for specific performance of agreement dated 5/11/2005.

9. The cause of action for the suit arose on 05-11-2005 and subsequently after issuance of legal notice dated 23/01/2006 and thereafter within the jurisdiction of this Hon'ble Court and this Hon'ble Court has got jurisdiction to try and dispose the above matter.

10. The prescribed Court fee is paid on the plaint as per the separate valuation slip.

11. No other suit/s filed in the same cause of action before any other Court of Law.

WHEREFORE, the plaintiff most respectfully prays that this Hon'ble Court be pleased to pass a Judgment and Decree in favour of the plaintiff against the defendants.

(a) For specific performance of the agreement to sell dated 05.11.2005 by directing the defendant No.1 to execute the sale deed in favour of the plaintiff in respect of the schedule property by receiving the balance sale consideration under the agreement dated 05/11/2005 and consequently deliver vacant possession of the schedule property to the plaintiff.

(b) In the event the defendant No.1 failing to execute the registered sale deed in terms of the decree in favour of the plaintiff, then this Hon'ble Court may be pleased to appoint the Court Commissioner to execute the sale deed conveying the schedule property in favour of the plaintiff.

(c) For permanent injunction restraining the defendants from alienating, encumbering, transferring or creating charges in any manner in respect of the suit property in favour of any person other than the plaintiff.

(d) For cost of this suit.

SCHEDULE

All that part and parcel of the agricultural land bearing old Sy.No.159/16 and New No.159/P14 measuring 2 acres of Vijayapura, Vijayapura Hobli, Devanahalli Taluk, Bangalore Rural District and bounded on the:

East by: M. Goal's land
West by: M. Chikkanna's land
North by: T. Thimmaiah's land
South by: Mandibele gadi and M. Krishnappa's land

Sd/- Advocate for Plaintiff · Sd/- Plaintiff

VERIFICATION. I, the Plaintiff do hereby verify and declare that what is stated above is true and correct to the best of my knowledge, information and belief. Bangalore, Date: 17/4/2006. Sd/- Plaintiff

VERIFYING AFFIDAVIT (O.S. No.7788/2006)

I, S. Jayaram, S/o Late. Patel Shettappa, aged about 62 years, residing at Tippu Sultan Road, Devanahalli Town, Bangalore Rural District, do hereby solemnly affirm and state on oath as follows:

1. I submit that I am the plaintiff in the above case and as such I am fully conversant with the facts of the case, hence, I swear this affidavit. I submit that I have filed a suit for specific performance against the defendants.

2. I submit that the averments made in accompanying plaint are true and correct to the best of my knowledge information and belief.

I declare that what is stated above is true and correct. Identified by me. Sd/- Advocate · Sd/- Deponent. Bangalore, Date: 17-04-2006

IN THE COURT OF THE SENIOR CIVIL JUDGE AT DEVANAHALLI
O.S. No.7788/2006

Plaintiff: Sri. S. Jayaram, V/s Defendants: Smt. B. Parvathamma and others

WRITTEN STATEMENT OF THE FIRST DEFENDANT UNDER ORDER VIII RULE 1 OF THE CODE OF CIVIL PROCEDURE

The first defendant is filing the written statement as hereunder:-

1. The averments and claims made in para 3 of the plaint that the defendant No.1 is an absolute owner of the property bearing old survey No.159/16 and New No.159/P14, measuring 2 acres of Vijayapura village, Vijayapura Hobli, Devanahalli taluk which is fully described as schedule property is not correct. The suit schedule property is a joint family property. Defendants No.2 to 4 are also got right title and interest purporting to suit property.

2. The averments and claims made in para 4 of the plaint are not correct.

3. The averments and claims made in para 5 of the plaint are not correct. Suit property is the joint family property and the acquisitions of the said property is by accretion of joint nucleus and by the joint efforts of the family as such the suit property is a joint family property. Defendant No.1 has no exclusive right and title against the suit property and as such the obligation of the first defendant to execute the sale deed in favour of plaintiff does not arise.

4. The averments and claims made in para 6 of the plaint are not correct. There is no readiness and willingness on the part of plaintiff.

5. The averments and claims made in para 7 and 8 are not correct. There is defect in the issue of notice by the plaintiff.

6. That the suit is not maintainable under law as well as on facts.

7. The suit of the plaintiff is not maintainable under law as well as facts as an alternate plea to the return of alleged advanced amount is not sought. The true facts of the case are as hereunder:-

8. That this defendant has no exclusive right title and ownership in respect of the suit land. Further more she has no exclusive right to execute the agreement of sale dated 5-11-2005 in favour of plaintiff. Further more the co-owners namely Bhavani and Gopi and daughter and son of this defendants have not signed to the agreement. The notice issued by the plaintiff is defective and further more revenue documents purports to joint family property and the joint family interest subsists and involves as such the first defendant has no right to execute the sale deed purporting to suit property.

