Karnataka Civil Judge (Mains) 2016

Law Paper II · compulsory paper

Date: 10.07.2016 · Time: 10.00 AM to 1.00 PM · Maximum 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 judgment on the basis of oral and documentary evidence by giving valid and cogent reasons.

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI

O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 44 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 63 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

PLAINT UNDER ORDER VII RULES 1 AND 2 OF THE CODE OF CIVIL PROCEDURE 1908

The plaintiff above named respectfully submits as under:

1. That the addresses of the parties are correctly stated in the cause title above and that of the plaintiff is also care of his counsel Sri Raghavan, Advocate, Ballari.

2. That the defendant being the absolute owner in possession of the suit schedule property decided to sell the same and offered to plaintiff at its market value of Rs.5,00,000/- and the plaintiff accepted the same, hence, both the parties entered into a sale agreement on 4/2/2013 at Ballari under which the defendant received an advance amount of Rs.1,00,000/- from the plaintiff and agreed to sell the suit schedule property to the plaintiff by receiving the balance sale consideration of Rs.4,00,000/- within 3 months from the date of sale agreement.

3. The possession of the suit schedule property was agreed to be delivered by the defendant to the plaintiff at the time of execution and registration of the sale deed of the suit schedule property and the expenditure for stamp duty and registration are to be borne by the plaintiff.

4. The plaintiff has been ever ready and willing to perform his part of promise under the said sale agreement for paying the balance sale consideration of Rs.4,00,000/- to the defendant and also to bare the expenditure on the stamp duty and registration fee.

5. On 31/3/2013 the plaintiff telephone to defendant to be ready for execution and registration of the sale deed of the schedule property in favour of the plaintiff, but the defendant said that he was going to Andaman and Nicobar Islands along with his family and asked the plaintiff to wait for 15 days. The plaintiff believed the words of the defendant. But the defendant did not keep up his words and the plaintiff after sufficiently waiting for the defendant sent SMS and E-mail to the defendant on 20/4/2013 asking the defendant to come prepared to the office of the Sub-registrar at Ballari on 21/4/2013, for the execution and registration of the sale deed and to deliver the possession of the suit schedule property in favour of the plaintiff by receiving the balance sale consideration of

Rs.4,00,000/-. The plaintiff was waiting for the defendant at the office of the Sub-registrar, Ballari, but the defendant did not turn up.

6. That the defendant started avoiding the plaintiff and later the plaintiff came to know that one Ranganna, who is having election rivalry on the plaintiff, had offered Rs.6,00,000/- to the defendant for suit schedule property and the plaintiff was compelled to file a suit against the defendant for the relief of permanent injunction to restrain the defendant from selling the suit schedule property to third parties, in O.S.No.112/2013 and the same is pending on the file of the Court of Principal Civil Judge at Ballari.

7. That the plaintiff very often was demanding the defendant for the completion of the sale deed but the latter kept all the requests and demands of the former in cold storage. On 6/6/2013 the plaintiff got issued a legal notice through his Advocate calling upon the defendant to execute and register the sale deed within 15 days from the receipt of the said notice, by receiving the balance sale consideration of Rs.4,00,000/- from the plaintiff. The defendant received the said notice on 10/6/2013 but, neither executed the sale deed nor gave any reply to the same. The plaintiff without any alternative has filed the above case for the relief of specific performance against the defendant.

8. That the plaintiff undertakes to deposit the balance sale consideration of Rs.4,00,000/- into this Hon'ble Court whenever directed to do so. The plaintiff will suffer irrepairable loss and hardship if he is not granted the relief of specific performance.

9. That the original sale agreement dated 4/2/2013 is filed along with the plaint as document No.1, SMS extract as document No.2, E-mail extract as document No.3, copy of the legal notice dated 6/6/2013 as document No.4 and the postal acknowledgment as document No.5.

10. That the cause of action to this suit arose on 4/2/2013, 31/3/2013, 20/4/2013, 21/4/2013, 6/6/2013, 10/6/2013 and on subsequent days at Ballari within the jurisdiction of this Hon'ble Court.

11. That the suit is filed for the relief of specific performance against the defendant, the relief is valued at Rs.5,00,000/- which is the value of the suit schedule property and the valuation slip is separately enclosed.

