

Sri. K. N. Chandra Reddy vs B.Gopal on 29 March, 2016

IN THE COURT OF THE XI ADDL.CITY CIVIL JUDGE,
BANGALORE CITY

Dated this the 29th day of March 2016.

PRESENT: S.V.KULKARNI, B.Com., LLB(Spl)
XI Addl.City Civil Judge, B'lore city.

O.S.No.1918/2002

Plaintiff Sri. K. N. Chandra Reddy,
 S/o Late Narayana Reddy,
 Aged 55 years,
 Residing at No.2, H.V.Reddy Layout,
 Opp: ACES Layout, Doddanedundi Post,
 Bengaluru- 560 037.

(By Sri. S.K.V.Chalapathy, Advocate)

-Vrs-

Defendants 1 B.Gopal,
 S/o Buddappa,
 Aged 51 years,
 Residing at No.83
 Sahithya Nilaya, Konena Agrahara
 Village, HAL Post, Bengaluru-17.

 2 K.N. Malla Reddy,
 S/o Late Narayana Reddy, @ Narayana
 Reddy, aged 40 years,
 Residing at Chowdeswari Nilaya,
 Kundalahalli, Marathahalli Post,
 Bengaluru-37.

(D1-by J.V.C., Advocate)

(D2 by PNNR, Advocate)

2 OS. No.1918 of 2002

Date of the institution of 21/03/2002
suit:

Nature of the suit: Specific performance

Date of the commencement
of recording of the evidence: 14/11/2010

Date on which the judgment 18/03/2016
was pronounced :

Total Duration Year/s Month/s Day/s

XI Addl.City Civil Judge,
B'lore city.

JUDGMENT

This is a suit filed by the plaintiff against
defendants No.1 and 2 seeking the relief of specific

performance of contract in respect of alleged agreement of sale entered into by first defendant with plaintiff dated:

28.4.1999 in respect of suit schedule property and plaintiff has impeladed second defendant as purchaser during subsistence of contract under sale deed dated: 20.3.2002 and plaintiff alleged that defendant No.2 is not a bonafide purchaser of suit schedule property and plaintiff prayed for direction to defendant No.1 and 2 jointly to execute regular registered sale deed by receiving balance sale consideration amount of Rs.30,000/- and plaintiff has prayed for direction to the tenants to attorn their tenancy in his favour and to deliver the possession of suit schedule property and plaintiff has prayed for other consequential reliefs as prayed for including the cost of suit.

The subject matter of the alleged sale agreement is in respect of house property as morefully described in the schedule annexed to the plaint, which reads as under:

SCHEDULE All that piece and parcel of house property on site No.19, HASB katha No.1195/659, Block No.2, Vinayaka Layout, Konena Agrahara Village, Varthur Hobli, Bangalore South Taluk, measuring east to west:30 feet and north to south:40 feet and bounded as follows:

East by: property bearing Katha No.652 West by: property bearing katha No.658
North by: 20 feet road, South by property bearing katha No.654 The schedule property consists of 8 Squars, ground floor and 8 Squares first floor, RCC roofed house with all amenities.

2. The case of the plaintiff has stated in the plaint averments briefly stated as follows:-

The plaintiff has filed this suit initially only against defendant No.1 for the relief of specific performance of contract, subsequently got impeladed 2nd defendant being purchaser of suit schedule property from first defendant by filing I.A.No.3 on 19.7.2002 and the said application was heard and allowed by this court on 20.11.2002 and thereby 2nd defendant is arrayed as party defendant No.2 in this suit. It is the case of the plaintiff that first defendant is the absolute owner of suit schedule property agreed to sell the suit schedule property in favour of plaintiff, which is

consisting of residential premises with ground floor and first floor and constructed on site No.19 and bearing HASB Katha 1195/659, Block No.II, Vinayaka Layout, Konena Agrahara Village, Varthur Hobli, Bangalore South Taluk for total consideration amount of Rs. 14,00,000/- and on the date of execution of sale agreement, first defendant has received part sale consideration amount of Rs.13,00,000/- from the plaintiff paid by way of cash and on the date of agreement of sale suit schedule property has been mortgaged to one Sri.Ramanjane wherein, out of part sale consideration amount paid by the plaintiff of Rs.13,00,000/- wherein first defendant has paid Rs.5,00,000/- to said Sri.Ramanjane and redeemed the mortgage created in favour of Sri.Ramanjane and plaintiff stated that original mortgage deed executed by the defendant No.1 in favour of said Sri.Ramanjane was delivered to the plaintiff under part performance of contract. It is further alleged by plaintiff that on the date of alleged execution of sale agreement, first defendant was due an amount of 5,00,000/- to Smt.Yeshodamma . Sri.Ramanjane and Smt.Yeshodamma who have received payments at the time of execution of the agreement of sale in favour of plaintiff have also attested the agreement of sale dated: 28.4.1999. The suit schedule property consisting of ground floor and first floor , wherein both the ground floor and first floor premises had been let out to two tenants and it is mentioned in the agreement of sale that first defendant had received an advance amount of Rs.30,000/- from the tenant in the ground floor premises and advance amount of Rs. 40,000/- in the first floor and it was agreed between parties that out of balance sale consideration amount of Rs.1,00,000/- to be paid to the defendant No.1 as sale consideration amount, the plaintiff has to retain Rs.70,000/- out of Rs.1,00,000/- for being paid to the tenants at the time of vacating the premises and thereafter remaining balance of Rs.30,000/- will have to be paid to the first defendant at the time of execution of sale deed. Out of total sale consideration amount of Rs.14,00,000/-, first defendant has received 13,00,000/- as earnest money(part sale consideration amount) and it was agreed that out of balance sale consideration amount of Rs.70,000/- shall be retained by the plaintiff for being repaid to the tenants and only Rs.30,000/- payable to the plaintiff at the time of execution of sale deed . The plaintiff alleged that, first defendant has put him in possession of suit schedule property under part performance of contract and directed the tenants to attorn their tenancy in favour of plaintiff and directed them to pay the rents to the plaintiffs and also authorized the plaintiff to collect the rents from the respective tenants and it was also subsequently discovered that the tenants in the ground floor and first floor had paid an advance of Rs.40,000/- and Rs.30,000/- respectively at the inception of their tenancy under first defendant. There was a mistake in mentioning the deposit amount paid by the respective tenants in the recitals of agreement of sale which is a mistake crept in the recitals of agreement of sale. It is the case of the plaintiff that subsequently, the tenant occupying first floor premises vacated and plaintiff has repaid him a advance amount of sum of Rs. 25,000/-after deducting Rs.5,000/- towards arrears of rent, which was due by the said tenant and thereafter from time to time, plaintiff has let out the first floor portion to other tenant. Hence, the plaintiff is in lawful possession of the suit schedule property in

part performance of agreement of sale. It was agreed by the first defendant as per terms of agreement of sale that he should get katha of the suit schedule property transferred in his name and thereafter to execute sale deed within the period of 11 months from 28.4.1999 and it was agreed between the parties that since the sale deed could be executed only after obtaining income tax clearance from the Income Tax department and the first defendant agreed to execute sale deed in favour of plaintiff after obtaining Income tax clearance certificate. Although only Rs.30,000/- was due and payable to the defendant No.1 towards sale consideration amount, few months after the execution of the agreement of sale, first defendant approached the plaintiff and requested him to pay additional sum of Rs.1,00,000/- as he was in need of funds in connection with the engagement of his daughter. The plaintiff having regard to the relationship existed between the two and having regard to request made by first defendant, he has paid Rs.1,00,000/- by cheque transaction to the defendant No.1, which was duly encashed by first defendant. The plaintiff alleged that there is relationship existed between himself and first defendant wherein plaintiff repeatedly approached the first defendant and requested him to get katha transferred in his name and also to obtain Income Tax clearance certificate and to execute registered sale deed by receiving balance sale consideration amount of Rs.30,000/- and the first defendant went on promising the plaintiff to perform his part of contract in transferring katha in his name and thereafter he would execute the sale deed. The first defendant did not performed his part of the contract, wherein plaintiff honestly believing the assurance made by the first defendant, but, first defendant went on postponing the execution of sale deed in one or the other pretext. Thereafter plaintiff came to know that first defendant has got katha of the property transferred to his name and having regard to the amendment to Income Tax Act , wherein obtaining of Income Tax clearance is not required if the sale consideration to be shown in the sale deed does not exceed Rs.25,00,000/-. On 20.01.2002, plaintiff approached the defendant No.1 and requested him to execute the sale deed since Income Tax clearance is not required and the katha is also transferred to the name of first defendant, wherein first defendant gave an evasive reply and thereby plaintiff constrained to cause Legal notice dated:

29.1.2002 calling upon the defendant to receive balance sale consideration amount of Rs.30,000/- and to execute regular registered sale deed in his favour in pursuance of agreement of sale dated: 24/8/1999. The first defendant has received said notice and he replied the notice issued by plaintiff vide reply notice dated: 6/2/2002, wherein reply given by the first defendant is containing false and untenable contentions wherein first defendant refused to execute sale deed and contents of reply notice are absolutely false and devoid of truth. The plaintiff pleaded his readiness and willingness since the date of execution of sale agreement and continuously as on today and now he is ready to perform his obligation of performance of contract and also he has prepared to pay balance amount of Rs.30,000/- and to get executed sale deed from first defendant at his own cost.