WHEREFORE, the first defendant prays that this Hon'ble Court be pleased to dismiss the above suit with exemplary costs, in the interest of justice and equity and law.

Sd/- Advocate for 1st defendant · Sd/- 1st defendant

VERIFICATION. I, Parvathamma, the first defendant in the above case do hereby declare that what is stated above is true and correct to the best of my knowledge, information and belief. Devanahalli, Date: 10.4.2007. Sd/- 1st defendant

VERIFYING AFFIDAVIT (First Defendant)

I, Parvathamma, W/o.Krishnappa, aged about 49 years, residing at Gurappannamat, Vijayapura town, Devanahalli Taluk, do hereby solemnly affirm state on oath as follows:

1. I submit that I am the defendant No.1 in the above case and I know the facts of the case.

2. The averments made in written statement para 1 to 8 are all true and correct.

What is stated above is true and correct. Identified by me: Sd/- Advocate · Sd/- Deponent. Bangalore, Date: 10.04.2006

WRITTEN STATEMENT OF DEFENDANTS 2 AND 3 UNDER ORDER VIII RULE 1 OF THE CODE OF CIVIL PROCEDURE (O.S. No.7788/2006)

The defendants 2 and 3 submit as follows:-

1. That the averments and claims made in para 3 of the plaint that the 1st defendant is absolute owner of the property bearing Sy. No.159/16 and new No.159/P14 measuring 2 acre situated at Vijayapura, Devanahalli Taluk, is more fully described in the schedule property is not correct and denied as false. The averments made in the same para the suit schedule property is Hindu joint family property. The defendants 1 to 4 are also own right title or interest over the suit schedule property the 1st defendant she is not at all own independent funds purchase the suit property, she is house wife of by profession

and also wife of the M.Krishnappa. The said M.Krishnappa is kartha of the joint family. The defendants 3 and 4 are also in joint possession in the suit schedule property. There is no partition between the M.Krishnappa and 1st defendant other family members.

2. The averments and claims made in para 4 of the plaint are not correct is false and denied. The defendants No.2 and 3 not at all aware the transaction of the agreement dated 05.11.2005 and sale consideration.

3. The averments and claims made in para 5 of the plaint are not correct. The suit property is joint family property and the acquisition of the said property is in accretion at joint nucleus and by the joint efforts of the family. As such the suit property is joint family property, the 1st defendant has no exclusive right and title interest over the suit property and as such the obligation of the 1st defendant to execute the sale deed in favour of plaintiff does not arise.

4. That the averments and claims made in para 6 of the plaint are not correct. This defendants not at all aware the para 6 averments of the plaint is totally denied and false.

5. That the averments and claims made in paras 7 and 8 of the plaint are not correct is totally false and denied.

6. That the suit is not maintainable either in law has baseless facts. The 3rd defendant issued the legal notice to the plaintiff on dated 27/01/2006. The plaintiff refused the legal notice on dated 03/02/2006 the copy of legal notice is also produced herewith for kind perusal of this Hon'ble Court. That the defendants 2 to 4's father namely M.Krishnappa spend the money for purchased the suit schedule property, today the above property is Hindu joint family property. That the above said M.Krishnappa is kartha of the joint family, the defendants 2 to 4 are the members of the joint family, there is no partition took place between the M.Krishnappa and defendants. The 1st defendant is not at all have own right to alienate the suit schedule property independently. The plaintiff agreement dated 05.11.2005 is not at all maintainable either in law or on facts of the case.

Wherefore the defendant Nos. 2 and 3 prays that this Hon'ble Court may be pleased to dismiss the suit of the plaintiff with costs, in the interest of justice and, equity.

Sd/- Advocate for the Defendant Nos. 2 and 3 · 2. Sd/- 3. Sd/- Defendants

VERIFICATION. We, the defendant No.2 and 3 above named, do hereby verify that what is stated above is true and correct to the best of our knowledge, information and belief. Devanahalli, Date: 12/7/2007. Sd/- Defendant No.2 and 3

VERIFYING AFFIDAVIT (Defendants 2 and 3) · O.S. No.1569/2006

I, Bhavani, W/o. B.V.Chandrashekar, aged about 30 years, residing at Bijawara village, Vijayapura Hobli, Devanahalli Taluk, do hereby solemnly affirm and state on oath as follows:

1. I am the 2nd defendant in the above case and I know the facts of the case. The 3rd defendant is my younger brother. Hence, I am swearing to this affidavit on behalf of him also.