WHEREFORE, the plaintiff prays that this Hon'ble Court may be pleased to pass the Judgment and Decree in favour of the plaintiff and against the defendant, for:

a. the relief of specific performance of the sale agreement dated 04.02.2013, to direct the defendant to execute and register the sale deed of the suit schedule property in favour of the plaintiff by receiving the balance sale consideration of Rs.4,00,000/- from the plaintiff and also to deliver the possession of the suit schedule property to the plaintiff and in case of failure or refusal on the part of the defendant to do so, the same caused to be done at the instance of this Hon'ble Court at the costs of the plaintiff, recoverable from the defendant; and

b. Court costs and such other relief which this Hon'ble Court deems fit to grant in the nature and circumstances of the case.

SCHEDULE

Vacant Site for residential purpose bearing No.50 being a part of the defunct survey No.14 situate at 3rd cross, Sathyanarayanpet, Ballari, measuring East to West by 50 ft and North to South by 60 ft being bounded on the,

East by	: Main road;
West by	: Condiments store;
North by	: Balaji Medical clinic; and on the
South by	: Maruthi Medicals

Sd/- Advocate for Plaintiff · Sd/- Plaintiff

VERIFICATION

I, Sitaram, the plaintiff in this case do hereby verify and declare that what is stated in the foregoing paragraphs are true and correct to the best of my knowledge, belief and information.

Ballari
Date: 7/2/2014
Sd/- Plaintiff

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 44 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 63 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

VERIFYING AFFIDAVIT

I, Sitaram, aged 44 years, son of Krishnamurthy, No. 48, Sathyanarayanpet, Ballari, do hereby solemnly swear affirm and state on oath as under:

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

2. I swear that I have filed the above suit for specific performance against the defendant.

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

4. I declare that what is stated above are true and correct.

Identified by me
Sd/- Advocate
Ballari
Dated: 07/02/2014.
Sd/- Deponent

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 44 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.

Defendant	Sri. Venkatappa, Aged 63 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

WRITTEN STATEMENT UNDER ORDER VIII RULE 1 OF THE CODE OF CIVIL PROCEDURE:-

The defendant begs to submit as under:

1. That the address of the defendant is also care of his counsel Sri.Rajanna, Advocate, Ballari.

2. The allegations made in para No.1 of the plaint that the defendant agreed to sell the suit schedule property to the plaintiff on 4/2/2013 at Ballari and entered into an agreement to sell the same for Rs.5,00,000/- and received the advance amount of Rs.1,00,000/- from the plaintiff and agreed to receive the balance sale consideration of Rs.4,00,000/- from the plaintiff within 3 months from the date of the alleged agreement are all false and specifically denied herein.

3. The allegations regarding delivery of possession of the suit schedule property to the plaintiff and execution and registration of the sale deed in favour of the plaintiff as stated in para No.3 of the plaint does not arise, hence, specifically denied herein. The allegation in para No. 4 that the plaintiff was ever ready and willing to perform his part of promise to pay the balance amount of Rs.4,00,000/- and also to bare the expenditure on stamp duty and registration are all false and specifically denied herein.

4. The allegations in para No.5 of the plaint that the plaintiff made telephoned to the defendant to be ready for registration and defendant told the plaintiff to wait for 15 days as the defendant was going to Andaman and Nicobar Islands along with his family, further, sending of SMS and E-mail to the defendant on 20/4/2013 and demanding the defendant to execute and register the sale deed by receiving the balance amount of Rs.4,00,000/- and he was waiting near Sub-registrar Office, at Ballari, are all false and specifically denied herein.

5. The allegations in para No.6 of the plaint that the defendant started avoiding the plaintiff and the plaintiff came to know that one Ranganna who is having election rivalry on the plaintiff, offered Rs.6,00,000/- to the defendant for the suit schedule property are all false and specifically denied herein. The filing of original suit in O.S.No.112/2013 is admitted, but the said suit is a vexatious one. The allegations in para No.7 of the plaint that the plaintiff was often demanding the defendant for completion of sale deed and also got sent a legal notice on 6/6/2013 to the defendant and the same was received by the defendant on 10/6/2013 are misleading and hence, specifically denied herein. The further allegations in the said para that the plaintiff without any alternative has filed the present suit is false and specifically denied herein.

6. That there is no cause of action to the suit and the alleged one is imaginary. The suit is not properly valued and the plaintiff is not entitled for any of the relief prayed for in the plaint.

