Karnataka Civil Judge (Mains) 2023

Law Paper II · compulsory paper

Framing of Issues and writing Judgment in Civil Cases · Date: 19.11.2023 · Time: 10.00 AM to 1.00 PM · Max Marks: 100

Instructions: 1. Option is given to the candidates to write answers either in English or in Kannada. 2. If there is any discrepancy or difference in the questions in English language and Kannada language, questions as framed in English language shall prevail. 3. Write your register number only on the cover page in the space provided in your answer book and nowhere else. You shall not write your name or make any kind of marks disclosing your identity on any part of your answer book or additional answer book. Contravention of the above instruction will entail disqualification.

Q: 1) Frame proper and necessary issues on the basis of the following pleadings: 10 Marks

Gist of the Plaint

The plaintiff instituted the suit under Section 26 r/w Order VII Rule 1 of the Code of Civil Procedure as under:

The defendant is the owner of the suit schedule property and he entered into an agreement of sale with the plaintiff agreeing to sell the suit schedule property for a consideration of Rs. 1,20,750/- on 28.02.1994. The defendant received a sum of Rs. 10,750/- as an earnest money and further took an additional sum of Rs. 15,000/- towards the sale consideration. Defendant totally received a sum of Rs.25,750/- from the plaintiff and executed an agreement of sale on 28.02.1994. It was agreed that the balance consideration amount was to be paid within a period of 6 months and to get the sale deed executed. Plaintiff requested the defendant to receive the balance consideration amount and execute the registered sale deed. Defendant went on dodging to receive the balance amount and execute the registered sale deed. Plaintiff got issued a legal notice on 23.08.1994, calling upon the defendant to receive balance consideration amount and execute registered sale deed. The said notice was duly served on the defendant. Defendant replied to the said notice and denied the execution of agreement of sale in favour of the plaintiff. The plaintiff was/is always ready and willing to perform her part of contract. But the defendant was not ready to perform his part of contract. Hence cause of action arose for the plaintiff to file the suit for specific performance of contract. The plaintiff has valued the suit for the purpose of jurisdiction and payment of Court fee at Rs. 1, 20,750/-. The Court has got jurisdiction to entertain the suit.

On all these grounds, it is prayed to decree the suit for specific performance of contract directing the defendant to receive the balance consideration amount and execute registered sale deed in respect of the suit schedule property in favour of the plaintiff, or in the alternative direct the defendant to repay the advance money with interest at the rate of 8% p.a.

Gist of Written Statement under Order VIII Rule I of the Code of Civil Procedure:

Defendant filed written statement denying the execution of an agreement of sale in favour of the plaintiff for a total consideration amount of Rs.1,20,750/- and also received alleged advance amount of Rs.25,750/- from the plaintiff. It is contended that at no point of time defendant received the said amount as alleged in the plaint. It is contended that the alleged agreement of sale is concocted and also denied the contents of the agreement of sale dated 28.02.1994. Defendant has admitted that the plaintiff got issued legal notice on 23.08.1994 and that the defendant gave a suitable reply to the legal

notice vide reply notice dated 15.09.1994. It is contended that there is no cause of action to file the suit. The suit is not properly valued and Court fee paid is insufficient. Further, the Court has no jurisdiction to entertain the suit. Hence the cause of action shown in the plaint is imaginary and false.

On all these grounds, prayed to dismiss the suit with exemplary cost.

Q.2) Frame proper and necessary issues on the basis of the following pleadings: 15 Marks

Gist of the Plaint

The plaintiff has instituted a suit under Section 26 r/w Order VII Rule 1 of the Code of Civil Procedure as under:

The plaintiffs father-in-law by name Nagappa had acquired the land measuring 3 acres 80 cents in Sy.No.56 under registered sale deed dated 04.01.1954, from Ramaiah. From the date of purchase, Nagappa became the absolute owner in possession of the suit schedule property. The property was transferred in the name of Nagappa. Nagappa died leaving behind his two sons, namely Halappa and Ningappa. Halappa and his wife died issueless. After the death of Halappa, katha was changed in the name of Ningappa, i.e., husband of plaintiff by way of succession. Portion of the land in Sy.No.56, to an extent of 1 acre 23 cents was sold in favour of one Smt. Basamma under registered sale deed and the remaining 2 acres 57 cents continued to be in possession and enjoyment of the plaintiff. Defendant has no right, title or interest over the suit schedule property and tried to interfere with her peaceful possession. The plaintiff requested the defendant not to interfere, but the defendant did not respond to her request and denied the title of the plaintiff over the suit schedule property. Hence cause of action arose for the plaintiff to file the suit for declaration of title and permanent injunction.

On all these grounds, it is prayed to declare the plaintiff is the owner of suit schedule property and grant a decree for permanent injunction restraining the defendant from interfering into the peaceful possession and enjoyment of the plaintiff over the suit schedule property.

Gist of Written Statement under Order VIII Rule I of the Code of Civil Procedure:

The defendant in the written statement contended that the defendant's father-in-law by name Somanna, purchased the land bearing Sy.No.56 measuring 3 acres 80 cents from one Basappa under registered sale deed. From the date of purchase, said Somanna was the absolute owner and in possession of the suit schedule property till his death. The said Somanna died leaving behind his three sons, namely, Nagappa, Dodda Ajjappa and Dodda Sannapa. On 12.12.2003, the sons of Somanna got divided their joint family properties. In the said partition, the suit property bearing Sy.No.56 measuring 3 acres 80 cents was allotted to the share of Nagappa, i.e., the husband of defendant. The katha was changed in the name of the husband of defendant and he was paying land revenue. Nagappa died leaving behind his wife, i.e., the defendant. After the death of Nagappa, katha was changed in the name of the defendant and the defendant is the absolute owner and in possession of the suit property. Plaintiff has no right, title or interest over the suit schedule property. The cause of action shown in the plaint is false and imaginary.

On all these grounds, it is prayed to dismiss the suit of the plaintiff with exemplary cost.

Q: 3) Write a Judgment considering the below mentioned plaint, written statement, issues framed, documentary and oral evidence. 75 Marks

[I] Summary of Plaint:

In the Court of the Principal Senior Civil Judge & JMFC at Hiriyur, Chitradurga

O.S. No. 55/2019

Between:

1. Sri. Kaatappa s/o Junjappa, Major, R/o Adivala Village, J.J. Halli Hobli, Hiriyur ... Plaintiff

And:

1. Yettappa s/o Parasappa, Major, R/o Vanivilasapura, Kasaba Hobli, Hiriyur ... Defendant No. 1

2. Manjunatha s/o Basappa, Major, R/o Vanivilasapura, Kasaba Hobli, Hiriyur ... Defendant No.2

Date of Filing: 01.09.2019

Memorandum of Plaint under Order VII Rule 1 read with Section 26 of the Code of Civil Procedure

1. The Defendant No.1 is the owner of Schedule property consisting of 5 acres as morefully described in the Schedule "A".

2. The defendant No.1 is the only son of his father and has inherited the Schedule "A" property. After the death of his father the mutation has been entered into his name as M.R. No.5/2012 and he has been paying land revenue.

3. The defendant No.1 wanted to celebrate the marriage of his daughter and due to paucity of funds he wanted to sell an extent of 1 acre of his Schedule "A" property, morefully described in Schedule "B".

4. The plaintiff came forward to purchase the Schedule "B" property, A registered Agreement of Sale was entered into on 01.05.2017 by the plaintiff with the defendant No. 1.

5. The terms of the transaction were settled in the agreement. It was agreed that entire sale transaction was to be completed within 6 months of execution of the Agreement of Sale.

6. As the defendant No. 1 was selling a portion of his property, the prevailing Rules mandated that a Survey Sketch prepared by the Government pursuant to an online application which was required to be applied and obtained. As the same would take time, the defendant No. 1 had agreed to get the same done which condition is incorporated in the agreement.