2. I submit that the averments made in the paras 1 to 06 of the written statement are all true and correct.

What is stated above is true and correct to the best of my knowledge, belief and information. Identified by me: Sd/- Advocate · Sd/- Deponent. Devanahalli, Bangalore, Date: 12/7/2007

EVIDENCE BY WAY OF AFFIDAVIT (O.S. No.7788/2006) · Name: Sri. S. Jayaram · P.W.1

Son of S/o. late Patel Shettappa · Age 66 years · Occupation Agriculturist · Address R/at Tippu Sultan Road, Devanahalli Town, Bangalore Rural District

I, S.Jayaram, S/o. late Patel Shettappa, major, residing at Tippu Sultan Road, Devanahalli Town, Bangalore Rural District, do hereby solemnly affirm and state on oath as follows:

1. I submit that, I am the Plaintiff in the above case and I am fully conversant with the facts of the case, hence, I am swearing to this affidavit.

2. I submit that, the Defendant No.1 is the absolute owner of the property bearing old Sy.No.159/16 and new No.159/P14 measuring 2 acres situated at Vijayapura village, Vijayapura hobli, Devanahalli Taluk, Bangalore Rural District and the same was purchased by the Defendant No.1 under a registered sale deed dated 09/11/1990 registered as document No.422/90-91, pages 9 to 12, volume 1387 book-I, in the office of the Sub-Registrar, Devanahalli, consequent upon the said purchase the mutation was effected in the name of the Defendant No.1 in M.R. No.24/90-91 and all the revenue records were mutated in the name of the Defendant.

3. I submit that, the Defendants had agreed to sell the schedule property at the rate of Rs. 11,60,000/- per acre, the total sale consideration of Rs.23,20,000/- and I agreed to purchase the schedule property and in this regard the Defendant executed a sale agreement dated 05/11/2005 in my favour.

4. I submit that, the suit property was purchased by the 1st Defendant under a registered sale deed from M.Narayanaswamy and Lakshminarayana and the said property constitute self acquired property of the 1st Defendant and as such Defendants No.2 to 4 have no right, title over the said property and the Defendant No.2 to 4 are formal parties to the suit. I submit that, the R.T.C. records pertaining to the suit property stands in the name of the 1st Defendant alone and hence, it is obligatory on part of the 1st Defendant to execute the sale deed in my favour.

5. I submit that, on 05/11/2005, I paid a sum of Rs. 10,00,000/- to the Defendant No.1 as advance amount and the Defendant No.1 has received the same and acknowledged the receipt of the advance amount and executed the aforementioned sale agreement dated 05/11/2005. As per the terms and conditions of this agreement the transaction was to be completed within 90 days from the date of agreement i.e., 05/11/2005, even though I was always ready and willing to get the sale deed registered in my name by paying the balance sale consideration of Rs. 13,20,000/- but the Defendants failed to come forward to execute the sale deed and also failed to produce the original documents of the schedule property. Therefore, under the circumstances, I demanded the Defendants to execute the sale deed, since the transaction could not be completed and subsequently I issued a legal notice to the Defendant No.1 on 23/01/2006 requesting the Defendant No.1 to receive the balance sale consideration amount and execute the sale deed in my favour and had also dispatch a draft sale deed along with the legal notice. The Defendant No.1 received the notice and given unwanted reply to the said notice.

6. I submit that, the Defendants failed to execute the sale deed in my favour even after several oral requests and the Defendant No.1 is postponing the same, even though I was ready and willing to perform my part of contract. I submit that, I demanded the Defendant No.1 to execute the sale deed in my favour and receive the balance sale consideration, but the Defendant No.1 intending to alienate the schedule property to the third parties and create third party interest in the schedule property in order to deprive the lawful rights in me in respect of the suit schedule property.

7. I submit that, after lapse of a month the Defendants herein has not shown any inclination to execute the sale deed in my favour in respect of the schedule property and therefore I having no other option is approaching this Hon'ble Court for the relief of specific performance of agreement dated 05/11/2005.

Wherefore, I pray that this Hon'ble Court be pleased to pass judgment and decree against the Defendants in the interest of justice and equity.

I, deponent herein do hereby declare that this is my name and signature, the contents of this affidavit are true and correct to the best of my knowledge, belief and information. Identified by me. Advocate · Sd/- Deponent. Devanahalli, Date: 11/01/2010. Sworn to before me.

Witness called, duly sworned on 11.01.2010. Further examination-in-chief by Sri. P.S. Advocate.

I am the plaintiff in this suit, I know the defendants. I am conversant with the facts of the suit. Today, I have produced my affidavit by way of examination in chief. What all is stated in the affidavit are true. I have produced the documents relating to the suit. Ex.P1 is the original agreement of sale dated 05.11.2005. Ex.P2 is the copy of the legal notice dated 23.01.2006. Ex.P3 is the postal acknowledgement. Ex.P4 is the reply dated 27.01.2006.

Cross-Examination - Sri. B.M.E. Advocate

(At this stage, as the Advocate requested for time, the case is adjourned) (Dictated and typed in the open Court) R.O.I. & A.C. Sd/- Senior Civil Judge & J.M.F.C.