7. That in addition to what is stated above, the defendant begs to provide the following perspective for complete and effective adjudication of all the relevant matters in the suit.

a. The defendant never entered into any agreement to sell the suit schedule property at any point of time or place in favour of the plaintiff. The suit schedule property was purchased by the defendant on 4/4/2005 for Rs.20,00,000/- under the registered sale deed No.44, Volume 2025 of Book 1 in the office of the Sub-registrar, Ballari. And ever since the date of purchase the defendant has been the owner in possession of the suit schedule property till today.

b. That the plaintiff is a chronic defaulter in repayment of loans to various persons and banks and is only a short of applying for insolvency. He is a close relative to defendant through the wife of the latter and during February 2013, the plaintiff came to house of defendant and begged the defendant to sign a document in the form of a sale agreement and he would show it to the Manager, State Bank of India, Cowl Bazaar, Ballari, for the purpose of showing solvency to enable him to secure loan of Rs.5,00,000/- and would return the said document within 2 days. As plaintiff is related to the defendant through the wife of the defendant, she also supported the plaintiff and asked the defendant to help him as there are small children to the plaintiff to be looked after. Hence, as a mark of mercy and sympathy, the defendant signed the document believing the plaintiff, at the same time warning him not to misuse the same, and the plaintiff agreed and made a promise to be faithful, in the name of his children. After 2 days the defendant asked the plaintiff to return the document but the latter said the same was lost and could not be traced inspite of diligent search. And the defendant believed the plaintiff and kept quiet.

c. That the defendant came to know that the plaintiff is in deep financial crisis and even has left his job and wandering here and there as an estate agent. The defendant has reliably learnt that the plaintiff never had an amount of more than Rs.2,000/- in his bank account at State Bank of India, Ballari, during the past 2 years. The defendant has cheated and deceived the plaintiff by misusing the signed document as sale agreement, for the above case and the said document is the same which was stated by the plaintiff that he has lost and could not trace inspite of diligent search. In this connection the defendant reserves his right to take suitable legal action against the plaintiff under the Criminal Law.

d. The Plaintiff has filed the present suit which is vexatious in nature and the defendant is the absolute owner in possession of the suit schedule property and plaintiff has no right on it. The defendant has not executed any sale agreement of the suit schedule property in favour of the plaintiff.

WHEREFORE, the defendant prays that this Hon'ble Court may be pleased to dismiss the suit of the plaintiff with exemplary costs in the ends of Justice.

Sd/- Advocate for defendant · Sd/- Defendant

VERIFICATION

I, Venkatappa, the defendant do hereby verify and declare that what is stated in the foregoing paragraphs are true and correct to the best of my knowledge, belief and information.

Ballari.
Date: 15.03.2014
Sd/- Defendant

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 44 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 63 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

VERIFYING AFFIDAVIT

I, Venkatappa, aged 63 years, son of Krishnawamy, No. 128, Hospet Road, 4th Cross, Ballari, the defendant in this case, do hereby solemnly swear affirm and state on oath as under:

1. I swear that I am the Defendant in the above case and hence, I am fully conversant with the facts of the case. Hence I swear this affidavit.

2. I swear that the Plaintiff has filed the above suit for specific performance against me.

3. I submit that averments made in the accompanying written statement are true and correct to the best of my knowledge, belief and information.

4. I declare that what is stated above are true and correct.

Identified by me
Sd/- Advocate
Ballari
Dated: 15/03/2014.
Sd/- Deponent

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

EVIDENCE BY WAY OF AFFIDAVIT — P.W.1

Name: Sitaram
Son of: Krishnamurthy
Age: 45 years
Occupation: Estate Agent
Address: No. 48, Satyanarayanpet, Ballari

I, Sitaram, aged 45 years, son of Krishnamurthy, residing at No.48, Sathyanarayanpet, Ballari, the plaintiff in this case, do hereby solemnly swear and state on oath as under:

1. The defendant being the absolute owner in possession of the suit schedule property agreed to sell the same to me for Rs.5,00,000/- and received an advance amount of Rs.1,00,000/- and executed a sale agreement in my favour on 4/2/2013 at Ballari and agreed to receive the balance consideration of Rs.4,00,000/- within 3 months from the date of the sale agreement and agreed to deliver the possession of the suit schedule property to me at the time of execution and registration of the sale deed.

2. I have been ever ready and willing to perform my part of promise under the said sale agreement to pay the balance sale consideration of Rs.4,00,000/- to the defendant and also to bare the expenditure on the stamp duty and registration fee.

3. On 31/3/2013 I telephoned the defendant and asked to be ready for registration of the sale deed of the suit schedule property in my favour, but he said that he was going to Andaman and Nicobar

Islands along with his family and asked me to wait for 15 days. I believed his words, but he did not keep up his words and after waiting for the defendant sufficiently, I sent SMS and E-mail to him on 20/4/2013 asking him to come prepared to the office of the Sub-Registrar at Ballari on 21/4/2013 for the execution and registration of the sale deed and to deliver the possession of the suit schedule property to me by receiving the balance sale consideration of Rs.4,00,000/- from me. I was waiting for the defendant at office of the Sub-registrar, Ballari, but he did not turn up.

