Karnataka Civil Judge (Mains) 2017

Law Paper II · compulsory paper

Date: 16.07.2017 · Max Marks: 100 · Time: 10.00 AM to 1.00 PM

Note: Option is given to the candidates to write answers either in English or in Kannada. If there is any discrepancy in the questions in English language and Kannada language, the questions as framed in English language shall prevail.

1. Frame proper issues in the following case. 15 Marks

Plaintiff: Smt. Sumithra
Vs
Defendants:

1. Devanand S/o Late Patel Rajanna
2. Smt. Sunitha W/o Devanand
3. Rangaswamy S/o Ramegowda
4. Radhakrishna S/o Hanumanthegowda

Suit is filed on 23.03.2006

Plaint

1. The suit schedule property earlier belonged to the family of defendant No.1 & 2 and they were the owners of the suit schedule property. The plaintiff had purchased the suit schedule property from defendant No.1 & 2 on 02.12.2002 for a sale consideration of Rs.87,000/- under registered sale deed and after purchase of the land, the plaintiff has been cultivating the suit schedule property without any hindrance from anybody.

2. All of a sudden, the defendant No.3 came to the suit schedule property and tried to trespass into the suit schedule property on 08.03.2006 by saying that he is the owner of the suit schedule property. The defendant No.3 has no manner of right to trespass into the suit schedule property. Hence this suit.

3. The cause of action arose on 08.03.2006, when the defendant No.3 was trying to trespass into the suit schedule property within the jurisdiction of this court.

4. Wherefore, the plaintiff prays that the Hon'ble Court may be pleased to pass judgment and decree in favour of the plaintiff and against the defendants.

a. For the relief of declaration that she is the absolute owner of suit schedule property.
b. For permanent injunction restraining the defendant No.3 from interfering with the peaceful possession and enjoyment of the suit schedule property by the plaintiff.
c. For costs and such other and further reliefs as the court deem fit to grant in the facts and circumstances of the case.

Sd/- Advocate for plaintiff Sd/- Plaintiff

After service of summons, the defendant No.3 & 4 have appeared through their counsels and filed separate written statements. The defendant No.1 & 2 are placed Ex-parte.

Written statement of defendant No.3

1. The defendant No.3 denies that the plaintiff has purchased the suit schedule property from defendant No. 1 & 2 for sale consideration of Rs.87,000/- and she is in possession and enjoyment of suit schedule property.

2. The defendant No.3 submits that the properties bearing Sy No.37 dry land measuring 3 acres, Sy No.56 measuring 1 acre 4 guntas, Sy No.39 measuring 1 acre wet land, Sy No.60 measuring 2 acre 8 guntas, dry land situated at Mallenahalli Village, K.M.Pura Taluk originally belonged to the joint family of the defendant No.1 & 2, Late Patel Rajanna, Manjanna, Huchchegowda, Prakasha, Ramesha, Murthy, Ansuya & sons and daughters of Late Patel Rajanna who is the father of defendant No.1 and father-in-law of defendant No.2.

3. Patel Rajanna and his sons and daughters for their exigencies to celebrate the marriage of Ansuya, the daughter of Patel Rajanna desired to sell the property referred above and the defendant No.3 came forward to purchase the same including the suit schedule property from Patel Rajanna and his sons & daughters referred above.

4. After negotiation, the defendant No.3 had agreed to purchase the property for Rs.2,50,000/- and on 21.06.1999, an agreement of sale came into existence and the defendant No.3 paid Rs.2,00,000/- towards sale consideration through cheque No.608366 dated 21.06.1999 drawn on State Bank of India, K.M.Pura Branch.

5. The defendant No.1, his father and brothers and sisters were entitled to receive the balance consideration of Rs.50,000/- and were bound to execute regular registered sale deed. He came to know that the defendant No.1, the father of defendant No.1, his brothers and sisters were trying to dispose of the properties.

6. The defendant No.3 submits that he got issued a legal notice on 14.07.2000 to the defendant No.1 and his father Patel Rajanna. The said notice was not served to the defendant No.1 and his father Patel Rajanna. It appears that they intentionally refused to receive the legal notice.