7. The total consideration was fixed at Rs.25,00,000/- [Rupees twenty five lakhs] and was agreed to be paid as follows:-

[a] At the time of execution of the Agreement of Sale Rs. 10,00,000/- [Rupees ten lakhs]

[b] After Survey Sketch is obtained a sum of Rs.5,00,000/- would be paid. The Survey Sketch is to be obtained within 3 months from the date of execution of Agreement of Sale.

[c] At the time of registration of Sale Deed the remaining amount of Rs. 10,00,000/- [Rupees ten lakhs] would be paid.

8. The first installment was paid on 01.05.2017 when the Agreement of Sale was executed.

9. The Government Survey Sketch was obtained on 25.07.2017, and the defendant No.1 informed the plaintiff about it and called upon the plaintiff to pay the next installment of Rs.5,00,000/- in terms of the agreement and to bear the expenditure incurred i.e., Rs,25,000/- in obtaining the Survey Sketch.

10. The plaintiff has disputed the obligation to bear Rs.25,000/-, however clarified that he was ready to pay Rs. 1,000/- which was the Government fee fixed for the purpose of obtaining the Survey Sketch. It is further stated that he was ready to pay Rs.5,00,000/- as well and was ready to pay the remaining amount of Rs. 10,00,000/- and had made arrangements for the same and had kept the amount ready

in his bank account and had maintained the balance of Rs. 18,00,000/- from 01.07.2017 till the date of filing of the suit.

11. The plaintiff met the defendant No.1 personally and requested him to execute the Sale Deed. However, as there was no response from defendant No. 1, before the expiry of 3 months from the date of obtaining of Survey Sketch, notice was sent through Registered Post calling upon the defendant No.1 to execute the Sale Deed and that he was ready and willing to perform his part of the obligation though he would not pay the expenses amount of Rs.25,000/- as demanded and would pay only the prescribed Government fee for the sketch which was Rs.1,000/-. It is further stated in the notice that the plaintiff has kept the required amount in his bank account.

12. The plaintiff thereafter has repeatedly met the defendant No.1 several times and requested for execution of Sale Deed. The defendant No.1 however on one pretext or the other avoided executing the Sale Deed.

13. After 6 months from the date of Agreement of Sale the defendant No.1 has executed a Sale Deed in favour of defendant No.2 with respect to Schedule "B" property, which came to the knowledge of the plaintiff after the plaintiff applied for encumbrance of the property before filing of this suit.

14. As the agreement was a registered agreement the plaintiff submits that the defendant No.2 has to join defendant No.1 in the execution of the Sale Deed of the Schedule "B" property.

15. Before the expiry of 3 years from the time fixed for completion of sale transaction the suit has been filed seeking for the following relief:-

[i] Pass a decree of specific performance of the Agreement of Sale dated 01.05.2017, declare that the Sale Deed dated 25.11.2017 executed in favour of the defendant No.2 by defendant No.1 in relation to Schedule "B" property as not binding on the plaintiff and direct the defendant No.2 to join with defendant No.1 in the execution of Sale Deed in favour of plaintiff.

[ii] In the event of failure to execute the Sale Deed, to appoint a Court Commissioner and have the Sale Deed executed.

[iii] Without prejudice to the above, if the present suit is not decreed by directing the execution of the Sale Deed pursuant to the Agreement of Sale, the defendant No.1 be directed to refund Rs.5,00,000/- with 12% interest per annum from the date of Agreement of Sale.

16. Accordingly, the suit is sought to be decreed.

Schedule "A":

Land bearing Sy.No. 123, measuring 5 acres, situated at V.V.Pura Village, Kasaba Hobli, Hiriyur Taluk and bounded as follows:

East by: Land Eerappa
West by: Land of Ramappa
North by: Land of Tippeswamy
South by: Gokulanagar Road.

Schedule "B":

Land bearing Sy.No.123, measuring 1 acre, situated at V.V.Pura Village, Kasaba Hobli, Hiriyur Taluk and bounded as follows:

East by: Land Eerappa
West by: Remaining Land belonging to defendant No.1 in same survey number
North by: Land of Tippeswamy
South by: Gokulanagar Road.