4. The defendant started avoiding me and I came to know that one Ranganna, who is having election rivalry against me had offered Rs.6,00,000/- to the defendant for the suit schedule property and I was compelled to file a suit against the defendant for the relief of permanent injunction to restrain him from selling the suit schedule property to third parties, in O.S.No.112/2013 and the same is pending on the file of the Court of Principal Civil Judge at Ballari.

5. I was very often demanding the defendant for the completion of the sale deed but he kept all my requests and demands in cold storage. On 6/6/2013 I got issued a legal notice through my Advocate calling upon the defendant to execute and register the sale deed within 15 days from the receipt of the said notice by receiving the balance sale consideration of Rs.4,00,000/-. The defendant received the said notice on 10/6/2013 but, neither executed the sale deed nor gave any reply to the said notice. Therefore, without any alternative I had to file the above case for the relief of specific performance against him.

6. I undertake to deposit the balance sale consideration of Rs.4,00,000/- into this Hon'ble Court whenever directed to do so. I will suffer irreparable loss and hardship if I am not granted the relief of specific performance.

7. The original sale agreement dated 4/2/2013 is filed along with the plaint as document No1, SMS extract as document No.2, E-mail extract as document No.3, copy of the legal notice dated 6/6/2013 as document No.4 and the postal acknowledgment as document No.5.

8. I have a valid cause of action to file the above suit and it arose on 4/2/2013, 31/3/2013, 20/4/2013, 21/4/2013, 6/6/2013 and 10/6/2013 and on subsequent days at Ballari within the jurisdiction of this Hon'ble Court.

9. The relief under this suit is valued at Rs.5,00,000/- being the value of the suit schedule property as mentioned in the sale agreement and the valuation slip is separately enclosed to the plaint.

WHEREFORE, I pray that this Hon'ble Court may be pleased to pass the Judgment and decree in my favour and against the defendant in respect of the sale agreement of the suit schedule property dated 04.02.2013 to direct him to execute and register the sale deed of the suit schedule property and to deliver possession of the same in my favour by receiving the balance sale consideration of Rs.4,00,000/- from me and in case of his refusal or failure to do so the same caused to be done at the instance of this Hon'ble Court at my costs and expenditure recoverable from the defendant.

I do swear in the name of God that this is my name and signature and what is stated above are true and correct to the best of my knowledge belief and information.

Identified by me
Sd/-

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI

O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

P.W.1 — Sitaram

Name: Sitaram
Son of: Krishnamurthy
Age: 45 years
Occupation: Estate Agent
Address: No. 48, Satyanarayanpet, Ballari
Duly Sworn on 5/8/2014

Examination in Chief by Sri. Raghavan, Advocate for plaintiff

I have filed my affidavit in lieu of examination in chief. I have also filed the documents in support of my claim.

1. The original sale agreement dated 4/2/2013 executed by the defendant is as Ex-P1 and the signature of the defendant in my favour is Ex-P1(a).

2. SMS extract is as Ex-P2.

3. E-mail extract as Ex-P3.

4. Copy of the legal notice as Ex-P4.

5. Postal acknowledgement as Ex-P5.

Cross examination by Sri. Rajanna, Advocate for defendant

1. It is false to suggest that I was never ready and willing to perform my part of promise to pay the balance sale consideration of Rs.4,00,000/- to the defendant.

2. It is true that State Bank of India, Ballari branch has filed a case against me for recovery of Rs. 13,00,000/- before the Debts Recovery Tribunal, Bengaluru.

3. It is true that my daughter is married and residing at Pathankot in Punjab. My son-in-law is in the Indian Army. It is true that I had gone to attend my daughter on 18/4/2013 by train and stayed in my daughter's house for one week and returned to Ballari thereafter.

4. It is true that I sent SMS and E-mail to the defendant from Pathankot.

5. I had asked my brother-in-law to go to office of the Sub-registrar for registration of the sale deed. I had sent power-of-attorney executed in his favour for getting the sale deed. I had asked by brother-in-law to get the amount for paying the balance sale consideration of Rs.4,00,000/- to the defendant and also to bare the expenditure for stamp duty and registration and my brother-in-law waited for the defendant.