7. The defendant No.3 submits that he has filed suit O.S.No.34/2001 for the relief of Specific Performance of an agreement of sale before the Civil Judge, K.M.Pura. In the said suit, the defendant No.1, his father, brothers and sisters did not appear before the court and finally the suit came to be decreed Ex-parte on 01.12.2001. The defendant No.3 has filed execution petition No.120/2002 to execute the decree and a sale deed was executed through court in favour of defendant No.3 and the defendant No.3 obtained possession of the suit property through court bailiff and since then the defendant No.3 had been in possession and enjoyment of the suit schedule property.

8. The defendant No.3 submits that the plaintiff, defendant No.1 & 2 Colluding with each other are trying to oust him from the suit schedule property.

9. This court has no jurisdiction to entertain the suit. Hence prays for dismissal of the suit.

Written statement of defendant No.4

1. Suit is bad for non-joinder of brothers and sisters of defendant No.1 as necessary parties. Suit is barred by limitation.

2. The defendant No.4 denies that the plaintiff had purchased suit schedule property from the defendant No.1 & 2 for sale consideration of Rs.87,000/-.

3. The defendant No.4 submits that the suit properties and other properties originally belonged to the family of the father of defendant No.1 i.e., Patel Rajanna. The father of defendant No.1 i.e., Patel Rajanna and his children sold suit schedule property and other properties in favour of defendant No.3 for sale consideration of Rs.2,50,000/- and received earnest money of Rs.2,00,000/- from defendant No.3 by executing sale agreement dated 21.06.1999.

4. The defendant No.4 submits that since the defendant No.1, his father and his brothers and sisters did not execute sale deed in favour of defendant No.3, the defendant No.3 filed suit O.S.No.34/2001 for the relief of Specific Performance of an agreement of sale and said suit came to be decreed on 01.12.2001 and thereafter, the defendant No.3 filed execution petition No.120/2002 to execute the decree and a sale deed was executed through court in favour of defendant No.3 and the defendant No.3 obtained possession of the suit property through court bailiff and since then the defendant No.3 had been in possession and enjoyment of the suit schedule property.

5. The defendant No.4 submits that he has purchased the suit schedule property from the defendant No.3 through registered sale deed dated 14.05.2003 and hence, he is the absolute owner in possession of the suit schedule property. Hence, prayed for dismissal of suit.

2. Frame proper issues in the following case. 10 Marks

O.S.No.22/2012
Plaintiff: Laxmamma D/o Late Krishnegowda W/o Javaregowda
Vs
Defendants:

1. Thimmamma D/o Late Krishnegowda
2. Gowramma W/o Late Krishnegowda
3. Laxmamma D/o Late Krishnegowda
4. Chikkamma W/o Late Hanumanthegowda
5. Gopalagowda S/o Late Krishnegowda
6. Ramakrishnagowda S/o Late Krishnegowda

Suit is filed on 14.12.2012

Plaint

1. The plaintiff and defendant No.1 are the daughters of Late Puttamma, the first wife of Late Krishnegowda. Defendant No.3, 5 and 6 are the children of defendant No.2 Gowramma, who is the second wife of Late Krishnegowda. Defendant No.4 is the wife of Late Hanumanthegowda, the son of defendant No.2 and late Krishnegowda.

2. The common ancestor of the family of plaintiff and defendants i.e., Krishnegowda died in the year 1980. The suit properties are standing in the name of Krishnegowda and suit item No.3 was purchased by Krishnegowda out of joint family fund on 20.04.1974. After death of Krishnegowda, the defendant No.2 has changed Katha into her name, though the suit properties are the ancestral properties of the plaintiff.

3. The defendant No.2 married Krishnegowda during the life time of Puttamma, the first wife of Krishnegowda. The plaintiff has asked the defendants to partition the suit property and allot her share about 6 months back, but the defendants gave evasive reply. Hence this suit.

4. The cause of action arose about 6 months back, when the plaintiff demanded share in the suit properties.

5. Wherefore, the plaintiff prays that the Hon'ble court may be pleased to pass judgment and decree in favour of plaintiff & against the defendants.

a. For partition of suit properties by metes and bounds and allot plaintiff's 1/3 share in the suit properties.
b. For Mesne profits.
c. For cost & such other and further reliefs as the court deems fit to grant in the facts and circumstances of the case.