[II] Summary of Written Statement of Defendant No.1:-

1. The defendant No.1 makes a general denial of averments of the plaint. The execution of the Agreement of Sale in favour of plaintiff is not disputed.

2. However, the defendant No.1 submits that the expenses incurred towards the obtaining of Survey Sketch is required to be borne by the plaintiff as stipulated in the Agreement of Sale. He had entrusted the task of getting the Survey Sketch to a real estate agent. He had earlier approached the Government Survey Officer directly and was told that his application was lower down in the seniority and would take 6 months and accordingly, he had entrusted the work of obtaining Survey Sketch to a real estate agent who had assured that he would get the Survey Sketch within 3 months, which he did.

3. Though the Government fee was only Rs. 1,000/-, the real estate agent fee for services was Rs.24,000/- and accordingly, the said amount was to be borne by the plaintiff as agreed by him.

4. It is submitted that the expenses cannot be adjusted from the sale consideration and that the plaintiff refused to pay the said expenses and accordingly, the plaintiff was not ready and willing to perform his obligation.

5. It is submitted that after the lapse of 6 months as stipulated in the Agreement of Sale and as plaintiff was not ready to take the Sale Deed, as he was in need of funds, he sold the property to the second defendant. He states that after the lapse of 6 months the Agreement of Sale has lapsed.

6. Defendant No. 1 further submits that the present suit is not filed within time.

7. Accordingly, he prays for dismissal of the suit with costs.

[III] Summary of Written Statement of Defendant No.2:-

1. The second defendant who is the purchaser submits that he is a bona fide purchaser for value.

2. He has paid full consideration reflective of prevailing market value when Sale Deed was executed in his favour. He was unaware of the Agreement of Sale entered into with plaintiff by first defendant at an earlier point of time.

3. He came to know about the earlier agreement only after receiving the suit summons, and even otherwise, the Sale Deed was executed after the expiry of 6 months provided under the agreement which has lapsed. Accordingly, he prays for dismissal of the suit with costs.

[IV] Issues:-

(i) Whether the plaintiff proves that the defendant No.1 had executed an Agreement of Sale on 01.05.2017 agreeing to convey 1.00 acre of land in Sy.No.123, morefully described as Schedule "B" to the plaint?

(ii) Whether the defendant No.1 proves that the plaintiff had agreed to bear the expenditure in obtaining the Survey Sketch?

(iii) Whether the plaintiff proves that he was always ready and willing to perform the obligations imposed on him under the Agreement of Sale dated 01.05.2017?

(iv) Whether the defendant No.2 proves that the Agreement of Sale is not binding upon him and decree for specific performance cannot be passed against him as he is a bona fide purchaser for value?

(v) Whether the suit is filed within time?

(vi) What order?

[V] Summary of Evidence of the Plaintiff:-

1. The plaintiff was examined as PW.1 and has reiterated the averments of the plaint.

2. The registered Agreement for Sale has been produced and marked as Exhibit-P1. The legal notice sent to the defendant No.1 is marked as Exhibit-P2. The bank account statement of the plaintiff depicting the cash balance at the relevant point of time is marked as Exhibit-P3. Postal acknowledgment is marked as Exhibit P4.

3. PW. 1 states that after Survey Sketch was obtained, the defendant No. 1 informed him to pay Rs.25,000/- towards cost of obtaining the Survey Sketch and pay the balance sale consideration, at which point of time PW.1 informed that he would pay only the Government fee for obtaining the sketch and he will not pay any amount beyond it. That Rs.25,000/- demanded was exorbitant and he was not obliged to pay anything beyond what was provided for in the Agreement of Sale.

4. The plaintiff states that he personally conveyed that he was ready and wiling to pay the remaining amount as mandated under the Agreement of Sale and Sale Deed ought to be executed. The plaintiff further states that he had kept ready in his bank account the required amount of sale consideration to perform his part of contract.