6. I have mis-placed the power of attorney. My brother-in-law is working as a Manager in Hotel Vijaya at Sandur.

7. It is true that the measurement of the said hotel is 10ft X 15ft and the same belongs to Vijaykumar. I do not know what is the salary of my brother-in-law. It is false to suggest that neither, myself nor my

brother-in-law had or has any resource to by the suit schedule property.

8. I did not pay the entire sale consideration to the defendant on the date of the sale agreement, because, he did not ask for it. I had sufficient money on that day. It is true that my neighbor Govinda Reddy has filed an Execution Petition against me on the file of Additional Civil Judge, Ballari. It is true that the Court has ordered for the issue of arrest notice to me.

9. It is true that I have taken the defence that I have no means to pay in the said case. The decretal amount in that case is Rs.95,000/-. The reason for me to file suit for permanent injunction against the defendant is my hope that defendant would execute the sale deed in my favour and also to avoid expenditure on Court fee and lawyer's fee.

10. It is false to suggest that I, requested the defendant to help me through signing a document, which is now Ex-P1 to enable me to get loan from the bank. It is further false to suggest that I have cheated and deceived the defendant by misusing the said document as Ex-P1. It is false to suggest that the defendant had no intention to sell the suit schedule property to me at any point of time and I did and do not have sufficient economical means to buy the suit schedule property.

11. It is false to suggest that the defendant has not executed Ex-P1 in my favour and I am not entitled for the relief of specific performance. It is false to suggest that defendant had no intention to sell the suit schedule property to me and I was never ready and willing to buy the same at any point of time. I do not know for what price defendant purchased the suit schedule property. It is false to suggest that the value of the suit schedule property was more than Rs.25,00,000/-.

12. It is true that I had promised Srinivas Murthy of Hospet to sell the suit schedule property for Rs.30,00,000/- after getting the sale deed from the defendant.

13. It is true that I had written a letter to the said Srinivas Murthy stating that the suit schedule property was purchased by the defendant for Rs.20,00,000/-. It is false to suggest that I am a habitual blackmailer. It is false to suggest defendant has not executed any sale agreement in my favour on 04/02/2013 or on subsequent days and I had not paid Rs.1,00,000/- by way of advance. It is false to suggest that I have misused Exhibit P1 by claiming it as sale agreement. It is false to suggest that I never had economic means to pay Rs. 4,00,000/- to defendant at any point of time.

R.O.I & A.C.
Sd/-
PW1

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

EVIDENCE BY WAY OF AFFIDAVIT — P.W.2

Name: Srinivasamurthy
Son of: Kandaswamy
Age: 45 years

Occupation: Business
Address: Sandur

I Srinivasamurthy aged 45 years son of Kandaswamy residing at Mines mohalla at Sandur do hereby solemnly swear, affirm and state on oath as under.

1. During the month of February 2013 the plaintiff in this case asked me to sign a document as witness and it is required for important purpose and I have signed document in the house of the Defendant.

2. After I signed the document defendant was asking the plaintiff to be truthful and not to mis-use the document. When I asked the reason, the plaintiff told me that he would tell it later and we came out of the house of the defendant.

I do swear in the name of God that this is my name and signature and what is stated above are true and correct to the best of my knowledge belief and information.

Identified by me
Sd/- Advocate
Ballari.
Date: 05.08.2014
Sd/- Deponent
Sworn before me

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

PW-2 — Srinivasamurthy

Name: Srinivasamurthy
Son of: Kandaswamy
Age: 45 years
Occupation: Business
Address: Sandur
Duly Sworn on 5/8/2014

Examination in Chief by Sri. Raghavan, Advocate for plaintiff

I have filed my affidavit in lieu of examination in chief. I am seeing the document which I have signed, it is already marked as Ex.P1 and my signature is Ex.P1(b).

Cross Examination by Sri. Rajanna, Advocate for defendant

I do not know the contents of Exhibit P1. It is true that the Plaintiff is facing hard days and he is trapped in debts. It is false to suggest that I do not know anything about the case. I have seen the suit schedule property and it worth about Rs.25/- to Rs.30/- lakh.

Ballari.
Date: 5/8/2014

R.O.I & A.C.
Sd/-
PW2

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

EVIDENCE BY WAY OF AFFIDAVIT — PW-3

Name: Muniyappa
Son of: Venkatappa
Age: 46 years
Occupation: Business
Address: Sandur
Duly Sworn on 5/8/2014

I Muniyappa aged 46 years son of Venkatappa residing at Mines Mohalla at Sandur to hereby solemnly swear, affirm and state on oath as under.