Sd/- Advocate for plaintiff Sd/- Plaintiff

Schedule

Immovable properties situated at Nandi village, K.M. Nagar are as follows:

Item No.1: Sy No.180 measuring 6 guntas
Item No.2: Sy No.180/1 measuring 9 guntas
Item No.3: Sy No.2/5 measuring 3 acres
Item No.4: Sy No.3/6 measuring 2 acres
Item No.5: Sy No.100/1 measuring 1 acre 12 guntas
Item No.6: Sy No.98 measuring 1 acre 29 guntas

Sd/- Advocate for plaintiff Sd/- Plaintiff

After service of summons, the defendants have appeared through counsels. The defendant No.2 has filed written statement. Other defendants have not filed written statements.

Written statement of defendant No.2

1. This defendant admits her relationship with the plaintiff and other defendants as alleged in the plaint.

2. This defendant denies that the suit properties are the ancestral properties of the plaintiff. The plaintiff is not the family member and she married 60 years back and hence, the suit is barred by limitation.

3. This defendant had purchased suit Item No.5 & 6 on 29.9.1975 and suit item No.3 on 22.2.1972 after the plaintiff went out of the joint family. Therefore, suit item No.3, 5 and 6 are her self acquired properties.

4. Suit is bad for non-joinder of necessary parties. Hence, prayed for dismissal of the suit.

3. Write a considered Judgment on the basis of oral and documentary evidence by giving valid and cogent reasons. 75 Marks

In the court of Civil Judge, Shivapura

O.S.No.45/2012

Between
Basavaraj S/o Late Shankara, Aged 65 years
Narayana S/o Narasimha, Aged 42 years
Both are residents of Halakki Village, Shivapura. *Plaintiffs*

AND
(1) Smt. Gangambika, 35 years, D/o Late Bhagirathi
(2) Sheena, 60 years, S/o Gangappa, Husband of Late Bhagirathi
Both are resident of Anegundi, Shivapura. *Defendants*

Plaint Under Section 26 Order VII Rule 1 of the Code of Civil Procedure, 1908

The Plaintiffs submit:

1. The suit schedule property described in the schedule hereunder originally belonged to late Bhagirathi, the mother of defendant No.1 and wife of defendant No.2 and she got the suit property under partition and on her death, both the defendants came into actual possession of the property with RTC in their names. Both the defendants jointly offered to sell the suit property in favour of plaintiff No.1 on account of their urgent requirements of funds for their family necessity. After mutual discussion, the plaintiffs _ _ _have agreed to purchase the suit property for Rs.2 lakhs and accordingly, an agreement of sale was entered into between them on 18.4.2010 and the defendants received Rs.80,000/- as earnest money.

2. The plaintiffs have agreed to pay the balance amount on or before 18.9.2010 subject to production of survey sketch, NOC for registration of sale deed in favour of plaintiff No.1 or his nominee. On 6.9.2010, the defendants sought extension of time for obtaining required NOC, sketch to execute sale deed. And accordingly, with the consent of both the parties, time for performance was extended till 30.3.2011. The defendants have failed to obtain required sketch and NOC. Both the parties have agreed to extend the time for performance of the agreement till 29.02.2012. The defendants are not serious about the compliance of terms of the agreement and hence with a view to avoid future delay, the plaintiffs have made arrangement for the procurement of the required sketch and NOC. Both the defendants are bound to reimburse the cost of Rs.1,00,000/- out of the balance sale price payable by the plaintiffs to the defendants. The said balance sale price is kept by the plaintiffs in their bank accounts. The plaintiffs have always been ready and willing to perform their part of the contract. Although the sale agreement is obtained by the plaintiff No.1, since he has been authorized to obtain the said sale deed in the name of his nominee, the plaintiff No.1 has requested the plaintiff No.2 to join the said transaction and also to join to this suit. As the defendants have been purposefully postponing the execution of sale deed, the plaintiffs got issued a legal notice dated 4.2.2012 to the defendants requesting them to execute sale deed on any day after 29.2.2012. The defendants have received legal notice on 7.2.2012, but instead of complying the legal notice, they sent reply denying the sale agreement. Hence, this suit.

3. The cause of action for the suit arose on and since 18.4.2010, the date of the suit agreement and on various other dates, when the said agreement was extended on 6.9.2010 and 30.3.2011. It also arose on 27.2.2012, when the defendants refused to specifically perform the suit agreement by means of their legal reply notice of the said date. The cause of action for the suit arose in Anegundi Village, Shivapura within the jurisdiction of this Court. The suit is thus in time.