Witness recalled, duly sworn on 24.02.2010: Cross-examination by Sri.E.M.B. Advocate for defendants 1 and 2

11. I am an agriculturist by profession. I do not know the 1st defendant. I have deposed that defendant No.1 has executed Ex.P1 - agreement. Before the execution of Ex.P1, I have not met him. It is not correct to state that I am carrying on the profession of money lending. The suit schedule property in Sy. No.159/P-14 measures 2 acres. I have not seen the schedule property. I have not seen the original documents and title of the schedule property. Except stating that the 1st defendant has purchased the schedule property, I do not have full information regarding how she acquired it. I am unable to say how many daughters and sons the 1st defendant has. I cannot say how many members are there in her family. The 2nd defendant may be the daughter of the 1st defendant. Defendants 3 and 4 are the sons of the 1st defendant. It is true that all the defendants are residing at Vijayapura as members of the Joint Family. I cannot say what rights defendants 2 and 4 have in the schedule property. May be that the schedule property is a Joint family property of the 1st defendant and her children. The 1st defendant declined to answer the suggestion that the 1st defendant did not have absolute right to execute an agreement of sale in respect of the schedule property as per Ex.P1. However, she states that the 1st defendant has executed the agreement of sale.

12. 1st defendant received a sum of Rs. 10 lakhs as advance at the time of executing the agreement as per Ex.P1. I do not know what was the market value of the agricultural lands at Vijayapura at the time of execution of Ex.P1. The 1st defendant has stated that she would execute the sale deed in respect of the schedule property within 90 days from the date of Ex.P1.

13. Two months after the execution of Ex.P1, I met the 1st defendant and requested her to execute the sale deed. I am unable to say the specific date on which I had gone there requesting her to execute the sale deed. I alone had gone to her. Nobody else had come along with me. When I asked the 1st defendant to execute the sale deed, her husband Krishnappa also was present. It is not true to say that

I did not meet the 1st defendant within 90 days from execution of Ex.P1 and requested her to execute the sale deed and that I am deposing falsely.

14. Venkatareddy, Tirumala Narayana, Krishnappa have signed as witnesses to Ex.P1 - agreement. Venkata Reddy and Tirumala Reddy are the residents of Vijayapura. One Anwar is the scribe of Ex.P1. I do not know whether he has licence as a document writer. Rs.23,20,000/- is the total consideration agreed upon for the schedule property. In my day to day transactions, I have 3 to 4 agreements of sale as Ex.P1 are done by him. In those 3 - 4 transactions, the total extent of land involved is only 4 acres. It is not correct to suggest that the schedule property does not exclusively belong to the 1st defendant and I have got a false document as Ex.P1 executed by the defendant and I am deposing falsely. It is not true to suggest that with the intention of knocking of the property, I got issued Ex.P2 notice. I may be that the defendants and 1st defendant's husband are all joint owners and are in joint possession of the schedule property and I do not know in this regard.

Cross-Examination: 15. As the Advocate for defendants 3 and 4 were absent, their cross-examination is taken as Nil. No re-examination. (Dictated and typed in the open Court) R.O.I. & A.C. Sd/- Senior Civil Judge & J.M.F.C.

EVIDENCE BY WAY OF AFFIDAVIT (WITNESS EVIDENCE) · O.S. No.7788/2006 · Name: Tirumalanarayana · P.W.2

Father's Name: Late Narayanaswamy · Age: About 45 Years · Occupation: Agriculturist/business · Address: Ramadevara Beedi, Vijayapura Town, Devanahalli Taluk

I, Tirumalanarayana, son of late Narayanaswamy, aged about 45 years, residing at Ramadevera Beedi, Vijayapura Town, Devanahalli Taluk, do hereby solemnly affirm and state on oath as follows:

1. I know the plaintiff and defendants and that on 05/11/2005 the 1st defendant executed a sale agreement in respect of the property bearing Sy.No.159/P-14 situated at Vijayapura, Devanahalli Taluk, measuring 2 acres for a sum of Rs.23,20,000/- and that on that day Mr. Jayaram paid a sum of Rs. 10,00,000/- in cash to Pavathamma before her husband was also present and the said Parvathamma affixed her signature on the stamp paper and after her signature her son Prabahakar also affixed a signature and her husband Krishnappa witnessed the signature and later on B.N. Venkata Reddy affixed a signature and as a 4th witness I affixed my signature.

2. I submit that, aforesaid agreement was typed at Devenahalli Taluk Office and transaction took place at Devanahalli Taluk office.

I the deponent, do hereby declare that what is stated above are true and correct to the best of my knowledge, information and belief. Identified by me. Sd/- Advocate · Sd/- Deponent. Devanahalli, Date: 04/06/2010. Sworn to before me.