I know the plaintiff and defendant in this case last year during February 2013 at Ballari I saw the plaintiff near the house of defendant. The plaintiff asked me to sign a document as a witness and I did so.

I do swear in the name of God that this is my name and signature and what is stated above are true and correct to the best of my knowledge belief and information.

Identified by me
Sd/- Advocate
Ballari.
Date: 05.08.2014
Sd/- Deponent
Sworn before me

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

PW-3 — Muniyappa

Name: Muniyappa
Son of: Venkatappa

Age: 46 years
Occupation: Business
Address: Sandur

Examination in Chief by Sri Raghavan, Advocate for Plaintiff.

I have filed my affidavit. Now I see Exhibit P1 and Exhibit P1(c) is my signature.

Cross Examination by Sri Rajanna, Advocate for defendant

It is true that myself, Plaintiff and the defendant are related to each other. It is true that the wife of the defendant had come to attend a marriage at Sandur and myself and the Plaintiff were also present at the marriage. It is true that the Plaintiff asked the wife of the defendant for help and she said that she would tell her husband to help the Plaintiff. I do not know the contents of Exhibit P1.

Ballari.
Date: 5/8/2014
R.O.I & A.C.
Sd/-
PW3

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

AFFIDAVIT OF THE DEFENDANT — D.W.1

Name: Sri. Venkatappa,
Age: 64 years
Father's Name: Krishnaswamy,
Occupation: Merchant,
Residence: No. 128, Hospet Road, 4th cross, Ballari.

I Venkatappa aged 64 years son of Krishnaswamy No. 128, Hospet road, 4th Cross, Ballari, the defendant in this case do hereby solemnly affirm swear and state on oath as under.

1. I am the defendant in this case and conversant with the facts of the case. The plaintiff has filed the above case against me on false grounds. During February 2013 the plaintiff came to my house, he is my relative through my wife and asked for help by signing a document to enable him to secure loan of Rs.5,00,000/- from the bank. My wife also told me to help him, and I signed document gave it to him which is marked as Exhibit P1 in this case. I had warned the plaintiff not to misuse my signature and the document and the plaintiff agreed and made a promise to be faithfull in the name of his children. After two days when I asked him to return the document he said that the same was lost and could not be traced inspite of deligent search and I believed him and kept quite.

2. I never entered into any agreement to sell the suit schedule property at any point of time in favor of the plaintiff. The suit schedule property was purchased by me on 4/4/2005 for Rs.20,00,000/- under

the registered sale deed No. 44, Volume 2025 of Book 1 in the office of the Sub-registrar, Ballari and ever since the date of purchase I am in possession of the same as the owner till today.

3. The plaintiff is a chronic defaulter in repayment of loans to various persons and banks and is only short of applying for insolvency.

4. I came to know that the plaintiff is in deep financial crisis and has even left his job and wandering here and there as an estate agent. I have reliably learnt that the plaintiff never had an amount of more than Rs.2,000/- in his bank account during the last 2 years.

5. He has filed a false case against me though I never had any intention to sell the suit schedule property to the plaintiff at any point of time. By filing this case the plaintiff is trying to cheat and deceive me for making wrongful gains. I am going to take suitable legal action against him under criminal law. I have not received any amount from the plaintiff at any point of time or under Exhibit P1.

6. The plaintiff has filed the present suit which is vexatious in nature and has suppressed the material facts.

7. I am the absolute owner in possession of the suit schedule property and the plaintiff has no right on it.

8. I have not executed any sale agreement of the suit schedule property in favour of the Plaintiff.

WHEREFORE, I pray that this Hon'ble Court may be pleased to dismiss the suit of the Plaintiff with exemplary costs.

I do swear in the name of God that this is my name and signature and what is stated in this affidavit are all true and correct to the best of my knowledge, belief, and information.

Sd/- Defendant
Identified by me
Sd/- Advocate for defendant.
Duly sworn before me
Sd/-
Ballari.
Date: 30/08/2014.

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI

O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

D.W.1 — Sri. Venkatappa

Name: Sri. Venkatappa,
Age: 64 years
Father's Name: Krishnaswamy,
Occupation: Merchant,

Residence: No. 128, Hospet Road, 4th cross, Ballari.
Duly Sworn on: 30.08.2014

Examination in Chief by Sri Rajanna, Advocate for defendant.

I have filed my affidavit in lieu of Examination in Chief. The contents of the affidavit are true and correct.

Cross Examination by Sri Raghavan, Advocate for plaintiff.