Hence, first defendant is bound to execute sale deed conveying right title and interest in favour of plaintiff. The plaintiff got amended the pleadings after impleading of defendant No.2 in the suit as per I.A.No.3 filed on 29/10/2002 and allowed on 20/11/2002, wherein plaintiff got amended original pleadings by insertion of amended para- 17(a) to © and also in the prayer column of the plaint. Wherein in para-17(a) plaintiff pleads that he has issued Legal notice dated: 28/1/2002 calling upon the first defendant to execute sale deed in terms of agreement of sale dated: 28/4/1999 wherein first defendant with sole intention of defeating the rights of plaintiff has sold the suit schedule property in favour of second defendant, who is none other than the brother of plaintiff under registered sale deed dated:

20/3/2002 which is a day prior to the filing of the present suit. It is alleged by the plaintiff that the 2nd defendant being purchaser of property having knowledge of subsisting the agreement of sale executed by first defendant in favour of plaintiff and 2nd defendant was also aware of plaintiff collecting rents from the tenants in occupation of suit schedule property and since 2nd defendant and plaintiff are not in good terms, wherein 2nd defendant has colluded with first defendant had obtained sale deed dated: 20/3/2002 with the sole intention of defeating the rights of plaintiff and as such defendant No.2 is not a bonafide purchaser for value without the notice of agreement of sale dated: 28/4/1999 in favour of plaintiff. Apart from the fact that defendant No.2 has been fully aware of existence of sale agreement and if defendant No.2 had made bonafide and reasonable enquiries, he would have come to know that there is an agreement of sale in favour of defendant No.2 pendente lite purchaser. Hence, defendant No.2 also liable to execute sale deed along with first defendant in conveying the title in favour of plaintiff by way of absolute sale. It is further alleged by the plaintiff that, first defendant has deliberately suppressed the fact of mortgage transaction of suit schedule property in favour of ITI Employees Co-operative Credit Society Ltd. dated 12.9.1995, when the sale agreement was entered into, wherein first defendant furnished the encumbrance certificate for the period 1/7/1994 to 23/5/2001 which also did not disclose the mortgage transaction, which first defendant had created in favour of ITI Employees Co-operative Credit Society, wherein first defendant made the plaintiff to believe his misrepresentation knowing fully well that suit schedule property has already been mortgaged and this attitude of first defendant clearly shows that first defendant has committed an act of fraud in suppressing the fact of mortgage of suit schedule property and this conduct of first defendant shows that, he has played fraud on plaintiff. In the circumstances, there is no absolutely no impediment for this court to decree the suit and in respect of para-17© plaintiff alleged that subsequent to filing of suit, defendant colluded with the tenants and dispossessed the plaintiff from the schedule premises and they are collecting the rents from the tenants and as such defendants are liable to pay mesne profits and bound to deliver vacant possession of the suit schedule premises or in the alternative, direct the tenants to attorn their tenancy in favour of plaintiff and to pay rents in respect of suit schedule premises. Hence, plaintiff alleging cause of action in para-19 of the plaint has filed this suit against defendants and has prayed for grant of suit reliefs as prayed in the plaint.

3. The defendant No.1 appeared in the suit through counsel and filed written statement wherein defendant No.1 contended that suit filed by the plaintiff is not maintainable either in law or on facts and the same is liable to be dismissed in limine. Defendant No.1 denied the execution of sale agreement dated: 28/4/1999 in favour of plaintiff agreeing the sell the suit schedule property for total sale consideration amount of Rs.14,00,000/- and first defendant specifically denied the receipt of part sale consideration amount of Rs.13,00,000/- from the plaintiff by way of cash under the alleged agreement of sale dated: 28/4/1999. Hence, the first defendant in para-2 and 3 of his written statement has specifically denied the allegation of plaintiff regarding execution of agreement of sale dated: 28/4/1999 agreeing to sell the suit schedule property and receipt of Rs.13,00,000/- as earnest money (part sale consideration amount) on that day in the presence of witnesses and it is contended by first defendant that plaintiff is close relative of him and he has misused the relationship and confidence reposed on him and appears to play fraud on him taking advantage of confidence and faith reposed and defendant No.1 contended that plaintiff is running chit-fund business and defendant was also one of the member in the said chit- fund, ward No. First defendant was successful in bidding of chit for a sum of Rs. 5,00,000/- and the same was used by him for the purpose of repaying the loan secured from one Sri.Ramanjane and said transaction was taken place in presence of plaintiff. However, the original mortgage document executed to Sri.Ramanjane was retained by the plaintiff as a security for the payment of balance chit amount. Defendant No.1 was frequently attending on the plaintiff as he had a lot of confidence and also payment of Rs.5,00,000/- towards chit transaction. The plaintiff who is a shrewd business mind and having worldly knowledge and also having upper hand made the defendant to believe his words and secured signatures on blank stamp papers stating that, same are required to evidence due payment of balance chit installments and defendant No.1 denied the allegations of plaintiff regarding payment of Rs.5,00,000/- to Smt.Yeshodamma out of part consideration amount paid by the plaintiff and also payment of Rs.5,00,000/- Sri.Ramanjane in respect of mortgage amount due to him as on 28/4/1999 out of part sale consideration amount and on the contrary, first defendant contended that, no such transaction had taken place on 28/4/1999 in the presence of Sri.Ramanjane and Smt.Yeshodamma in respect of suit schedule property and defendant No.1 admits that suit schedule property is consisting of ground floor and first floor and it has been let out to two tenants wherein he has received Rs.70,000/- as advance amount from both the tenants. But, defendant No.1 denied the allegations of the plaintiff that out of balance sale consideration amount of Rs.1,00,000/- it was agreed to retain an amount of Rs.70,000/- by the plaintiff to be paid to the tenants while vacating the premises and only balance sale consideration amount of Rs.30,000/- is payable by the plaintiff and defendant No.1 specifically denied the allegations made at para-7 of the plaintiff denying the contentions that out of total sale consideration amount of Rs.14,00,000/- he received 13,00,000/- by way of cash and it was agreed that out of balance sale consideration amount of Rs.1,00,000/- , Rs.70,000/- to be retained by plaintiff payable to the tenants and only Rs.30,000/- payable to the plaintiff at the time of execution of sale deed and defendant No.1 also denied the parting of possession of suit schedule property in favour of plaintiff under part performance of contract and it is contended by first defendant that subsequently plaintiff came to know that tenants in the ground floor has paid advance amount of Rs.40,000/- and tenant in first floor has paid Rs.30,000/- and there was mistake in mentioning the security deposit amount paid by the respective tenants in the sale agreement and it is the mistake occurred in writing the agreement of sale and defendant No.1 contended that since he did not execute any agreement of sale in favour of plaintiff and hence,

defendant No.1 contended that plaintiff has created the sale agreement dated: 20/4/1991 and defendant No.1 also denied the allegations that plaintiff has repaid the amount of Rs.30,000/- to the tenants which is vacated premises of first floor wherein plaintiff has paid Rs. 25,000/- to the tenant of first floor and he had with-hold Rs.5,000/- towards arrears of rent due by the tenant and it is contended by the defendant No.1 that plaintiff never repaid any advance amount to tenants at the time of their vacating the premises and plaintiff has no right or authority to pay advance amount to the tenants at the time of vacating the premises and plaintiff has no right or authority to pay advance amount to the tenants . Defendant No.1 has contended that, he is the absolute owner of suit schedule property and he was in possession and enjoyment of the suit schedule property exercising all rights as owner till it is alienated in favour of 2nd defendant in the month of March-2002 and defendant No.1 denied the averments made in para-9 of the plaint and also denied the allegations that he agreed to execute sale deed after changing of katha in his name and also after obtaining Income Tax clearance certificate and further first defendant denied that he has suppressing the fact of mortgage transaction in favour of ITI Employees Co-operative Credit Society Ltd., and on the contrary, defendant No.1 contended that, on the date of alleged agreement of sale itself, katha of the suit schedule property was standing in the name of first defendant and plaintiff was aware of money transaction created in favour of ITI Employees Co-operative Credit Society Ltd., on 12/9/1995 itself by depositing title deeds for a sum of Rs.2,13,000/- and first defendant was able to discharge the loan and got redeemed the property only on 18/3/2002. Hence, defendant No.1 has no right, title or interest to contact either with plaintiff or any one else without valid redemption and it is unbelievable that no prudent man will enter into contract and pay advance amount as much as Rs.13,00,000/- blindly without verifying the encumbrance and insisting for production of original title deeds and production of Income Tax clearance certificate before Sub- Registrar for registration of document which is not mandatory if the sale consideration of the document presented for registration is less than Rs.25,00,000/-. Hence, first defendant denied the plaint averments at para-10 and also denied specifically the execution of alleged agreement of sale dated: 28/4/1999.