5. In the cross-examination, the plaintiff admits that he was required to pay the expenditure relating to obtaining of Survey Sketch by the defendant No.1, but volunteers that he was ready to pay the Government fee towards obtaining of such sketch, but the demand to pay any amount above the actual expenses was not agreed upon.

[VI] Summary of the documents/exhibits marked:-

Exhibit P1 - It is the Agreement of Sale dated 01.05.2017.

(a) The agreement states that Rs. 10,00,000/- was paid at the time of execution of Sale Deed.

(b) Survey Sketch to be obtained within 3 months by the defendant No.1.

(c) The Sale Deed has to be registered within 6 months from the date of execution of this agreement.

(d) The agreement stipulates the time for payment and contains schedule of payment. The relevant clauses regarding expenses and payment are as follows:-

(i) The owner would obtain the Survey Sketch and purchaser (plaintiff) would bear the expenses in that regard.

(ii) That 5,00,000/- would be paid once the Survey Sketch is obtained.

(iii) Remaining consideration of Rs.10,00,000/- would be paid at the time of registration of the Sale Deed.

Exhibit P2 - It is the legal notice dated 21.10.2017 sent by plaintiff to defendant No.1 calling upon him to receive the balance sale consideration as Survey Sketch was obtained and to execute registered

Sale Deed. It was stated that he was ready and willing to adhere to the terms and conditions of the Agreement of Sale, however, he would only pay the actual cost of obtaining the Survey Sketch as per Government fee. It is also stated that he had necessary funds in his bank account required to complete the transaction.

Exhibit P3 - It is the bank statement dated 01.07.2017 of the plaintiff depicting the cash balance of Rs. 18,00,000/- and has maintained the said balance in the account.

Exhibit P4 - Postal acknowledgement evidencing the receipt of notice by defendant No.1.

[VII] Summary of Evidence of Defendant No.1:-

1. The defendant No.1 was examined as DW.1 and he has reiterated contentions in the written statement and has contended that the plaintiff having refused to bear the expenditure in obtaining the Survey Sketch was clearly not ready and willing to perform his part of the obligation. The defendant No.1 has stated that he has waited for the lapse of 6 months which was the time stipulated in the agreement for completion of the transaction and thereafter executed the Sale Deed in favour of the second defendant.

2. Defendant No. 1 submits that when he approached the Authority for Survey Sketch, he was informed that the same would take about 6 months, as sketch would be done only as per seniority. Thereafter, he approached a real estate agent who assured that he would get the Survey Sketch within a period of 3 months and he would have to bear the expenses for the services rendered. As the defendant No. 1 wanted the sketch expeditiously, he entrusted the task of obtaining the Survey Sketch to the real estate agent.

3. In the cross-examination, he was asked as to what was the actual expenditure incurred in terms of the Government fee and it was admitted that the Government fee is Rs.1,000/- and the real estate agent had charged an additional amount of Rs.24,000/-. It was further submitted by DW.1 that the real estate agent had informed DW.1 that Rs.24,000/- paid to him was with respect to the professional fee for the service rendered and also expenses to be borne for the purpose of getting the sketch out of turn and within 3 months.

4. The defendant No.1 has marked Exhibit D1 which is the Survey Sketch, Exhibit D2 which is the receipt of 1,000/- paid to Survey Department, Exhibit D3 is the receipt given by the real estate agent for a sum of Rs.24,000/-.

[VIII] Summary of Documents/ Exhibits marked:

Exhibit D1 - It is the Survey Sketch (Government Sketch) obtained by the first defendant as regards Schedule "B" property.

Exhibit D2 - It is the receipt of the Government fee (Rs. 1,000/-) paid to get Survey Sketch.

Exhibit D3 - It is the receipt of the real estate agent for Rs.24,000/- received for professional fees and other expenditure incurred by the real estate agent.