4. The value of the suit for the purposes of court-fee and jurisdiction is Rs.2 lakhs being the total consideration of the suit property agreed to be sold and court-fee of Rs.13,625/- is paid on the plaint as prescribed under Section 40(a) of the Karnataka Court-fees and suits Valuation Act, 1958.

5. WHEREFORE, the Plaintiffs pray for Judgment and Decree –

(1) For specific performance of the suit agreement of sale dated 18.4.2010 and directing the defendants to execute the sale deed of the .suit Schedule property, on receipt of the balance sale price of Rs.1,20,000/- from the plaintiffs and on their failure to so execute the sale deed, then directing execution of the said sale deed through the process of this court at the cost of the plaintiffs or such of them.
(2) For alternative relief of refund of earnest money.
(3) Directing the defendants to pay the cost of this suit to the plaintiffs or such of them.
(4) For such other and further reliefs as the court deems fit and proper to grant under the circumstances of the case, in the interest of justice.

Schedule

Immovable property measuring 20 guntas out of 1 acre 52 guntas, dry land situated in Survey No.140/1 at Anegundi Village, Shivapura Taluk with the boundaries:

EAST: Land of Gulabi
WEST: Land of Raju
NORTH: Land of Patel Rajanna
SOUTH: Land of Gowni

Shivapura, 20.3.2012 Advocate for plaintiffs Plaintiffs

We, the plaintiffs above-named do declare that the statements made herein-above are true to the best of our knowledge, information and belief.

Shivapura, 20.3.2012 Plaintiffs

Written Statement filed under Order VIII Rule 1 of Code of Civil Procedure, 1908 on behalf of the defendant No.1

The defendant No.1 begs to submit as under:

1. The Defendant vehemently denies all the averments made by the Plaintiffs in the Plaint. All averments that are not specifically admitted are hereby denied as false.

2. It is true that Suit properties originally belonged to the mother of the Defendant No.1 and wife of Defendant No.2 by virtue of a partition and after her death, Defendants came into possession of the same. It is absolutely false that the Defendants jointly offered to sell the Schedule Properties for Rs.2,00,000/- on mutual negotiation and settlement with Plaintiff No.1. It is also not true that the Defendants were in urgent need of any funds for family necessity and offered the land jointly to sell to the Plaintiff No.1. It is not true that out of the total sale consideration of Rs.2,00,000/-, the Plaintiff No.1 has paid a sum of Rs.80,000/- in cash and agreed to pay balance sale price of Rs.1,20,000/- within 5 months of said agreement dated 18.04.2010.

3. It is not true that as per the terms and conditions of the alleged agreement of sale, the Plaintiff No.1 was liable to pay the balance sale consideration on or before 18.09.2010 and the Defendants shall execute registered sale deed in the name of Plaintiff No.1 or his nominee at their cost.

4. This Defendant emphatically denies that before the expiry of aforesaid date, on 6.9.2010, the Defendants sought extension of time for performance of their contract till 30.3.2011 with the consent of both parties.

5. It is not true that Defendants have failed to obtain required sketch and NOC and once again sought for extension of time for performance till 29.2.2012. It is not true that Plaintiffs have spent not less

than Rs.1,00,000/- and is entitled for reimbursement of the same from the Defendants as the cost spent by the Plaintiff No.1, which is to be adjusted out of the balance sale price payable by the Plaintiffs. It is not true that the balance sale price payable by the Plaintiffs is in Bank deposit and Plaintiff is ever ready and willing to pay the balance sale price, as per the alleged agreement of sale which is extended from time to time.

6. The Plaintiff No.1 cannot make the Plaintiff No.2 to join in the suit as authorized nominee. The Plaintiff No.2 is neither proper nor necessary party to the suit. The Plaintiff No.2 has no manner of right, title or interest to seek any relief of specific performance against the Defendants as he is not a party to the alleged transaction.

7. That the alleged agreement dated 18.4.2010 is unenforceable and the Plaintiff has no manner of right, title or interest to claim performance of any contract against the Defendants. Defendants have sent a reply to the notice dated 4.2.2012 and clearly denied the existence of the very agreement and privity of contract. The Defendants are not ready and willing to perform any part of alleged terms of contract as per the invalid unenforceable and insufficiently stamped agreement.