Witness recalled, duly sworn on 04.06.2010. Further examination-in-Chief Sri. P.S. Advocate

3. I know the plaintiff and defendants. I know the facts of the suit. Today, I have produced the affidavit of examination-in-chief. All that is stated there is true.

4. As witness identified his signature in Ex.P1 - agreement, it is marked as Ex.P1(a).

Cross-examination by Sri. E.M.B. Advocate.

5. Plaintiff - Jayaram is my relative. I have seen the schedule property. It is situated on the Vijayapura Road at Mandibele. I do not know the boundaries of the schedule property. The talks in respect of the schedule property took place in 1st defendant's husband Krishnappa's house. At the time of talk,

Gowda, B.N.Venkata Reddy, residents of Vijayapura and myself were present. During the talk, the documents pertaining to schedule property were examined by us. The 1st defendant has two sons and a daughter. Only the signature of the 4th defendant - Prabhakar is taken to Ex.P1. The 1st defendant and Krishnappa undertook to get the signatures of the others. There was no difficulty to get the signatures of defendants 2 and 3 to the agreement. However, orally, it was stated that their signatures could be obtained. One week after the agreement, we requested the 1st defendant to get the signature of others.

6. I am a B.A. Graduate. It is not correct to suggest that as the schedule property was the joint family property of the defendants, 1st defendant had no absolute right to transfer the same. It is not correct to say that I did not participate in the talk relating to agreement and I do not know anything about the schedule property and deposing falsely.

7. I do not know the value of the stamp of Ex.P1. One Anwar of Devanahalli is the scribe of Ex.P1. The said Anwar is a document writer. The stamp paper for Ex.P1 was purchased in the name of the 1st defendant. It is not true to suggest that in 2006, in and around Vijayapura, the market value of a land was about Rs.30-35 lakhs and that in my presence, no document as Ex.R1 was executed and still I am deposing falsely.

Re-examination - Nil. (Dictated and typed in the open Court) Sd/-

EVIDENCE OF 1ST DEFENDANT THROUGH HER SPECIAL POWER OF ATTORNEY HOLDER (O.S. No.7788/2006) · D.W.1

Between: Sri. S. Jayaram, Plaintiff, and Smt. Parvathamma & Others, Defendants

I, M. Krishnappa, son of late A.V. Munishamappa, aged about 60 years, residing at Gurappana Mutt, Vijayapura Town, Devanahalli Taluk, Bangalore Rural District, do hereby solemnly affirm and state on oath as follows:

1. I submit that, I am the duly constituted power of attorney of Defendant No.1 as per Notary Special Power of Attorney dated 14/06/2010 notarized on 17/06/2010.

2. I submit that, I am the husband of 1st Defendant and as such I am conversant with the facts of the case.

3. I submit that, that 1st Defendant has no exclusive right, title and ownership in respect of the suit schedule land. I further submit that, the 1st Defendant has no exclusive right to execute the agreement of sale dated 05.11.2005 purporting to the suit land in favour of plaintiff.

4. I submit that, the co-owners namely Bhavani i.e., my daughter and Gopi my son have not signed to the agreement. The notice issued by the plaintiff is defective.

5. I submit that, the joint family interest and co-ownership subsists in the suit schedule property and as such the 1st defendant has no exclusive right to execute the sale deed purporting to suit property.

Therefore, this Hon'ble High Court be pleased to dismiss the above suit, in the interest of justice, equity and law.

That is stated above is true and correct to the best of my knowledge, belief and information. Identified by me. Advocate · Deponent. Devanahalli, Date: 24.06.2010

Witness recalled and duly sworn on 24.06.2010. Further examination-in-chief Sri.B.M.B. Advocate

6. I have obtained a Special Power of Attorney from the 1st defendant. I have produced the said Power of Attorney as Ex.PD1. I know the facts of the suit. Today, I have produced the affidavit contained in

my examination-in-chief. All that is stated is true.

Cross-examination - At the request of Sri.P.N. Advocate adjourned. (Dictated and typed in the open Court) R.O.I. & A.C. Sd/- Civil Judge (Sr.Dn.) & J.M.F.C.

Witness recalled, duly sworn on 30.07.2010. Cross-examination by Sri.P.A. Advocate

7. It is true that the 1st defendant Parvathamma is my wife. The 1st defendant purchased the schedule property from my elder brother Narayanaswamy in the year 1990 for a sum of Rs. 16,000/-. Witness was shown the sale deed dated 21.07.1991. The witness was shown a certified copy of this sale deed dated 21.7.1991. The witness admits that is the sale deed in favour of the 1st defendant. It is marked as Ex.P6. After execution of the sale deed - Ex.P6, the name of the 1st defendant is entered in the Pahani. It is true that the 1st defendant's name is entered in the Pahani. As the witness admits the Pahani, it was marked as Ex.P7. As the witness was shown Ex.P1 and he admits his signature therein, the same is marked as Ex.P1(b).