4. First defendant further contended that, plaintiff is related to him and he denied that plaintiff repeatedly approached him and requested to execute sale deed and he went on postponing to execute sale deed in favour of plaintiff and defendant No.1 also denied the averments in para-14 and 15 except admitting the issuance of Legal notice by the plaintiff dated: 28/1/2002 and defendant No.1 contended that he has suitably replied the said notice by reply notice dated: 6/2/2002 and defendant No.1 denied that only after receiving Legal notice dated: 28/1/2002, defendant No.1 came to the knowledge of alleged sale agreement existed dated: 28/4/1999. Since the defendant No.1 has not entered into any contract of agreement of sale nor received any advance sale consideration amount from the plaintiff and hence, question of plaintiff's readiness and willingness to carry out his obligation to get sale deed registered by paying balance sale consideration amount does not arise for consideration and defendant No.1 denied the averments made in para-17 of the plaint denying his liability to execute sale deed. Defendant No.1 in para-14 contended that, the suit schedule property was leased in favour of tenants consisting of ground floor and first floor . Plaintiff prevailed over defendant No.1 to permit him to collect rents from the respective tenants occupied the suit schedule property, which he has been collecting ever since the month of April-1999 till March-2002 towards completion of said installments due and hence, first defendant contended that alleged agreement of sale relied by the plaintiff dated: 28/4/1999 has been manipulated, concocted and prepared on the

strength of signatures obtained in connection with chit transaction. Hence, alleged agreement of sale is concocted, forged document and not to be acted upon for want of proper execution, oneness of mind and want of consideration. The defendant had no necessity to sell the schedule property at that point of time. Defendant No.1 contended that, he never agreed to appropriate or adjust the rental advance amount towards balance sale consideration amount as claimed by the plaintiff had collected rents from the tenants for the due payment of chit amount due from April-99 till March-2002 and the same was fully paid accordingly and thereafter first defendant himself was collecting rents from the respective tenants till first de disposed off the suit schedule property and defendant No.1 contended that there was no valid and tenable agreement existed between him and plaintiff and as such he denied the alleged plea of plaintiff's readiness and willingness as claimed in the suit and first defendant contended that he has replied the Legal notice caused by the plaintiff dated : 28/1/2002 and defendant No.1 stated that he has sold the suit schedule property by virtue of execution of registered sale deed dated: 20/3/2002 in favour of K.N.Malla Reddy, S/o Late Narayanappa of Kundalahalli village and purchaser was put in possession of suit schedule property on the date of sale and without prejudice to the above contentions, first defendant contended that the alleged agreement of sale and delivery of possession of suit schedule property under the alleged agreement of sale dated:

28/4/1999 is grossly unstamped and as such suit agreement relied upon by plaintiff is liable to be impounded under the provisions of sections 33 and 34 of Karnataka Stamp Act since subject matter of the suit is not in the hands of defendants on the date of filing this suit and hence, first defendant has also denied cause of action and defendant No.1 had filed additional written statement on 4/9/2004 and 19/3/2008 and 6/4/2010, wherein defendant No.1 denied the amended portion of pleadings as set out by the plaintiff by amending the plaint by incorporation of pleadings as per pleadings stated in para-17(a) to (c). Hence, first defendant by filing additional written statement, denied the amended portion of plaint in toto and first defendant prays for dismissal of suit filed by the plaintiff with exemplary costs to meet the ends of justice.

5. Defendant No.2 resisted the suit by filing written statement contending as follows:

The suit filed by the plaintiff is not maintainable either in law or on facts and same is liable to be dismissed in limine. The defendant denied the averments made in para-2 and 3 of the plaint as false and called upon the plaintiff to prove these averments by strict proof of evidence and defendant No.2 also specifically denied the alleged money transaction in respect of suit schedule property with Sri.Ramanjane and also discharge of loan in favour of mortgagee and Sri.Ramanjane delivered the original mortgage deed to the plaintiff and defendant No.2 also denied the allegations contained in para- 4 of the plaint denying the allegations that first defendant was due of Rs.5,00,000/- to Smt.Yeshodamma and first defendant has paid the said amount from the plaintiff and defendant No.2 contended that these facts are concocted for the purposed of this case and defendant No.2 also denied that Sri.Ramanjane and Smt.Yeshodamma have received payments at the time of execution of sale agreement

in favour of plaintiff and they have attested the agreement of sale and defendant No.2 admits that suit schedule property consisting of ground floor and first floor and two houses have been let out to two tenants by the vendor of this defendant and defendant No.2 denied the averments made in para-7 of the pleadings in toto and defendant No.2 specifically denied the averments made in para-7 of the plaint and also contended that, the whole transaction alleged to have been taken place between plaintiff and first defendant is a created story by the plaintiff and it can be safely inferred that there was agreement of sale between plaintiff and first defendant in respect of suit schedule property. Defendant No.2 also denied the averments made in para-8 and 9 of the pleadings and further contended that, he is bonafide purchaser of suit schedule property from first defendant and as such defendant No.2 denied the entire averments made in para-12 to 19, wherein defendant No.2 denied the cause of action as stated in para-19 of the plaint and hence suit of the plaintiff is liable to be dismissed for want of proper cause of action Defendant No.2 in para-20 of the written statement contended that, the suit is not maintainable, wherein he has not paid proper stamp duty as required. Wherein plaintiff claims possession over the suit schedule property under the above performance of contract and as per Article 5(e) of Karnataka Stamp Act wherein an agreement of sale, immoveable property parted with possession under part performance of contract, if possession is delivered , wherein proper stamp duty required to be paid on the market value of the property as per Article 20 of Karnataka Stamp Act and plaintiff has not complied this mandatory requirement under the provisions of Karnataka Stamp Act and as such suit document is insufficiently stamped and as such the plaintiff is liable to pay duty and penalty as required by law and plaintiff has no locustandi to contest the case. The second defendant further contended that first defendant approached him in the first week of March-2002 expressing his desire to sell the suit schedule property in his favour and in order to meet out his financial commitments and to clear off the loan borrowed by him on pledging the suit schedule property with ITI Employees Co-operative Credit Society Ltd., wherein 2nd defendant got verified the title documents, katha and other documents standing in the name of first defendant and satisfied about the title of first defendant to convey the property and accordingly, 2nd defendant agreed to purchase the suit schedule property subject to clearance of loan raised by first defendant from ITI Employees Co-operative Credit Society Ltd., and 2nd defendant agreed to purchase the suit schedule property for total sale consideration amount fixed for Rs.8,40,000/- which was prevailing market value at that point of time and as per the terms of agreement, defendant has paid Rs.2,00,000/- by way of D.D.No.968963 dated:13/3/2002 drawn on Vijaya Bank, Bengaluru enabling the first defendant to discharge the mortgage amount and to obtain the original title deeds deposited with the mortgagee ITI Employees Co-operative Credit Society Ltd., and accordingly, first defendant has cleared the loan on 16/3/2002 and got released the property and thereafter 2nd defendant has paid balance sale consideration amount of Rs. 6,40,000/- and got registered in his name on 20/3/2002 in the office of Sub-Registrar, Bengaluru South taluk as document No. 13332/2001-02 and first defendant has delivered the possession of suit schedule property in favour of 2nd

defendant on the date of sale deed and first defendant had handed over all the original documents to defendant No.2 and thereafter second defendant got changed in his name by applying before the concerned authority for mutation of katha in respect of house properties and plaintiff had applied for loan from Srinidhi Sahakara Bank Ltd., R.V.Road, Bengaluru by mortgaging the suit schedule property and obtained loan of a sum of Rs. 5,00,000/- in order to clear off hand-loan raised by him for purchasing this property from first defendant by depositing all the original title deeds. Hence, defendant No.2 contended that he is in possession and enjoyment of the suit schedule property. Second defendant after verifying the titles to the suit property has purchased the same under a registered sale deed dated: 20/3/2002 from defendant No.1 and now katha of the suit schedule property stands in the name of defendant No.2 and thereafter defendant has mortgaged the suit property in favour of Srinidhi Sahakara Bank Ltd., R.V.Road, Bengaluru and obtained loan of Rs.5,00,000/- and he has also verified the title deeds, encumbrance certificate and tax paid receipts and all other documents pertaining to suit schedule property and since there was nil encumbrance certificate, he has purchased the suit schedule property under sale deed on 20/3/2002 for valuable sale consideration amount and after purchase of property, the vendor of defendant No.2 i.e., defendant No.1 issued attornment letter to the tenants who are in occupation of schedule premises attorning the tenancy in favour of defendant No.2 and thereafter tenants have executed rental agreements in favour of defendant No.2 and tenants are paying rents regularly to the defendant No.2 through cheque transaction. Hence, defendant No.2 is in lawful possession of the suit schedule property ever since from the date of purchase of said property. Hence, defendant No.2 denied the claim of plaintiff over the suit schedule property and defendant No.2 prayed to dismiss the suit with exemplary costs.

6. Defendant No.2 also filed additional written statement denying the claim of plaintiff made in para-17(a) to

(c) wherein defendant No.2 filed additional written statement on 4/9/2004 and on 19/3/2008 and defendant No.2 also filed his additional written statement on 6/4/2010. Hence, on perusal of additional written statement filed by defendant No.2, wherein defendant No.2 has specifically denied the amendment prayed by the plaintiff to the pleadings by insertion of para-17(a) to (c) in original plaint. Hence, defendant No.2 in his written statement denied the plaintiff's allegations in toto and on the contrary, defendant No.2 has set up the case that, he is a bonafide purchaser of suit schedule property for valuable sale consideration under sale deed dated: 20/3/2002 without notice of Ex.P.1 subsisting between plaintiff and first defendant. Hence, defendant No.2 prayed for dismissal of suit.

7. Based upon these pleadings, the following issues and additional issues have been framed in view of subsequent amendment to the pleadings:

1. Whether the plaintiff proves that the defendant was agreed to sell the suit schedule property for a valuable consideration of Rs.14,00,000/- and executed an agreement of sale dated:

28/4/1999 by receiving an advance amount of Rs.13,00,000/-?

2. Whether the defendants prove that the agreement of sale dated: 28/4/1999 is forged and fabricated document?

3. Whether the plaintiff proves that he was put in possession of the suit schedule property as part performance of the contract?