8. Therefore, the Court may be pleased to dismiss the above suit with exemplary costs to the Defendants in the interest of justice and equity.

Shivapura, Dated: 20.5.2012 Advocate of Defendant No.1 Defendant No.1

I the above named Defendant No.1 do hereby declare that all statements made herein above are all true and correct to the best of my knowledge, belief and information.

Shivapura, Dated: 20.5.2012 Defendant No.1

ISSUES

1. Whether the plaintiffs prove that the defendants have executed a sale agreement dated 18.4.2010 agreeing to sell the suit schedule property to the plaintiff No.1 for a sale consideration of Rs.2,00,000/-?
2. Whether the plaintiffs prove that the plaintiff No.1 - has paid Rs.80,000/- to the defendants as advance sale consideration?
3. Whether the plaintiffs prove that they have always been ready and willing to perform their part of contract?
4. Whether the suit is bad for misjoinder of plaintiff No.2?
5. Whether the plaintiffs are entitled for the relief of specific performance of an agreement of sale as sought for?
6. Whether the plaintiff No.1 is entitled for the alternative relief of refund of earnest money?
7. What order or decree?

EVIDENCE

PW1

Affidavit filed by the Plaintiff No.1 in lieu of examination-in-chief

I, Basavaraj S/o Late Shankara, Aged 66 years, resident of Halakki Village, Shivapura, do hereby solemnly affirm and state as under:

1. I say that I am the plaintiff No.1 in the above suit and I am deposing on behalf of plaintiff No.2. I say that the contents of the plaint filed by us may be read as part of this affidavit.
2. I say that the suit schedule property described in the schedule originally belonged to late Bhagirathi, the mother of defendant No.1 and wife of defendant No.2 and she got the suit property under partition and on her death, both the defendants came into actual possession of the property with RTC in their names.
3. I say that both the defendants jointly offered to sell the suit property in my favour on account of their urgent requirements of funds for their family necessity and after mutual discussion, we agreed to purchase the suit property for Rs.2 lakhs and accordingly, an agreement of sale entered into between us on 18.4.2010 and the defendants received Rs.80,000/- as earnest money.
4. I say that we have agreed to pay the balance amount on or before 18.9.2010 subject to production of survey sketch, NOC for registration of sale deed in my favour or my nominee.
5. I say that on 6.9.2010, the defendants sought extension of time for obtaining required NOC, sketch to execute sale deed and accordingly with the consent of both the parties, time for performance was extended till 30.3.2011.
6. I say that the defendants have failed to obtain required sketch and NOC. I say that we have agreed to extend the time for performance of the agreement till 29.02.2012.
7. I say that the defendants are not serious about the compliance of agreement and hence with a view to avoid future delay, we made arrangement for the procurement of the required sketch and NOC and both the defendants are bound to reimburse the said cost out of the balance sale price payable by us.
8. I say that the said balance sale price is kept by us in our bank accounts. We have always been ready and willing to perform our part of the contract.
9. I say that although the sale agreement is obtained by me, since I am authorized to obtain the said sale deed in the name of my nominee, I requested the plaintiff No.2 to join the said transaction and also to join to this suit.
10. I say that as the defendants have been purposefully postponing the execution of sale deed. I say that we got issued a legal notice dated 4.2.2012 to the defendants requesting them to execute sale deed on any day after 29.2.2012 and the defendants have received legal notice on 7.2.2012, but instead of complying the legal notice, they sent reply denying the sale agreement.
11. I say that there are no grounds to withhold the enforcement of the said lawful agreement. I thus, pray that the suit be decreed as prayed.

Identified by: Sd/- (Advocate) Sd/- Deponent

Further examination-in-chief by Advocate for Plaintiffs

I have filed affidavit in lieu of chief examination and I signed said affidavit. The contents of the affidavit are true. I have produced an agreement of sale executed by defendants on 18.4.2010 marked as Ex.P1. I identify my signature in Ex.P1, now marked as Ex.P1(a). I identify the signature of Defendant No.1 and 2, now marked as Ex.P1(b) and Ex.P1(c). I identify the signatures of witnesses i.e., Rajiv, Gopal and Shankar, now marked as Ex.P1(d), (e) and (f) respectively. I have produced the RTC of suit property, now marked as Ex.P2. I have produced copy of legal notice, now marked as Ex.P3. I have produced reply notice, now marked as Ex.P4. I have produced survey sketch, now marked as Ex.P5. I have produced NOC given by Tahsildar, now marked as Ex.P6.