It is false to suggest that the plaintiff is not my relative. It is false to suggest that the plaintiff has maintained credit balance of more than Rs.5,00,000/- in his SB account at State Bank of India, Cowl Bazaar, Ballari. It is false to suggest that I have executed a sale agreement on 4/2/2013 in favour of the plaintiff to sell the suit schedule property to him in the presence of the witnesses PW2 and 3. It is false to suggest that the plaintiff is a man of sufficient means.

It is false to suggest that the plaintiff was ever ready and willing to pay the balance sale consideration of Rs.4,00,000/- to me and I am the defaulter. It is false to suggest that I am deposing false to deceive the plaintiff.

Ballari.
30/08/2014.
R.O.I & A.C.
Sd/-
DW1

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

AFFIDAVIT — D.W.2

Name: Sri. Prabhakar,
Age: 43 years
Father's Name: Vinod Shetty,
Occupation: Senior Manager, State Bank of India,
Residence: No. 42, 6th Cross, Cowl Bazaar, Ballari.
Date: 30.08.2014

I Prabhakar, aged 43 years, son of Vinod Shetty, Senior Manager, State Bank of India, Cowl Bazaar, Ballari, do hereby solemnly swear and state on oath as under:

I know the plaintiff in this case. He is having a Savings Bank account in our bank at Cowl bazaar. The Account Number is 425262. I have brought the account extract of the plaintiff for the years 2012 and 2013, and till today the highest ever amount to the credit of the plaintiff is Rs. 4,500/- on 31/12/2012.

I do swear in the name of God that this is my name and signature and what is stated above are all true and correct to the best of my knowledge, belief and information.

Identified by me
Sd/- Advocate for defendant
Date: 30/08/2014, Ballari
Sd/- Deponent

IN THE COURT OF THE SENIOR CIVIL JUDGE AT BALLARI
O.S. No. 45/2014

Plaintiff	Sri. Sitaram, Aged 45 years, Son of Krishnamurthy, No. 48, Satyanarayanpet, Ballari.
	V/s.
Defendant	Sri. Venkatappa, Aged 64 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari.

D.W.2 — Sri. Prabhakar

Name: Sri. Prabhakar,
Age: 43 years
Father's Name: Vinod Shetty,
Occupation: Senior Manager, State Bank of India,
Residence: No. 42, 6th Cross, Cowl Bazaar, Ballari.
Duly sworn on 30/08/2014.

Examination in Chief by Sri. Rajanna, Advocate for defendant.

I have filed my affidavit and its contents are true and correct. The account extract of the SB account number 425262 of the plaintiff in our bank is as per Exhibit D1 and the relevant entry is Exhibit D1a.

Cross Examination by Sri. Raghavan, Advocate for plaintiff.

The plaintiff is having only one account in our bank bearing savings bank account No. 425262. It is false to suggest Exhibit D1 does not reflect proper figure of credit balance in our bank in the account of the plaintiff.

It is suggested that I am not supposed to reveal the account status of the plaintiff, my response is I have come in response to the summons issued by the Court to bring Exhibit D1 and to give evidence.

R.O.I & A.C.
Sd/-
DW2
Ballari
Date: 30/08/2014.

DOCUMENTS

Ex.P1 — SALE AGREEMENT (on a Non-Judicial stamp paper of Rs.200/-)

This sale agreement is entered into at Ballari on today 4th February 2013, between Venkatappa Aged 63 years, son of Krishnaswamy, No. 128, Hospet Road, 4th cross, Ballari, herein after called the seller and Sri. Sitaram, aged 44 years, son of Krishnamurthy, No. 48, Sathyanarayanpet, Ballari.

This agreement witnesseth as under:

1. The seller is the sole and absolute owner in possession of the schedule property having purchased the same under the registered sale deed for valuable consideration during the year 2005.

2. Due to better investment and mobilization of resources, the seller has offered to sell the schedule property to the purchaser for cash consideration of Rs.5,00,000 lakh and the seller has accepted the same and it has resulted in this agreement.

3. The purchaser has paid the advance amount of Rs. 1,00,000 to the seller and the latter acknowledges the receipt of the same from the former. It is agreed between the parties that the purchaser shall pay the remaining sale consideration of Rs.4,00,000 within 3 months from today. The seller upon the receipt of the said balance sale consideration, shall execute and register the sale deed of the schedule property in favor of the purchaser and also deliver the possession of the schedule property to the purchaser at the time of execution of the sale deed.