4. Whether the plaintiff proves that he has been always ready and willing to perform his part of the contract?

5. Is plaintiff entitle the relief of specific performance of contract?

6. To what order or decree?

Additional Issue framed on 29.1.2005:-

Whether the defendant No.2 proves that he is a bonafide purchaser of the schedule property for value without the notice of existence of the agreement of sale dated 28.4.1999?

Additional Issue framed on 29.5.2010:-

1. Whether the plaintiff proves that the defendants in collusion with the tenants dispossess him from the suit schedule property and the defendants are collecting rents from the tenants?

2. Whether the plaintiff proves that he is entitled for the vacant possession of the suit schedule property?

3. Whether the plaintiff is entitled for the mesne profits?

8. In order to prove the above issues, the parties to the suit have adduced their respective oral and documentary evidence, wherein the plaintiff himself is examined as PW.1 and got marked Ex.p.1 to P.29 through his evidence and three more witnesses are examined as P.W.2 to 4, wherein P.W.2 & 4 have produced documents in their evidence by producing pass-book which are marked as per Ex.P.26 and 27. With this evidence, plaintiff's side evidence is closed. On the other hand, Defendant No.1 is examined as DW.1 and in his evidence, documents Ex.D.1 to 32 are came to be marked and defendant No.2 is examined as D.W.2 and in his evidence, the documents Ex.D.33 to 54 are marked. Hence, with this evidence, the evidence of defendant No.1 and 2 is taken as closed. Thereafter, the

suit is posted for arguments.

9. Heard the arguments of both sides and posted the suit for judgment. In support of his case, the counsel for plaintiff has relied upon the following decision:

1. 1971 AIR Supreme Court 2548(Dattatreya Vs. Ranganath Gopalrao Kawathekar (dead) by his Legal Representatives and others)
2. 2008(11)SCC page 45(Silvey and others Vrs Arun Varghese and another)
4. 1973(3) SCC page 418(Dr. Govindas and another Vs Shrimati Shantibai and others)
5. ILR 2014 KAR 233(Smt. Padmini Raghavan Vs M.Ramanjani. H.A. Sonnappa, since dead by his Lrs and others)
6. AIR 1968 Madras 383(Veeramalai Vanniar(died) and others Vs Thadikara Vanmnar and others).
7. AIR 2001 SC1658(R.K.Mohammed Ubaidullah & Ors Vrs Hajee C.Abdul Wahab(D) By Lrs. & Ors.
8. MANU/TN/0655/1983(Bole Naidu Vs N. Kothandarama Pillai and others.)
9. AIR 1960 SC p.1010 para 10(Narayan Bhagawantrao Cosavi Balijiwale Vrs Gopal Vinayak Cosavi and others.
10. AIR 1994 Kar 247(Smt. Nirmala and others Vrs Smt. RAKmini and others)
11. AIR 1994 Kar. 256(SuryodayanMills Workers Union Vrs Siate of Karnataka and others
12. AIR 1985 SC48(State of U.P Vrs M.K. Antony)
13. AIR 1985 SC 61(M/s Samarai Trading Co.

Pvt. Ltd.,)

14. AIR 1930 Privy Council 18(Muddanna Virayya Vrs Mudanna Adenna and others)
15. MANU/KA/7340/2007 (Sri. N.Hanuymantharaya S/o Narayanappa Vrs Smt. Mariyamma W/o late Munishamappa and Ors)
16. (2014) 6 SCC 716(Mahavir Singh Vrs State of Haryana.

17. (2014) 6 SCC 723(Satish Chandra and another Vrs State of Madhya Pradesh) Learned counsel for defendant No.1 has filed the following citations:-

1. SCC(2013) 4 page 546(Garre Mallikharjuna Rao(dead) by Lrs. Vrs Nalabothu Punnaiah)
 2. AIR 1996 SC page 2814(Lordu mari David and others Vrs Louis Chinnaya Arogiaswamy and others)
 3. AIR 2015 Kar1(M.V.Prema Chandra & another Vrs Smt. Sarojamma and others
 4. AIR1957 Kerala 63(Seithammarakkath Mammad Vrs Koyommatath Mammad)
 5. AIR 1976 Parna 92(Ram Pragas Singh Vrs Gajendra Prasad Singh and another
 6. AIR 1991 Orissa 25(Sri. Khetramohan Ray Vrs Udayanarayan Panda & another)
- Learned counsel for defendant No.2 has filed the following citations:

1. (2008) 4 SCC 530(Thiruvengadam Pillai Vrs Navaneethammal and others)
2. ILR 2014 KAR 1444(A.G.Sheshappa and another Vrs R.Basappa)
3. (2015)8 SCC 695(Padmakumari and others Vrs Dasayyan and others)

10. On appreciation of available oral and documentary evidence of parties to the suit and coupled with pleadings filed by both parties and by considering the citations submitted by both sides and considering the arguments and written arguments, written submissions filed in this case, I answer the above issues as follows:-

Issue No.1	In affirmative
Issue No.2	In negative;
Issue No.3:	In affirmative
Issue No.4	In affirmative;
Issue No.5:	In affirmative;

Additional No.1 Issue In affirmative;
framed on 29.5.2010:

Additional Issue No.1 In negative
framed on 29.1.2005:

Additional Issue No.2 In affirmative;
framed on 29.5.2010:

Additional Issue No.3 Does not considered in this case framed on 29.5.2010: and enquiry is contemplated in the execution proceedings regarding mesne profits Issue

No.6 The suit filed by the plaintiff deserves to be decreed with costs against both the defendants for the following reasons:-

REASONS

11. Issues No.1 to 3 and Additional No.1 Issue framed on 29.5.2010 : It is the case of the plaintiff that defendant No.1 is the absolute owner of suit schedule property. In order to discharge the existing loan liability and for legal necessity, first defendant had entered into agreement of sale with plaintiff dated: 28/4/1999 agreeing to convey the suit schedule property in favour of plaintiff and after sale negotiations held between plaintiff and first defendant, wherein first defendant agreed to convey the suit schedule property in favour of plaintiff for a total sale consideration amount of Rs. 14,00,000/- and first defendant had received part sale consideration amount of Rs.13,00,000/- on 28/4/1999. At the time of execution of sale agreement in the presence of witnesses paid by way of cash and first defendant agreed to convey suit schedule property by receiving balance sale consideration amount of Rs.1,00,000/- and it was agreed between plaintiff and defendant No.1 that Rs. 70,000/- was to be retained by the plaintiff out of balance sale consideration amount payable to the tenants who are in occupation of first floor and ground floor premises respectively Rs.40,000/- and Rs.30,000/- towards return of rental advance to the tenants out expenses of sale consideration amount of Rs.1,00,000/-

and plaintiff was to pay Rs. 30,000/- towards balance sale consideration amount to the first defendant and first defendant has to mutate his name in respect of katha of the suit schedule property and to obtain income tax clearance and to execute sale agreement conveying the right, title and interest in favour of plaintiff in respect of suit schedule property. The plaintiff also pleaded that the first defendant had received Rs.1,00,000/- from the plaintiff for his legal necessity and also to perform marriage of his daughter and plaintiff has paid this amount of Rs.1,00,000/- by issuance of cheque transaction and first defendant had received said amount and hence, it is the case of the plaintiff that first defendant by execution of sale agreement dated: 28/4/1999 parted with possession in favour of plaintiff in part performance of contract and authorized the plaintiff to collect the rents from the respective tenants who are occupying the premises of ground floor and first floor and accordingly,, plaintiff was recovering the rents from the respective tenants and also entered into lease agreement after existing tenants vacated the suit schedule property by execution of fresh lease agreements and he requested the first defendant to execute sale deed on 20/1/2002 since the income tax clearance is not required as the consideration amount shown in the agreement of sale is below Rs.25,00,000/- and also first defendant had obtained katha transfer in his name. But, first defendant given evasive reply and defendant No.1 did not come forward to execute sale deed and to complete the transaction in pursuance of agreement of sale dated:

28/4/1999 and thereby plaintiff constrained to cause Legal notice dated: 20/1/2002 calling upon the first defendant to receive balance sale consideration amount of Rs.30,000/- and to execute sale deed and the said notice is replied by defendant No.1 vide reply notice dated: 6/2/2002 by giving false and evasive reply and as such

plaintiff denied the contents of reply notice dated: 6/2/2002 given by first defendant and plaintiff alleged his readiness and willingness to perform his part of the contract and to pay balance sale consideration amount and hence, plaintiff initially filed this suit against first defendant and thereafter second defendant has been added in this suit as per order dated: 20/11/2002, wherein defendant No.2 is the purchaser of suit schedule property from defendant No.1. under sale deed dated:

20/3/2002 from defendant No.1 and accordingly, plaintiff got amended the pleadings by insertion of para-17(a) and also got amended 17(b) in the original plaint and also got amended prayer column of plaint wherein plaintiff alleged that on the basis of agreement to sell dated: 28/4/1999 he was put in possession of the suit schedule property and he is recovering rents from the tenants under constructive possession. But, the first defendant suppressing the fact of existing agreement of sale had conveyed the suit schedule property in favour of defendant No.2 by execution of sale deed dated: 20/3/2002 which is a date prior to the filing of the suit and first defendant was aware of agreement of sale and since the plaintiff and 2nd defendant are not in good terms and their relationship is not cordial and as such 2nd defendant has colluded with first defendant in bringing about sale deed dated: 20/3/2002 with sole intention of defeating the rights of plaintiff. Hence, plaintiff alleged that 2nd defendant is not a bonafide purchaser of suit schedule property by virtue of sale deed dated: 20/3/2002 and hence, 2nd defendant shall also join first defendant in execution of sale deed and further plaintiff alleged that 2nd defendant had dispossessed from the suit schedule property under the guise of sale deed dated: 20/3/2002. Hence, the plaintiff on the cause of action as stated in the plaint, has filed this suit against defendant No.1 and 2. The first defendant denies the execution of sale agreement dated: 28/4/1999 in favour of plaintiff and on the contrary, first defendant set up defence specifically contended that plaintiff and his henchmen have created the suit agreement dated: 28/4/1999 and it is created and concocted document, wherein plaintiff is running chit fund business of various chit business wherein first defendant was bidder of chit transaction for Rs.82,000/- and first defendant had received Rs.5,00,000/- as loan from one Sri.Ramanjane and he authorized the plaintiff to collect the rents from the respective tenants in respect of schedule premises of ground floor and first floor till receipt of Rs.5,00,000/- towards chit transaction and the rental amount to be received by the plaintiff to be adjusted towards chit transaction paid by the first defendant and as such it is the contention of first defendant that plaintiff by running chit business had obtained his signatures on blank stamp papers and also plaintiff has collected one blank cheque leaf duly signed by first defendant in respect of cheque transactions and as such plaintiff has misused the said blank signed stamp papers and created suit agreement dated: 28/4/1999 and on the contrary, first defendant contended that he has not raised any loan from sister of plaintiff namely Smt.Yeshodamma of Rs.5,00,000/- and also the alleged loan transaction is created and concocted to file the suit by the plaintiff and his sister Smt.Yeshodamma. On the contrary, first defendant had mortgaged the suit schedule property in favour of ITI Employees Co-operative Credit Society Ltd., for an amount

of Rs.2,13,000/- on 12/4/1995 by depositing of title deeds and the said mortgage loan transaction was discharged by him on 20/3/2002 and thereby he conveyed the suit schedule property in favour of defendant No.2 by execution of sale deed on 20/3/2002 and hence, first defendant denied the execution of sale agreement dated: 28/4/1999 and also denied the receipt of Rs.13,00,000/- towards part sale consideration amount under suit agreement of sale from the applicant. Hence, with this defence, defendant No.1 is contesting the suit.

12. Whereas the 2nd defendant after his impleading in this suit, has filed written statement denying his knowledge about alleged agreement, which existed between him and plaintiff. However, defendant No.2 admits his relationship with plaintiff contending that plaintiff is his elder brother and first defendant is also related to him and defendant No.2 also contended that his relationship with plaintiff is strained and they are not in cordial terms and defendant No.2 contended that after due verification of title of first defendant is in respect of suit schedule property, he has purchased the suit schedule property from defendant No.2 under sale deed dated: 20/3/2002 for valuable consideration of Rs.5,40,000/- wherein he has paid Rs.2,40,000/-, wherein he has paid Rs.2,00,000/- to first defendant on 13/2/2002 to discharge the mortgage loan existing over the suit schedule property of ITI Employees Co-operative Credit Society Ltd., and first defendant after discharge of mortgage loan of ITI Employees Co-operative Credit Society Ltd., executed sale deed in favour of 2nd defendant and as such defendant No.2 claims to be bonafide purchaser of suit schedule property without having knowledge of alleged agreement of sale.

Hence, defendant No.2 has taken the shelter of Section.19(b) of Specific Relief Act claiming that he is bonafide purchaser of suit schedule property for a value. Hence, with this contention, the parties to the suit, the parties to the suit have adduced their respective oral and documentary evidence and now it is necessary for this court to appreciate the original evidence placed on record and find out whose evidence is capable for acceptance and deserves to be relied upon.

13. Plaintiff himself is examined in this case as P.W.1 by filing affidavit evidence under Order 18 Rule 4 of C.P.C is lieu of examination-in-chief in this case and on perusal of his affidavit evidence, wherein P.W.1 stated that first defendant is related to him since he has married daughter of his maternal uncle one H.M.Muniyappa Reddy and frequently he was visiting the house of first defendant and as such he knows first defendant and first defendant was the absolute owner of suit schedule property bearing HASB Katha 1195/659, Block No.II, Vinayaka Layout, Konena Agrahara Village, Varthur Hobli, Bangalore South Taluk and this property is described fully in the schedule annexed to the plaint and this property is referred to as suit schedule property and P.W.1 stated that first defendant approached him in the year 1999 and informed that he has availed loans from several creditors and he is paying heavy interest on the said loan and he is in need of funds to discharge the debt and also to meet out the expenses of marriage of his daughter and on enquiry by the plaintiff, first defendant discloses that he has borrowed loans from one Sri.Ramanjane and Smt.Yeshodamma and P.W. 1 stated that, Smt.Yeshodamma is sister to him and he ascertained by enquiring his sister

regarding loan lent to defendant No.1, wherein Smt.Yeshodamma has confirmed about the lending of loan to first defendant of Rs.5,00,000/- and thereafter after mutual negotiations first defendant agreed to convey the suit schedule property for sale consideration amount of Rs.14,00,000/- and he executed sale agreement dated:

28/4/1999 for Rs. 14,00,000/- agreeing to sell the property and P.W.1 stated that there are two tenants occupied on the date of agreement to sell, they are one M. Nagaraj Reddy who was occupying ground floor and one Prakash Chandra Reddy was occupying first floor portion and accordingly, first defendant has attorned the tenancy in favour of plaintiff and directed these tenants to pay loan to plaintiff and hence, first defendant delivered the original loan karar executed by tenants namely Nagaraj Reddy and Prakash Chandra Reddy respectively and pursuant to direction given by defendant No.1, the tenants started to pay rents to plaintiff and thereby defendant No.1 is parted with possession under part performance to agreement to sell dated: 28/4/1999 and P.W.1 stated regarding execution of sale agreement on 28/4/1999 and he has paid Rs.13,00,000/- part sale consideration amount to first defendant and first defendant had paid Rs.5,00,000/- out of that amount received by him to one Sri.Ramanjane from whom he had borrowed loan and he has paid another Rs.5,00,000/- to Smt.Yeshodamma in discharge of loan due to her and another sum of Rs.3,00,000/- was retained by first defendant and plaintiff deposed that he has paid part consideration amount by way of cash from the date of execution of sale agreement and the first defendant paid Rs.5,00,000/- to Sri.Ramanjane and he handed over the document dated: 22/7/1998 in respect of mortgage/security for having discharge the loan on 28/4/1999 to the custody of plaintiff. Hence, P.W.1 stated that first defendant out of amount of Rs.13,00,000/- paid on 28/4/1999, he has paid Rs.5,00,000/- each to Sri.Ramanjane and Smt.Yeshodamma towards discharge of outstanding loan and retained sum of Rs.3,00,000/- with him to meet the mortgage expenses of his daughter for which he is making negotiations and first defendant informed him that he has received total sum of Rs.70,000/- as advance from the tenants and out of balance sale consideration amount of Rs.1,00,000/- plaintiff shall retain Rs.70,000/- to retain the said amount to tenants when they vacated the premises and plaintiff agreed to pay balance sale consideration amount of Rs.30,000/- at the time of execution of sale agreement and P.W.1 also stated that first defendant approached him and requested him to pay additional advance amount of Rs.1,00,000/- towards sale transaction since he was in need of amount for arranging engagement ceremony of his daughter and though plaintiff was not bound to pay any additional sum, but, having regard to the relationship existed between him and first defendant, wherein he has paid Rs.1,00,000/- to first defendant by way of cheque transaction drawn on State Bank of India and first defendant has encashed the said amount paid by the plaintiff and P.W.1 stated that he has issued Legal notice as first defendant did not turn up to execute sale deed even though he has obtained katha in his name by issuance of Legal notice dated:

28/1/2002 before filing this suit and first defendant has replied the notice by reply notice dated: 6/2/2002 wherein first defendant has not denied the fact that he has received sum of Rs.1,00,000/- as additional consideration amount and it is for the first time, first defendant in his written statement taken stand/defence that the receipt of Rs.1,00,000/- amount borrowed by plaintiff and he has discharged the said amount by repaying the said amount to the plaintiff and P.W.1 stated that his sister Smt.Yeshodamma persuaded him to purchase the suit schedule property for Rs.14,00,000/- and he had amount of Rs.3,00,000/- with him and balance amount of Rs.10,00,000/- was borrowed by him from one Krishnappa, Resident of Kundalahalli under pronote executed by him in his favour and now he has discharged the said loan amount and as such the consideration amount paid to first defendant was available with him in the above stated manner.