Cross examination by Advocate for Defendants

I am an agriculturist. I also do coolie work. Plaintiff No.2 is having soft drinks shop at Pune and the Plaintiff No.2 is my son-in-law. Witnesses to the agreement i.e., Raju is mason, Gopal is clerk in Halakki panchayat, Shankar is a business man.

Sale negotiation was held in the house of document writer Shankarnarayana. At that time, the defendants, the husband of Defendant No.1 and witnesses were present. The property documents were verified by the document writer. Two days prior to the execution of agreement of sale, we had discussion about the sale price in my house. At that time, witness Gopal was present. The sale consideration amount was paid by me in the house of document writer. At the time of discussion, I had confirmed the portion of land which was agreed to be sold by the defendants in survey No.140/1. I have paid Rs.80,000/- in the house of document writer in favour of Defendant No.1 and her husband. The said amount was paid in cash. I have borrowed loan to pay the said amount to the defendants. On that day, I had Rs.30,000/- to 40,000/- in my house. We went to the house of document writer at 10.00 A.M. Whole transaction was completed at 12.00 noon. I do not know what is the total extent of land owned by the defendants. I did not take any steps to survey the land prior to the sale agreement. It is true that I should have obtained authenticated sketch before the execution of agreement of sale. Gopal had submitted an application to obtain sketch from survey department. Plaintiff No.2 came from Pune one year after the execution of agreement. It is not true to say that Gopal had submitted an application to secure sketch of the land other than the land involved in the agreement of sale. When surveyor visited the land, the

Plaintiff No.2 was not present. Survey was conducted in respect of entire property of the defendants. I cannot say whether the location of the suit property was changed at the time of survey. It is not true to suggest that the dispute arose when we demanded the land other than the land mentioned in the agreement of sale. It is not true to suggest that the suit property is not at all related to the land surveyed subsequently. It is not true to suggest that I have filed this suit with an intention to defraud the defendants. Re-examination nil.

R.O.I & A.C. Sd/- Civil Judge

PW2

Affidavit filed by the witness for the plaintiffs in lieu of Examination-in-Chief

I, Gopal S/o Ramachandra, aged 35 years, Anegundi Village, Shivapura do hereby solemnly affirm and state as follows:

1. I say that I know the parties to the suit and also the facts and circumstances of the suit. I say that the plaintiffs and defendants are residing in adjacent plots and I knew them from my childhood. I say that the plaintiffs are also related to me and my house is about a mile away from their house in the same village.
2. I say that I was present when the suit agreement dated 18.4.2010 was executed in the house of Shankarnarayana. I say that the same was a sale agreement in respect of the suit property and said sale agreement was executed between the Plaintiff No.1 and Defendants for the sale of suit property. I say that the Plaintiff No.1 and Defendant No.1 & 2 signed the agreement in my presence. I say that sale consideration amount was fixed at Rs.2,00,000/- and Plaintiff No.1 paid Rs.80,000/- to the defendants and balance amount was agreed to be paid within 5 months.

3. I say that the Plaintiff No.1 requested me to help him in procuring the required NOC and sketch for the completion of final sale deed. I say that I procured the sketch and NOC.

Identified by: Sd/- (Advocate) Sd/- Deponent

Further examination-in-chief by Advocate for the Plaintiffs:

I have filed affidavit in lieu of chief examination and I have signed said affidavit. The contents of the affidavit are true. Now I identify the signature of Plaintiff No.1 and Defendants in Ex.P1. The signatures are already marked as Ex.P1(a) to (c). I identify my signature in Ex.P1, already marked as Ex.P1(e).

Cross examination by Advocate for the Defendants:

I am working as clerk in Halakki Panchayat. I was not aware of earlier transaction in respect of suit property. I was present when an agreement was prepared in the house of document writer. At that time, the Defendants, the husband of the Defendant No.1, Plaintiff No.1, Rajiv and Shankar were present. Amount of Rs.80,000/- was paid by Plaintiff No.1 to the Defendants in my presence. When I went to the house of document writer, he was typing the agreement of sale. I read over the contents of the agreement to the parties. I had visited the suit property prior to the agreement of sale. Agreement of sale was prepared as per instructions of the defendants and Plaintiff No.1. I am not aware of the change of survey number of suit property. It is not true to suggest that the transaction was not completed because the plaintiff No.1 demanded other land. It is not true to suggest that I am deposing falsely only to help the plaintiffs.