4. If the purchaser fails to pay the balance consideration of Rs.4,00,000/- to the seller within 3 months from today this agreement stands cancelled and the advance amount of Rs.1,00,000/- will be forfeited in favor of the seller. At the same time if the purchaser is ready to get the sale deed by paying the balance sale consideration for the schedule property and if the seller fails to execute the sale deed in favor of the purchaser, the latter shall be entitled to get the relief of specific performance by taking legal action against the seller in which event the seller shall be liable for all the costs and consequences in the process.

SCHEDULE

Vacant Site for residential purpose bearing No. 50 being the part of the defunct survey No. 14 situate at 3rd cross Sathyanarayanpet, Ballari, measuring east to west by 50 ft and north to south by 60 ft being bounded on the,

East by	: Main road;
West by	: Condiments store;
North by	: Balaji Medical clinic; and on the
South by	: Maruthi Medicals

In witness where of the parties have hereinto set there hands and subscribed their signatures this day month and the year first above mentioned.

Seller
Witnesses:
Sd/- I Srinivasamurthy son of kandaswamy, mines mohalla Sandur.
Sd/- I Muniyappa son of Venkatappa, mines mohalla Sandur
Sd/- Written by Bikkalappa, License No.40, Ballari.

Ex.P2 — SMS

SMS extract from the mobile phone of the plaintiff. Date: 20/04/2013. Text message: come prepared for execution and registration of the sale deed 21/4/2013/- will be waiting near the office of the SR Ballari. Regards: Sitaram.

Ex.P3 — E-mail

Email extract from Sitaram45@gmail.com to venkatappa46@gmail.com. Date: 20/04/2013.

Text: Dear uncle

I will be waiting near the office of the Sub-Registrar Ballari on 21/04/2013, please come for Registration of the sale deed in connection with sale agreement dated 4/2/2013.. Regards: Sitaram.

Ex.P4 — Legal Notice

Ballari
Dated: 6/6/2013.

From
Raghavan B.Com,LL.B.,
Advocate, Shanthi Layout,
Vijayanagar, Ballari.

To,
Sri. Venkatappa
Aged 63 years,
son of Krishnaswamy,
No. 128, Hospet Road,
4th cross, Ballari.

Dear Sir,

Under instructions from a client Sri. Sitaram aged 44 years, son of Krishnamurthy, No.48, Sathyanarayanapet, Ballari I hereby issue the following notice to you and demand strict compliance thereof:

You are aware that you have entered into an agreement to sell the schedule property to my client on 4/2/2013 for Rs.5,00,000/- and received the amount of Rs.1,00,000/- by way of advance and the balance amount of Rs.4,00,000/- is payable to you within 3 months from the date of sale agreement, upon the receipt of which you have to execute the sale deed of the schedule property in favor of my client and deliver the possession of the schedule property to my client.

You are aware that my client is ever ready and willing to pay the balance sale consideration to fulfill his part of promise under the sale agreement dated 4/2/2013 and also to bear the expenditure for stamp duty and registration.

You are reminded of the SMS and Email sent by my client on 20/04/2013. But you have not responded to the request and demand of my client for executing the sale deed of the schedule property in favour of my client.

Hence you are hereby informed to come prepared for the execution and registration of the sale deed of the schedule property and also deliver the possession of the same in favor of my client within 15 days from the receipt of this notice, failing which my client will be constrained to take legal action against you in which event you will be liable for all the costs and consequences in the process.

Yours faithfully, Sd/- Advocate.

SCHEDULE

Vacant Site for residential purpose bearing No.50 being a part of the defunct survey No.14 situate at 3rd cross, Sathyanarayanpet, Ballari, measuring East to West by 50 ft and North to South by 60 ft being bounded on the,

East by	: Main road;

West by	: Condiments store;
North by	: Balaji Medical clinic; and on the
South by	: Maruthi Medicals

Sd/- Advocate.
Date: 06.06.2013

Ex.P5 — POSTAL ACKNOWLEDGEMENT

From,
Raghavan B.Com,LL.B.,
Advocate, Shanthi Layout,
Vijayanagar, Ballari.

To,
Venkatappa
Aged 63 years,
son of Krishnaswamy,
No. 128, Hospet Road,
4th cross, Ballari.

Registered post dated 6/6/2013 received by Venkatappa on 10/6/2013. Sd/- Addressee

Ex.D1 — Account extract

State Bank of India,
Kowl Bazar, Ballari.
S.B.a/c No.425262.

Highest Balance for the years 2012 and 2013 and till date in the account of Sitaram Rs.4,500/- on 31.12.2012.