8. I have not produced any documents to show that the schedule properties were Joint Family Properties. It is not true to suggest that the schedule property is the self-acquired property of the 1st defendant. Witness volunteers that it is the joint family property. I have signed Ex.P1 after reading the same. It is true that he was the President of Vijayapura Muncipality.

Cross-examination by Sri.D.M.K. Advocate

9. It is true that defendants 2 to 4 are the children of 1st defendant. It is true that the 1st defendant purchased the schedule property on behalf of the joint family. It is true that the 1st defendant has no profitable estate. It is true that the 1st defendant is a housewife. The 1st defendant did not get any money from her paternal house. It is true that defendants 1 to 4 are in a joint family. Apart from the schedule property, our family owns other properties. It is true that no partition has taken place in our joint family. It is true that on 27.01.2006, 3rd defendant had issued a notice to him. It is true that defendants 2 and 3 have a right in the schedule property. May be that the 1st defendant has no absolute right to sell the schedule property.

(At this stage, the Advocate for the defendant sought permission to further cross-examination and permission granted)

Further cross-examination by Sri.V.A. Advocate

10. There are no document to show that the schedule property is the joint family property. It is not true to suggest that myself, my wife and my children have conspired and to knock off the schedule property we are deposing falsely. It is true that we had agreed to executed a sale deed within 90 days from the date of agreement. The plaintiff had issued a notice to the 1st defendant. It is true that the plaintiff had issued a notice to the 1st defendant.

Re-examination - Nil. (Dictated and typed in the open Court) R.O.I. & A.C. Sd/- Senior Civil Judge & J.M.F.C.

Ex.P1: Agreement of sale (English rendering of the Kannada original)

Shri. AGREEMENT OF SALE. This agreement of sale is made on the fifth day of November, the year Two Thousand and Five (05-11-2000), in favour of Sri S. Jayaram, aged about 62 years, son of late Sri Patel Shettappa, residing at Tippu Sultan Road, Devanahalli Town, Bangalore Rural District, by me, Smt. B. Parvathamma, aged about 52 years, wife of Sri M. Krishnappa, residing at Gurappana Matha, Vijayapura Town, Devanahalli Taluk, Bangalore Rural District, and by my children, the 1st aged about

28 years Bhavani, the 2nd aged about 26 years Gopi and the 3rd aged about 25 years Prabhakara, all of us together agreeing and writing as follows.

The land in old Survey No.159/16, now new Survey No.159/P14, of Vijayapura Hobli, Devanahalli Taluk, measuring 2.00 acres, was purchased by me, B. Parvathamma, from M. Narayanaswamy, son of A.V. Munishamappa of Vijayapura Town, and his son, under a registered sale deed dated 9.11.1990 at the Sub-Registrar's office, Devanahalli, registered as No.422/90-91, Book 1, Volume 1387, pages 9 to 12; on the strength of that deed the khata and pahani stand in my name as M.R. No.24/90-91, and we ourselves have been paying the land revenue to the Government till now, the land being within our full ownership.

We, being in need of money for our own purposes and for the maintenance of the family, have this day agreed to sell to you, the above-named, the land described in the schedule of this document, at Rs.11,60,000-00 per acre, and have fixed the price of the 2.00 acres shown in the schedule at Rs.23,20,000-00 (Rupees twenty-three lakh twenty thousand) in all, as absolute sale. Out of the entire price, I have this day received from you Rs.10,00,000/- (Rupees ten lakh) in cash as advance, in the presence of the witnesses who sign this agreement. The balance of the price, Rs.13,20,000-00 (Rupees thirteen lakh twenty thousand), you shall pay to us within 90 days from today, at the time of registration of the proper sale deed to be got written. Whenever you come and call us within 90 days from today, we shall, without raising any dispute or objection, receive the balance of the price from you and get a proper sale deed of the schedule property registered in your name or in the name of the person you indicate.

We have not created any encumbrance on the schedule property in favour of anyone other than you. It will be our entire responsibility to furnish, within the fixed period, all the documents relating to the land and those required for the registration you ask for. Apart from us there are no other heirs to the land. We are bound to act as stated in this agreement. The land is not darkhast or inam land. There are no cases, bank loans or hand loans on the land; in short there is no dispute of any kind on the land. If any dispute arises in future about the land or this agreement, we ourselves shall stand by and settle it at our own responsibility. This is the agreement of sale of the land, written and given by us of our own free will and with full satisfaction.

SCHEDULE OF THE PROPERTY. Bangalore Rural District, Devanahalli Taluk, Vijayapura Hobli, Vijayapura village, old Survey No.159/16, new Survey No.159/P14, extent 2-00 acres, bounded on the East by: M. Gopalara's land; West by: M. Chikkanna's land; North by: T. Thimmayya's land; South by: Mandibele gadi side and M. Krishnappa's land. The whole of 2-00 acres of land between these boundaries is covered by this agreement of sale.