14. P.W.1 further stated that there are tenants in occupation of the schedule property and their tenancy has been attorned in his favour and subsequently the tenant by name Nagaraja Reddy has executed rent karar agreeing to pay monthly rent of Rs.5,250/- and tenant was occupying the first floor portion namely Prakash Chandra Reddy vacated the premises and handed over possession to the plaintiffs and P.W.1 as stated that he has paid an amount of Rs.25,000/- to the 1st defendant as advance and since he was collecting rents and since it was agreed between him and 1st defendant that he should return the advance amount received from the tenant out of Rs.1,00,000/- amount retained out of balance sale consideration amount and accordingly, P.W.1 stated that he has refunded Rs.25,000/- to tenant namely Prakash Chandra Reddy from out of Rs.30,000/- advance amount after adjusting Rs.5,000/- towards arrears of rent and P.W.1 stated that the tenant by name Narasimha occupied first floor portion and he also executed rent karar in his favour and he has paid an advance of Rs.50,000/- by way of cheque and he vacated the premises approximately after two years and accordingly, he has returned advance amount paid by tenant Narasimha by way of cheque and thereafter, one Balamurugan, who came as tenant in the premises and executed rent karar in favour of plaintiff and on the date of agreement, he was on occupation of schedule premises and he also paid an advance amount of Rs.50,000/- by means of cheque and that is reflected in his bank passbook and Balamurugan also executed another agreement dated 11.1.2002 and his rent karar was executed by the factory in which the Balamurugan was working and the 2nd agreement was executed by Balamurugan in his individual capacity and hence, tenants were paying rents to him by means of cheque transaction and he has produced Xerox copies of cheques issued in his favour by the tenants and P.W.1 denied that he was running chit business or chit transaction that was being run by the plaintiff and in that connection payment of Rs.5,00,000/- and plaintiff has secured his signature on blank stamp paper and P.W.1 stated that defendant No.1 with fraudulent motive suppressed the fact of mortgage transaction of schedule property with ITI Employees Co-operative Society and not only that defendant No.1 even handed over an encumbrance certificate, which did not disclose any encumbrances on the property in favour of ITI Employees Co-operative Society and P.W.1 denied that payment of additional amount of Rs.1,00,000/- was treated as loan between him and defendant No.1 and P.W.1 also denied that he has prevailed that the 1st defendant to permit him to collect the rents from the schedule premises from the tenants from April 1999 to 2002 towards the completion of the alleged chit installments and P.W.1 stated that there was no chit transaction run by him and hence, P.W.1 denied specifically that the agreement of sale relied by him

is concocted document and P.W.1 in his affidavit evidence stated that 1st defendant had borrowed money from K.N.Ramesh for a sum of Rs.2,00,000/- and in repayment of loan, he had issued cheque for Rs.2,00,000/- and the said cheque was dishonoured and consequently K.N.Ramesh had filed complaint against defendant No.1 and prosecuted him for the offence under Sec. 137 of N.I.Act and before filing that case, K.N.Ramesh had issued notice to 1st defendant and defendant No.1 has sent reply stating that he has issued blank cheque for Rs.2,00,000/- in connection with the chit transaction to the plaintiff and he in turn handed over the said cheque to one K.N.Ramesh on the basis of which a notice was caused. The 1st defendant even filed criminal complaint against plaintiff/P.W.1 and one K.N.Ramesh and the said criminal complaint was investigated by the police and a "B" report has been filed in the said proceedings and 1st defendant has stated in that PCR proceedings that the chit transaction was for Rs.2,00,000/- and while in the present case, he has stated that chit transaction was for Rs.5,00,000/- and P.W.1 stated that 2nd defendant, who is his brother and he is in enimical terms with him, wherein 1st witness in the criminal case for the 1st defendant. The 2nd defendant has deposed as witness before the criminal case and hence, P.W.1 stated that 2nd defendant, who is his brother and in view of strained relationship and defendant No.2 is fully aware of existence of sale agreement in favour of plaintiff and in order to defeat his rights under the agreement of sale, defendant No.1 and 2 have colluded together, wherein 1st defendant had sold the property in favour of defendant No.2, who had clear notice of the agreement of sale in favour of plaintiff. Hence, P.W.1 in para No.15 of his examination of chief affidavit deposed regarding his readiness and willingness to obtain sale deed by paying balance sale consideration amount of Rs.30,000/-. Hence, P.W.1 relying upon his affidavit evidence and P.W.1 got marked documents Ex.P.1 to P.29 in his oral evidence and hence, P.W.1 pray for grant for decree of specific performance of contract in respect of suit schedule property as against defendant No.1 and 2 and P.W.1 got marked Ex.P.1 to P.29, the documents are as below:-

- | | |
|---------------|---|
| Ex.P.1 | Agreement of sale dated 28.4.1999
executed by defendant No.1 in favour
of plaintiff |
| Ex.P.2: | Copy of Legal notice sent through
advocate for plaintiff to the defendant
dated 28.1.2002 |
| Ex.P.3: | Postal acknowledgment for having
served the notice on D.1 |
| Ex.P.4: | Reply notice sent to plaintiff through
the advocate for defendant No.1
dated: 6.2.2002 |
| Ex.P.5 & P.6: | Two Encumbrance certificates in
respect of suit schedule property |
| Ex.P.7: | Receipt given by plaintiff to Lucent
Technologies |
| Ex.P.8: | Bank statement extract of plaintiff |

- Ex.P.9: Another bank account in respect of plaintiff
- Ex.P.10: Public notice published in paper publication in daily newspaper Dated.2.7.2002
- Ex.P.11: Certified copy of order sheet in PCR No.20/2003
- Ex.P.12: FIR in respect of PCR No.20/2003
- Ex.P.13: Certified copy of deposition of witness of defendant in PCR No.20/2003
- Ex.P.14: Certified copy of complaint in PCR No.20/2003
- Ex.P.15: Certified copy of "B" report in PCR No.20/2003

Ex.P.16 & 17: Certified copies of two notices in PCR No.20/2003 Ex.P.18: Rental agreement dated 5.10.1998 Ex.P.19: Rental agreement dated 1.2.2001 executed by Lucent Technologies in respect of plaintiff Ex.P.20 Rental agreement executed by Narasimha dated 25.10.2000 Ex.P.21: Rental agreement executed by Balamurgan dated 11.1.2002 Ex.P.22 Rental agreement executed by Nagaraj Reddy dated 1.4.2002 P.22(a) to (c) Signatures of Nagaraj Reddy, Krishna Reddy, and Muniraja Reddy Ex.P.23: Mortgage deed executed by defendant No.1 in favour of Ramanjane dated 22.7.1998 Ex.P.24: Office copy of complaint given to police dated 30.7.2002 Ex.P.25: O/c of complaint given to KEB authority Ex.P.26: Pass book of P.W.2, Ex.P.27: Pass book of P.W. 4 Ex.P.28 Cheque book Ex.P.29 Certified copy of order sheet in C.C.26272/2003

15. The counsel appearing for the defendants cross examined P.W.1 on 9.1.2012, wherein P.W.1 admits that 2nd defendant is his younger brother and they have got 3 sisters namely Smt.Kamamma, Smt.Yeshodamma and Smt.Nagarathna and the name of 1st wife of defendant No.1 is Smt.Vishalakshi and she is no more and P.W.1 admits that the husband of his sister Smt.Yeshodamma is one Sri.Jayarama Reddy and P.W.1 admits that Smt.Vishalakshi is the younger sister of Sri.Jarayam Reddy and P.W.1 also admits that Vishalakshi died in road traffic accident occurred in the year 1990 and P.W.1 stated that he is not doing any business or avocation and in the year 1998-1999, he was doing agricultural work having 5 acres of agricultural land, wherein he used to grow paddy, ragi and jawar crops etc., and P.W.1 stated that his income during the year 1998-1999 from agricultural source was around Rs.1,50,000/- and P.W.1 admits that so far he is not assessed the income tax and he admits that he had bank account opened in the year 1998- 1999 and P.W.1 stated that the land held by him are in Sy.No.9/1 measuring 2 acres 28 guntas, Sy.No.No.130/1 measuring 28 guntas and Sy.No.285/2 measuring 30 guntas and the said lands were allotted to his share in the family partition, which took place in the year 1994-1995 and P.W.1 admits that he can produce necessary documents to show that these lands were allotted to his share and P.W.1 stated that he do not have any documents to show his income of Rs.1,50,000/- in the year

1998-1999 and P.W.1 admits that the lands at Kundalahalli have been developed and also residential and commercial layouts have come up. But P.W.1 denied that since 15-20 years ago, no one is cultivated the lands around Kundalahalli, at that time, the properties were already developed and P.W.1 stated that he has got cash with him in the year 1989 of Rs.3,00,000/- and he had kept some amount in the bank and rest of the amount is with him and he can produce passbook pertaining to him and P.W.1 stated that defendant No.1 is related to him, he was an ITI employee and he do not know the reasons for incurring the debts by 1st defendant and P.W.1 stated that 1st defendant was telling him that he was due in a sum of Rs.5,00,000/- each to one Sri.Ramanjane and to his sister Smt.Yeshodamma and the said Sri.Ramanjane is from Parranduru Agrahara, which is about 3 K.Ms from his village and P.W.1 stated that he was present when 1st defendant was raised loan from the said Sri.Ramanjane . But he was not present, when 1st defendant borrowed money from his sister Smt.Yeshodamma and P.W.1 denied the suggestion that the said Sri.Ramanjane was introduced the 1st defendant by his sister Smt.Yeshodamma and witness volunteered that since the younger brother of 1st defendant was working in ITI, he introduced defendant No.1 to the said Sri.Ramanjane and P.W.1 admits that his sister Smt.Yeshodamma, who is house wife and P.W.1 further admits that the defendant No.1 himself told that he would sell the suit schedule property and sale talks were taken in the house of 1st defendant and at that time, defendant No.1, his mother and 2nd wife and his daughters were present. The defendant No.1 offered to sell the suit schedule property for Rs.16,00,000/- and it was finally settled for Rs.14,00,000/- and 1st defendant showed the Xerox copies of title deeds and rental agreements in respect of the suit schedule property and he did not verified the encumbrance certificate in respect of suit schedule property and he did not obtained any legal opinion from any lawyer prior to entering into contract with 1st defendant and sale talks were held 15 days prior to the agreement of sale.