Re-examination: Nil

R.O.I & A.C. Sd/- Civil Judge

PW3

Name of witness: Shankaranarayana
Father's name: Subba Rao
Age: 55 years
Occupation: Document Writer
Address: Halakki Village, Shivapura

Examination-in-chief by Advocate for the Plaintiffs

Now I see the agreement of sale which was prepared by me. The said agreement was entered into between Plaintiff No.1 and Defendants. Document was prepared by me in computer. I read over the contents of agreement to the parties and witnesses. Plaintiff No.1 and Defendants have signed the agreement in the presence of witnesses. Witnesses Rajiv, Gopal and Shankar were signed before me. Sale transaction was held for Rs.2,00,000/- and the Plaintiff No.1 paid Rs.80,000/- as advance sale consideration to the Defendants at the time of execution of an agreement of sale.

Cross examination by Advocate for the Defendants

I know the plaintiff No.1 even prior to the date of execution of agreement of sale. Plaintiff No.1 was visiting my house during the life time of his father for drafting of documents. I know Defendant No.1 since the date of execution of Ex.P1. Plaintiff No.2 did not come to my house at the time of execution of Ex.P1. He did not come even after the execution of Ex.P1. At the time of execution of Ex.P1, Defendant No.1 and 2, Plaintiff No.1, Rajiv, Gopal and Shankar were present. Sale consideration was fixed in my

house. After verifying the property records, I drafted the agreement. I did not verify the sketch of the land. All terms and conditions of agreement were discussed in my presence. I had written present; old survey number, its boundaries and sub-division number of suit property in the agreement. I entered new survey number in the agreement as per the instructions of the parties. In the earlier partition deed, only boundaries of the property were mentioned. It is true to suggest that property involved in the agreement is only a portion of the property mentioned in the partition deed. I cannot say whether the Property involved in the agreement is entirely different than the property mentioned in the partition deed and sketch. It is not true to suggest that I am deposing falsely. Re-examination nil. R.O.I & A.C. Sd/- Civil Judge

DW1

Affidavit in lieu of examination-in-chief filed by the Defendant No.1

I, Gangambika, aged about 35 years, D/o Sheena, residing at Anegundi Village, Shivapura do hereby solemnly state and affirm on oath as follows:

1. I say that I am the Defendant No.1 and Defendant No.2 is my father in the above case. I know the facts of the case.
2. I say, it is true that the suit property originally belonged to my mother and after her death, we came into possession of the same. I say that it is absolutely false that we offered to sell the suit property for Rs.2 lakhs in favour of Plaintiff No.1 and received Rs.80,000/-. I say, it is not true that as per the terms and conditions of the alleged agreement of sale, Plaintiff No.1 was liable to pay the balance sale consideration on or before 18.9.2010 and we were required to obtain survey sketch, NOC, etc for the execution of final sale deed in the name of Plaintiff No.1 or his nominee at their cost. I say that it is not true that we have failed to obtain required sketch and NOC and once again sought for extension of time for performance till 29.2.2012. It is not true that Plaintiff No.1 has spent not less than Rs.1,00,000/- and is entitled for reimbursement of the same from us as the cost spent by the Plaintiff No.1, which is to be adjusted out of the balance sale price payable by the Plaintiff No.1. It is not true that the balance sale price payable by the Plaintiff No.1 is in Bank deposit and Plaintiff No.1 is ever ready and willing to pay the balance sale price as per the alleged agreement of sale which is extended from time to time.
3. I say that the Plaintiff No.2 is neither proper nor necessary party to the suit. The Plaintiff No.2 has no manner of right, title or interest to seek any relief of specific performance against us as he is not a party to the alleged transaction. I say that the alleged agreement dated 18.4.2010 is unenforceable and the Plaintiff No.1 has no manner of right, title or interest to claim performance of any contract against us. I say that we are not ready and willing to perform any part of alleged terms of a contract as per the invalid unenforceable agreement.
4. I say that suit is not properly framed. Hence, suit may be dismissed with cost.