Having read, heard and understood, we have put our signatures to this document in the presence of witnesses. Signature of the executants. Signature of the person who has taken the agreement. Witnesses: 1) 2) 3)

Ex.P2

V. ANAND B.Com., LL.B., Advocate. Off: No.84, Kilari Road, Bangalore-560 053. Phone-22877706. Residence: No.11, Palace Road, Bangalore-52. Phone-22269695, 2254723. Date: 23/01/2006

To Smt. B. Parvathamma, W/o Sri. M. Krishnappa, Aged about 53 years, Residing at Gurrappana Mata, Vijayapura Town, Devanahalli Taluk, Bangalore Rural District.

Madam, Under instructions from my client Sri. S. Jayaram, son of late Patel Shettappa, aged about 62 years, residing at Tippu Sultan Raod, Devenahalli Town Rural District.

You are aware that, by an agreement dated 05/11/2005 you had agreed to sell the property bearing survey No.159/16 new No.159/P14 situated at Vijayapura, Kasaba Hobli, Devanahalli Taluk, Bangalore Rural Distrit, measuring 2 acres for a total sale consideration of Rs.23,20,000/- in favour of my client and that on the date of execution of the said agreement, my client paid a sum of Rs.10,00,000/- as an advance amount and the balance was payable within 90 days from the date of agreement.

My client states that, my client is ready to pay the balance sale consideration of Rs.13,20,000/- and my client requested you to furnish revenue documents pertaining to the schedule property and that my client is herewith furnishing a draft sale deed for your kind approval and that my client intends to get the sale deed registered on or before 28th January, 2006 and kindly intimate to me or to my client with regard to the approval of the draft sale deed.

Therefore, I request your good self to kindly intimate the place and date for registration of the sale deed. Thanking you, Yours faithfully. End: Draft sale deed.

Ex.P3

BY U.C.P. To B. Parvathamma, W/o Sri. M. Krishnappa, R/o Gurppana mata, Vijayapura Town, Devanahalli (Tq), Bangalore Rural District. From V. Anand, Advocate, No.8/1, Kilari Road, Bangalore-53. Post office seal.

Ex.P4

India post. DEPARTMENT OF POSTS, INIDA. ACKNOWLEDGEMENT. Received registered letter/parcel - No.620 Dated 24/01/2006. Insured for Rupees. Addressed to B. Parvathamma, W/o Sri. M. Krishnappa, R/o Gurappana mata, Vijaapura Town, Devanahalli Taluk, Bangalore Rural District. Date stamp of office of delivery 25/01/06. Sd/- B. Parvathamma, Signature and name. On postal service. Name-stamp of office of posting: V. Anand, Advocate, No.8/1, Kilari Road, Bangalore-53.

Ex.P5

B.M. BYREGOWDA, B.Sc., LL.B., Advocate. Ph. 7645258. Mobile-9845486769. Residence: Bijjavara, Via Venkatagirikote, Devanahalli Taluk. Ref. No. R.P.A.D. Date: 23/01/2006

To Sri. V. Anand, Advocate, No.84, Kilari Road, Bangalore-53. Sir,

Your notice dated 23/01/2006 issued to my client Smt. B. Parvathamma, wife of Sri. M. Krishnappa, aged about 53 years, residing at Gurappa Matta, Vijayapura Town, Devanahalli Taluk, reached this day to my hands and I hereby instructed to give reply to your notice as hereunder:

At the outset my client instruct me that she has no exclusive right, title and ownership in respect of the land, measuring 2 acres bearing Sy.No.159/16 and New No.159/P14, situated at Vijayapura Kasaba hobli, Devanahalli Taluk, and as such she has no exclusive right to execute the agreement of sale dated 05/11/2005, in favour of your client Sri Jayaram, son of late Patel Shettappa, Devanahalli Town. It is instructed from my client the other co-owners namely Bhavani and Gopi and daughter and sons have not signed to the agreement of sale. Further, more the said property is a joint family property the other co-parcener are not ready to execute the sale deed. Further more it is instructed that an alleged draft sale deed is annexed with your notice as per the averments made in your notice for approval of sale

deed and as such my client is not ready to hand over revenue documents as you offered in your notice since the joint family interest subsists my client has no right to execute the sale deed.

In the said circumstances, your notice is defective. My client is ready to return 10 lakhs to your client which she received by virtue of agreement dated 05/11/2005. Thanking you. Sd/- (S.M. Byre Gowda) Advocate

Ex.P6

The Sub-Registrar, Devanahalli, Registered as Document No.482/1990-91, Page 9-12, Volume 1387 of Book-I dated 09.11.1990. (English rendering of the Kannada original.)