16. P.W.1 stated that on 28.4.1999, the 1st defendant took him to Sub Registrar office at K.R.Puram and 1st defendant got prepared the agreement of sale from his advocate in his presence, but he do not know the name of the said advocate, who has drafted the agreement of sale and stamp paper for Ex.P.1 was purchased by the 1st defendant near the Sub Registrar office at K.R.Puram. Himself, 1st defendant, Sri.Ramanjane and Smt.Yeshodamma were also present before the Sub Registrar office on the day of execution of sale agreement and terms of sale talks have been incorporated in the agreement of sale and 1st defendant himself had brought Sri.Ramanjane and Smt.Yeshodamma on the date of execution of sale agreement and the 1st defendant told that he would sell the suit schedule property in order to discharge the loan borrowed from Sri.Ramanjane and Smt.Yeshodamma and this fact is averred in Ex.P.1, but P.W.1 admits that in Ex.P.1, there is no facts narrated in respect of loan transaction and P.W.1 further admits that this is a fact that it is not recited in Ex.P.1 recitals.

17. P.W.1 stated that 1st defendant had handed over possession of suit schedule property to him in pursuance of Ex.P.1 and P.W.1 claims to have paid Rs.13,00,000/- to defendant No.1 by way of cash at the time of execution of Ex.P.1 and since Sri.Ramanjane insisted for payment of cash and accordingly, on the day of execution of Ex.P.1, since Sri.Ramanjane insisted for payment of cash only and accordingly, plaintiff had paid the amount to defendant No.1 by way of cash and out of that amount, he has paid an amount of Rs.5,00,000/- to defendant No.1 and after payment of Rs.5,00,000/-, 1st defendant repaid the said amount and handed over the documents of mortgagee

deed collected from Sri.Ramanjane to the custody of plaintiff and P.W.1 further stated that he also paid Rs.5,00,000/- to Smt.Yeshodamma and she do not know about the loan transaction between 1st defendant and Smt.Yeshodamma and P.W.1 admits that katha of schedule property was standing in the name of 1st defendant in respect of suit schedule property in the year 1995 and he further admits that since revenue documents were in the name of 1st defendant in respect of suit schedule property, there was no difficulty for him to get execute the registered sale deed on the basis of Ex.P.1 and P.W.1 stated that he was ready and willing to get execute sale deed , but 1st defendant himself took 11 months time to secure some more documents and 1st defendant handed over possession of schedule property to him in performance of Ex.P.1 and as such, P.W.1 claims to have paid Rs.13,00,000/- by way of cash to defendant No.1 at the time of execution of Ex.P.1. Since Sri.Ramanjane insisted for payment of cash and accordingly, he has paid consideration amount of Rs.13,00,000/- by way of cash in favour of 1st defendant and 1st defendant out of that amount, paid Rs.5,00,000/- to Sri.Ramanjane and collected mortgage deed from him and further P.W.1 has paid an amount of Rs.5,00,000/- to Smt.Yeshodamma. But P.W.1 stated that he was not aware of loan transaction between defendant No.1 and Smt.Yeshodamma and P.W.1 admits that the katha of schedule property was in the name of 1st defendant in respect of suit schedule property in the year 1995 and P.W.1 admits that since the revenue documents were standing in the name of 1st defendant in respect of suit schedule property and there was no difficulty for them to get registered sale deed instead of the agreement of sale at Ex.P.1 and P.W.1 stated about his readiness and willingness to obtain sale deed got registered from the defendants. But 1st defendant himself took 11 months time to secure some more documents to execute registered sale deed, but whereas 1st defendant had told that he would get income tax clearance from the concerned authorities and after obtaining clearance certificate and execute the sale deed in favour of plaintiff . But the said fact has not been stated in Ex.P.1 and as such, he do not know if Ex.P.1 is whether is an agreement of sale or it is created document relied by the plaintiff and P.W.1 denied his knowledge regarding other performance of contract by 1st defendant and P.W.1 denied that as per income tax circular, wherein the valuation of the property as per the agreement of sale is below Rs.25,00,000/- and as such, defendant No.1 cannot obtain any permission for the purpose of execution of sale deed from the RTI authority. Hence, P.W.1 in his cross-examination deposed his evidence in the above manner and again P.W.1 was recalled for cross-examination and P.W.1 his cross examined further by defendants counsel, wherein P.W.1 admits that he is read over the contents of Ex.P.1 and recitals of it are true and correct and P.W.1 admits that there is no mention of the collection of amount of Rs.3,00,000/- by the plaintiff received from late Krishnappa and also from P.W.2 Smt. Yeshodamma and on the contrary, P.W.1 stated that the deceased Krishnappa was belongs to his village and his fathers name was Chikkahanumanthappa and he was driver and apart from his driving work, he was doing agricultural work also, but he was not doing any money lending business and P.W.1 admits that Krishnappa in the year 1995-1996 has sold one acre of land for Rs.1,00,00,000/- and out of that amount, he has received Rs.10,00,000/- from Krishnappa as loan and P.W.1 stated that he produced documents in respect of loan transaction exists between him and deceased Krishnappa and P.W.1 stated that Krishnappa is no more and he died in the year 2003 or in the year 2004 and P.W.1 admits that he had obtained loan from deceased Krishnappa and original agreement is with the Krishnappa and P.W.1 stated that he did not offered any property as security for the said loan availed from Krishnappa and further P.W.1 stated that even still, he is paying interest in favour of wife of Krishnappa, but P.W.1 stated that he do not know where Krishnappa had bring an amount of

Rs.10,00,000/- and P.W.1 stated that he has repaid an amount of Rs.2,00,000/- each to late Krishnappa by two times and an amount of Rs.1,00,000/- in the year 2003-2004 and in all Rs.5,00,000/- was paid in favour of one Krishnappa and P.W.1 stated that he has paid this amount along with interest as per the agreement entered into and P.W.1 also stated that he has borrowed amount from Jayaram and paid an amount to Krishnappa of remaining two installments and P.W.1 stated that Jayaram was residing in BEML layout and his father's name is not known to the Krishnappa and Jayaram had lent loan by way of cash . But he did not execute any security document for the said loan borrowed by him and he admits that the Jayaram is not related to him and P.W.1 denied that after borrowing amount of Rs.10,00,000/-plaintiff from Krishnappa as loan and he has paid amount to 1st defendant towards earnest amount and P.W.1 denied that he has not obtained loan either from Krishnappa or from Jayaram Reddy towards loan and P.W.1 also denied that he is deposing false evidence in respect of payment of advance amount of Rs.13,00,000/- to the defendants and P.W.1 denied the suggestion that taking advantage of death of Krishnappa, he is falsely deposing regarding obtaining of loan and P.W.1 also denied that previously he was running chit transaction and 1st defendant had became member of chit transaction in the year 1999 for Rs.5,00,000/- by putting one chit and 1st defendant has to clear of the loan of Sri.Ramanjane, he bid that amount and obtained money and 1st defendant had obtained blank documents, over which, his signatures were obtained on blank stamp papers and also P.W.1 denied that he has obtained one cheque leaf signed by 1st defendant and P.W.1 admits that he was receiving rent from two tenements and P.W.1 denied that the 1st defendant allowed him to receive the rent towards adjustment of the said amount towards chit transaction and P.W.1 denied that after receiving amount of rent from February 1999 till April 2002 after receiving rental amount from the tenant, he got adjusted the said amount towards chit transaction and P.W.1 admits that he has recovered the loan amount from the tenants as per Ex.P.1 executed by defendant No.1 and P.W.1 admits that 1st defendant had not executed any agreement authorizing him to recover the rent and P.W.1 denied that he has misused the blank stamp papers duly signed by 1st defendant and had created the agreement of sale Ex.P.1 and P.W.1 denied that 1st defendant never agreed to sell the suit schedule property for Rs.14,00,000/- and not executed an agreement of sale as per Ex.P.1 and P.W.1 denied that the 1st defendant has not executed any agreement of sale at Ex.P.1 and he further denied the suggestion that 1st defendant had received amount out of chit transaction and paid amount to Sri.Ramanjane in his presence and after payment of amount to Sri.Ramanjane, wherein he has collected the mortgage deed executed by 1st defendant from the custody of Sri.Ramanjane.