Identified by: Sd/- (Advocate) Sd/- Deponent

Further examination-in-chief by Advocate for Defendants

I have filed affidavit in lieu of chief examination and I signed said affidavit. The contents of the affidavit are true.

Cross examination by Advocate for Plaintiffs:

I have seen Ex.P1 agreement of sale earlier. My signatures are there in Ex.P1. Defendant No.2 is my father. Suit property belonged to my mother. It is true that sale agreement was prepared by Shankaranarayana, document writer. It is true that one Rajiv, Gopal and Shankar have signed Ex.P1 as witnesses. It is true that we have extended the time for the performance of agreement of sale. It is true that I have received legal notice. Witness volunteers that we have not executed sale deed in favour of plaintiff No.1 because he has not paid the balance amount. I have mentioned in the reply notice that we have not executed sale deed because of non payment of balance amount. It is not true to suggest that I am deposing falsely to retain the property.

Re-examination: Nil

R.O.I. & A.C. Sd/- Civil Judge.

DOCUMENTS

Ex.P1: Agreement for the sale of Immovable Property

This agreement of sale made on this 18th day of April 2010 between 1) Smt.Gangambika D/o Sheena, aged 33 years and 2) Sheena S/o Gangappa, aged 58 years, both are resident of Anegundi village, Shivapura, hereinafter referred to as Vendors of one part;

AND

Basavaraj S/o late Shankar, aged 63 years, Halakki Village, Shivapura hereinafter referred to as Purchaser of another part.

Whereas, the vendors are the absolute owners of the property bearing Sy.No.140/1 measuring 20 guntas situated at Anegundi Village, Shivapura Taluk with the boundaries east land of Gulabi, west: land of Raju, north: land of Patel Rajanna, south land of Gowni. The said property originally belonged to Bhagirathi. She got the property under partition deed. After the death of Bhagirathi, the vendors being the daughter and husband of late Smt.Bhagirathi inherited the said property.

Whereas, on account of urgent requirements of funds for family necessity, now the vendors have decided to sell the above said property to the intending purchaser.

Whereas, the purchaser offered to purchase the property for Rs.2,00,000/- and the vendors have accepted the said offer.

Whereas, the parties are desirous of placing the terms agreed to between them on record.

Now the presents witnesseth as follows:

1. The vendors shall sell and purchaser shall purchase the property for Rs.2,00,000/-.
2. The purchaser has paid Rs.80,000/- to the vendors as advance consideration in the presence of witnesses. The vendors admit and acknowledge the receipt of the said amount.
3. The purchaser has agreed to pay balance sale consideration amount of Rs.1,20,000/- within 5 months i.e., on or before 18.9.2010 from the date of the agreement and vendors have agreed to execute registered sale deed and handover the possession within the stipulated time.
4. The vendors have agreed to obtain sketch of the property and NOC from the concerned department.
5. The vendors shall execute registered sale deed either in favour of purchaser or his nominee at the cost of purchaser.

In witness whereof the parties have signed this agreement on 18th day of April 2010.

Sd/- Vendors Sd/- Purchaser

Witnesses: 1) 2) 3)

Ex.P2

RTC in respect of property bearing survey No. 140/1 measuring 1 acre 52 guntas situated at Anegundi Village, Shivapura Taluk stands in the name of Smt.Gangambika and Sheena.

Ex.P3

Legal notice dated 4.2.2012 issued by Sri K.P.Narayanaswamy, Advocate, Shivapura on behalf of plaintiffs Basavaraj and Narayana to the defendants Smt.Gangambika and Sheena calling upon the defendants to execute registered sale deed on or before 29.2.2012 on the expiry of extended period.

Ex.P4

Reply notice dated 27.2.2012 issued by Sri Ramamurthy, Advocate, Shivapura on behalf of defendants Smt.Gangambika and Sheena to Sri K.P.Narayanaswamy, Advocate, Shivapura denying the execution of agreement of sale dated 18.4.2010 and receipt of advance sale consideration amount of Rs.80,000/-.

Ex.P5

Survey sketch prepared by surveyor attached to the office of Tahsildar, Shivapura taluk in respect of survey of 140/1 of Anegundi Village, Shivapura Taluk.

Ex.P6

No Objection Certificate issued by Tahsildar, Shivapura Taluk at the request of defendant No.2 Sheena.