[IX] Summary of the evidence of Defendant No.2:-

1. The defendant No.2 has examined himself as DW.2 and has adopted the evidence of defendant No. 1 and has specifically asserted that he has paid the market value of the property while purchasing it. It is asserted that the defendant No.1 did not intimate regarding the earlier Agreement of Sale entered into

with the plaintiff. He has further asserted that he is a bona fide purchaser for value and the agreement at Exhibit-P1 was not binding upon him.

2. The defendant No.2 has got marked the Sale Deed executed in his favour with respect to Schedule "B" property as Exhibit-D5.

[X] Summary of Exhibit

Exhibit D5 - It is the registered Sale Deed dated 25.11.2017, executed by the defendant No. 1 in favour of the defendant No.2.

[XI] Summary of Arguments of Plaintiff:-

1. The execution of Exhibit-P1 is accepted by defendant No.1 and accordingly, attesting witnesses are not required to be examined and Exhibit-P1 being a registered agreement, it must be taken to be proved.

2. The plaintiff was always ready and willing to perform his part of the obligation under the contract and the readiness and willingness is demonstrated by:

(a) Payment of Rs. 10.00 lakhs at the time of execution of Agreement of Sale as Exhibit-P1.

(b) By maintaining balance in the bank account as regards remaining amount of Rs. 15.00 lakhs and possessing further funds as is evidenced in the bank statement as per Exhibit P-3.

(c) The notice issued to the first defendant expressly asserting readiness and willingness to perform his part of the obligation which is marked as Exhibit-P2 and the acknowledgment receipt is marked as Exhibit-P4.

3. The obligation of the plaintiff was to bear the expenses incurred in obtaining the Survey Sketch and it includes bearing of the Government Fee alone and it cannot be construed that the plaintiff was required to bear the exorbitant fee charged by the real estate agent.

4. Further, insofar as the second defendant was concerned, the defence of bona fide purchaser for value was not available, as the agreement entered into between the plaintiff and defendant No.1 was a registered instrument. As the registered Agreement of Sale would find a mention in the encumbrance, it cannot be stated that the second defendant was not aware of it.

5. Accordingly, the second defendant was required to join in the execution of the Sale Deed along with the defendant No.1.

6. Without prejudice to the above contentions, if the Court were to reject the request for passing of a decree for specific performance, the Court may order for refund of Rs. 10.00 lakhs which was the consideration paid by the plaintiff to first defendant No.1 with interest of 12% per annum.

[XII] Summary of Arguments of Defendant No.1:-

1. The plaintiff by specifically asserting in the legal notice that he would not pay the amount of Rs.25,000/- which is the expenses incurred towards obtaining of a Survey Sketch, was clearly not ready and willing to perform his part of the obligation under the contract. The Agreement of Sale had clearly stated that though the defendant No. 1 was required to obtain the Survey Sketch, the expenses were to be borne by the plaintiff.

2. As detailed in the evidence on approaching the Survey Office directly, it was stated that the application of the defendant No.1 was lower down in seniority and in normal course it would take 6 months.

3. As there was urgency for execution of Sale Deed in light of marriage of daughter of first defendant and in light of the assurance of the real estate agent, task was entrusted to the agent to obtain the Survey Sketch. The sketch was obtained within 3 months and the expenditure involved was not only the Government fee but included the fee for services rendered by the real estate agent as well as miscellaneous expenses for which the agent has issued a bill and accordingly, the Government fee and the real estate agent bill being in the nature of expenses was required to be borne by the plaintiff.

4. The first defendant further contended that in the absence of any action by the plaintiff to take the Sale Deed, the first defendant having waited for a period of 6 months to lapse, has executed Sale Deed in favour of second defendant thereafter.

[XIII] Summary of Arguments of Defendant No.2:-

1. The defendant No.2 has contended that the market value was paid and Sale Deed was got executed and he was not aware of the pre-existing Agreement of Sale executed between the plaintiff and defendant No.1.

2. Further, the Sale Deed was executed after a lapse of 6 months when the time stipulated under the agreement had lapsed. Accordingly, there was no legal impediment for having executed Sale Deed in his favour.