DEED OF ABSOLUTE SALE OF DRY LAND. On the twenty-first day of July, One Thousand Nine Hundred and Ninety, to Smt. B. Parvathamma, the lawful wife of M. Krishnappa, son of A.V. Munishamappa, residing near the Gurappa Matha at Vijayapura Town, Devanahalli Taluk, we, M. Narayanaswamy, son of A.V. Munishamappa, residing near the same Matha at Vijayapura Town of the same taluk, and his only son N. Lakshminarayana, write this absolute sale deed of dry land as follows.

Having partitioned our ancestral properties on 11.11.76, the land which I, M. Narayanaswamy, have been enjoying by cultivating it myself and paying the land revenue to the Government, belonging to Vijayapura Kasaba village, Devanahalli Taluk, Survey No.159, sub-division No.16, dry land of 2 acres, assessment Rs.3.50, standing in my name as M.T. 8/90-91 in the khata and pahani, is bounded on the East by M. Gopalara's land, West by M. Chikkanna's land, North by T. Thimmayya's land, South by Mandibele gadi side and M. Krishnappa's land.

In this land there are Nilgiri trees, and the cut stumps [...] are included. To you, with the free consent of M. Narayanaswamy and N. Lakshminarayana, as we have newly built a house and for its expenses, at the present market rate, for Rs.16,000/- (Rupees sixteen thousand) as absolute sale, having received the price in cash in the presence of the witnesses who sign this deed, we have this day delivered possession of the said property to you. Hereafter you will be the full owner of the property, will pay the Government revenue due on it and enjoy it happily as you please by way of sale, gift and so on. We have not alienated this property to anyone. If any dispute arises about it hereafter, we shall settle it at our own cost. We have no objection to the khata and pahani being changed to your name on this deed. The land is not darkhast or inam land. It is not contrary to R.D. 132 ELR 76 dated 14.03.79. Forms Nos.15 and 14 have been filled in and submitted to the concerned authority, and the Registrar has registered this sale deed for you. The original documents of the land, the revenue receipts and pahani, we, M. Narayanaswamy and N. Lakshminarayana, hand over to you. This is the absolute sale deed written by us of our own free will.

M. Narayanaswamy, N. Lakshminarayana. Witnesses: M. Byyamma, Vijayapura; Keshavaiah, Vijayapura; Bikkalam R. Srinivasamurthy, Vijayapura. L. No.59/80-81.

Ex.P7

Record of Rights, Tenancy and Crops (R.T.C.) extract, Village Account Form No.2, relating to Survey No.159/P14 of Vijayapura village, Devanahalli Taluk, printed on 13/07/2010 and bearing the seal of the Senior Civil Judge, Devanahalli; it shows the entries based on Mutation Register No.24/90-91 for an extent of 2.00 acres [the remaining entries of the printed form are not legible].

Ex.D1: Special Power of Attorney

KNOW ALL MEN BY THIS POWER OF ATTORNEY, I Parathamma B, wife of M. Krishnappa, aged about 56 years, agriculturist, residing at Gurrappanamutt, Vijayapura Town, Devanahalli Taluk, Banalore Rural District, do hereby nominate, constitute and appoint my husband Sri. M. Krishnappa, son of late Munishamapopa, aged about 60 years, Agriculturist, residing at Gurrappanamutt, Vijayapura Town, Devanahalli Taluk, Bangalore Rural District, as my lawful attorney in my name and on my behalf to do following acts, deeds and things;

1. To represent me before the court of Hon'ble Senior Civil Judge, at Devanahalli for all intents and purposes in connection with the suit in O.S.No.1569/2006, in which I am the 1st Defendant. As I have been suffering heart disease and has undergone heart surgery and as such I am not in a position to attend before this Hon'ble Court to appear in O.S.No.169/2006.

2. To appear for and prosecute and defend all actions and proceedings to sign and verify all plaints, written statements and other pleadings, applications, petitions or documents to the court, to deposit, withdraw and receive documents and any money or moneys from the Court or from the opposite party, either in execution of the decree or otherwise and on receipt of payment thereof, to sign and deliver for me proper receipts and discharges for the same.

3. To file any appeal, revision or review petition or writ petition in respect of any order or decree that may be passed in the said suit and to represent me in the said proceedings before any Court.

4. To enter into compromise, execute compromise petition and to withdraw the suit on my behalf either at the original state or at the appellate stage.

5. To engage and appoint any solicitor, advocate or advocates to act and plead and otherwise conduct the said case whenever said attorney thinks proper to do so.

6. To do all other lawful acts and things in connection with the case as effectually as I could do the same if were personally present and all and wherever my said attorney shall lawfully do, I do hereby agree to ratify and confirm.

IN WITNESS WHEREOF, I signed this deed on this the 14th day of June, 2010 at Devanahalli. Execution admitted by me. Sd/- B. Parvathamma, Executant. Identified by me: B.M. Byre Gowda, Advocate, Devanhalli. Date: 14-06-2010