18. P.W.1 further cross examined on 16.7.2013, wherein he denied that his sister Yeshodamma was not having any source of income on her own. P.W.1 voluntarily stated that his sister Yeshodamma is receiving rental income per month for Rs.25,000/- and the said property is situated at Chikkasandra . But P.W.1 do not know about the particulars of property held by Smt.Yeshodamma situated at Chikkasandra and he do not know whether Smt.Yeshodamma is paying income tax and P.W.1 admits that in the year 1998 - 1999 himself, 1st defendant and his sister Smt.Yeshodamma, they were cordial to each other and P.W.1 denied that himself and his sister Smt.Yeshodamma had introduced Ramanjane to 1st defendant . But P.W.1 admits that he knew Ramanjane since the year 1990 and P.W.1 denied that his sister Smt.Yeshodamma and her late husband was not having any source of own income and he is deposing falsely in this suit and P.W.1 denied 1st defendant has borrowed an amount as loan from his sister Smt.Yeshodamma and P.W.1 admits that he did not

verified the documents executed between Smt.Yeshodamma and 1st defendant in respect of alleged loan transaction and P.W.1 admits that he has not produced loan documents obtained by Krishnappa in this suit and P.W.1 stated that he cannot produce the Xerox copy of alleged agreement executed in favour of Krishnappa in respect of loan transaction and P.W.1 volunteered that the husband of one Gangamma namely Krishnappa had died and P.W.1 stated that he is due an amount of Rs.5,00,000/- in respect of loan obtained from late Krishnappa and D.W.1 stated that he is going to examine the wife of Krishnappa namely Gangamma , a witness and P.W.1 admits that he has not obtained any documents executed from Krishnappa for having paid an amount of Rs.5,00,000/- during his life time and P.W.1 denied that Krishnappa was not having landed property and as such, he has not alienated any land and received amount from sale of land and P.W.1 denied that he has not obtained any loan from late Krishnappa and also from one Jayaram and P.W.1 admits that he has not informed the fact of obtaining loan from Krishnappa and Jayaram in the legal notice issued to the 1st defendant and P.W.1 denied that as he has not mentioned in the legal notice in respect of alleged borrowing of loan from Krishnappa and Jayaram and no such loan transaction exists between him and the said creditors. Hence, he did not mentioned that the fact in the legal notice caused to the 1st defendant and P.W.1 denied that in the year 1999,he do not have any amount for a sum of Rs.13,00,000/- and P.W.1 stated that he has not remember in respect of payment of additional sum of Rs.1,00,000/- other than the amount shown in the sale agreement, but P.W.1 voluntarily stated that he has paid additional sum of Rs.1,00,000/- to the 1st defendant by issuance of cheque and 1st defendant has encashed the said cheque and P.W.1 further stated that he has issued cheque for Rs.1,00,000/- on his sons account and his son is no more as he died. But P.W.1 stated that due to that reason, he could not produced any documents in respect of payment of additional amount of Rs.1,00,000/- to 1st defendant and P.W.1 stated the date of death of his son Lokesh as on 15.9.2009 and P.W.1 stated the reason for non obtaining endorsement executed from 1st defendant for having received additional sum of Rs.1,00,000/- of suit agreement, wherein P.W.1 stated that as 1st defendant is related to him and hence, on these reasons, he could not obtained endorsement/shara executed from 1st statement defendant on the sale agreement dated 28.4.1999 and P.W.1 denied that he has not paid any additional sum of Rs.1,00,000/- to the 1st defendant and P.W.1 specifically denied that every month, he is running 3-4 chit business in his house and P.W.1 also specifically denied that 1st defendant was in cordial terms and he has received amount from the tenants and he has got adjusted towards chit transaction and P.W.1 admits that he has not obtained encumbrance certificate in respect of suit schedule property existed prior to 1999 and P.W.1 stated that encumbrance certificate Ex.P.5 was given to him by the 1st defendant and he do not know ion Ex.P.5, there is recitals in respect of name of 1st defendant and P.W.1 denied that he has created Ex.P.5 for the purpose of this suit and P.W.1 denied his knowledge about the mortgage of schedule property by 1st defendant in the year 1990 and obtained amount by mortgaging the schedule property and P.W.1 admits that he knew about the discharge of mortgaged loan on 20.3.2002 when 1st defendant has executed sale deed in favour of his brother defendant No.2 and witness is confronted with Ex.P.7 and asked to identify his signature, wherein P.W.1 denied to identify the signature in Ex.P.7 and P.W.1 denied that Ex.P.7 to P.9 are not documents concerned to this case and P.W.1 admits that Ex.P.11 to P.15 these documents are produced, which are filed in criminal proceedings filed by 1st defendant against plaintiff herein and P.W.1 admits that he has not witnessed one K.N.Ramesh in the Police Station, but he denied that he himself and K.N.Ramesh are friends each other and P.W.1 denied that he got instigated K.N.Ramesh to file criminal case against

1st defendant by himself utilizing the blank signed cheques signed by 1st defendant and had filed criminal case against defendant No.1 and P.W.1 also denied that after execution of sale deed in favour of 2nd defendant, he instigated K.N.Ramesh to file cheque bounced case against defendant No.1 and P.W.1 denied that he has created Ex.P.18 to P.22 documents relied by him in the suit and P.W.1 also denied that he has created Ex.P.24 and 25, these two documents in order to suit his purpose and P.W.1 admits that 1st defendant has sold schedule property in favour of 2nd defendant on 20.3.2002. But P.W.1 denied that on the date of execution of sale deed, 1st defendant has handed over possession of suit schedule property and P.W.1 denied his knowledge that the tenants of schedule premises are paying now rent to defendant No.2 and P.W.1 denied that 1st defendant has not executed any sale agreement agreeing to sell the schedule property in his favour and he further denied that he never came in possession of suit schedule property and P.W.1 also denied that he has filed this false suit against defendants only with an intention to snatch away the property of the 1st defendant.

19. The counsel appearing for 2nd defendant cross examined to P.W.1 on 19.11.2013, wherein he admits that he know defendant No.2, who is his full brother and P.W.1 stated that himself and his brother are residing separately as they are separated in the year 1987 and his relation with defendant No.2 is now strained since the date of partition and separation in the year 1987 and P.W.1 stated that there was suit filed by his brother in the year 1987 and subsequently in the year 1994, there was settlement arrived before the court and P.W.1 stated that he was doing agricultural work and at present, he is not attending any work and P.W.1 specifically denied the suggestion that he is running chit fund business and chit business and he denied that Ex.P.1 sale agreement is created by him and P.W.1 denied his knowledge regarding mortgage created by 1st defendant in respect of suit schedule property as on the date of sale agreement with ITI Co-operative Society and obtained loan from the said society and P.W.1 stated that Ex.P.5 is given to him by 1st defendant himself confirming him that the schedule property is free from any encumbrance and as 1st defendant went on postponing to execute sale deed. Hence, there was delay in issuing of legal notice and there was transaction existed between him and 1st defendant during the year 1999-2000 and he has not obtained any documents in this suit in respect of these transaction and P.W.1 admits that he has not obtained original title deeds from 1st defendant and for that, P.W.1 voluntarily stated that as defendant No.1 had parted with possession of schedule property on the date of execution of agreement of sale. Hence, he has not obtained any documents of title from him and P.W.1 admits that 2nd defendant has purchased the suit schedule property from defendant No.1 after discharge of mortgage loan of ITI Employees Co-operative Society and witness volunteers that after issuance of notice by him, he came to know about the defendant No.1 discharged the existing of loan of ITI Co-operative Society and P.W.1 denied that as per sale deed dated 20.3.2002, defendant No.2 came in possession of suit schedule property and P.W.1 admits that defendant No.1 issued attornment notice to the tenants and witness volunteers that in turn tenant have replied the notice informing about the sale transaction entered with plaintiff and P.W.1 admits the tenants are paying rent to defendant No.2.

20. P.W.1 further cross-examined on 4.12.2013 , wherein he admits that he has not seen encumbrance certificate in respect of suit schedule property at that point of time and thereafter, he enquired with 1st defendant as he has not executed sale deed in his favour at that time, defendant

No.1 by securing encumbrance certificate has produced the documents for his perusal of and after perusal of encumbrance certificate, he came to the knowledge that there exist loan outstanding by 1st defendant to ITI Employees Co-operative Society and it was discharged and defendant No.1 has produced encumbrance certificate within the period of 3 years from 1992 to 2002 and P.W.1 denied that after 2nd defendant filed written statement in this suit and thereafter, he has manipulated the documents, encumbrance certificate produced in this case and P.W.1 denied that 2nd defendant after verifying all the relevant documents in respect of suit schedule property has purchased under sale deed and due to existence of ill will and enmity between himself and defendant No.2, he is deposing false evidence and P.W.1 also denied that the sale transaction entered by him with 1st defendant is not within the knowledge of 2nd defendant and P.W.1 admits that he has not produced any documents to show that defendant No.2 is knew about the sale transaction and his possession in respect of suit schedule property and he admits that defendant No.2. is paying tax and he is in possession of schedule property and P.W.1 voluntarily stated that defendant No.2 had ousted his possession forcibly and came in possession of the suit schedule property and P.W.1 denied that rent agreements marked at Ex.P.19 to P.22, in which his name is shown as owner of schedule property and witness denied the suggestion that he never became owner of the suit schedule property and P.W.1 specifically denied that 2nd defendant had no knowledge about the existence of Ex.P.1 by 1st defendant in favour of plaintiff and P.W.1 denied the suggestion that he is deposing false evidence in this case.

21. The plaintiff got examined one Sri.Ramanjane son of Sri.Muniyappa as witness P.W.2 in this case, wherein P.W.2 filed his affidavit evidence in lieu of examination-in-chief under Order 18 Rule 4 of CPC and P.W.2 stated that in his affidavit evidence he stated that he knew 1st defendant Sri.B.Gopal and plaintiff of this suit and he further stated that his brother and defendant No.1 herein working in ITI factory and in that connection, he came in acquaintance with 1st defendant Sri.B.Gopal for last several years and defendant No.1 requested him to grant a loan of Rs.5,00,000/- and accordingly, he has lent a sum of Rs.5,00,000/- in favour of defendant No.1 in the following manner and P.W.1 stated that he has given cheque for Rs.2,00,000/- respective bearing cheque Nos.001873 and 001874 for amount of Rs.4,00,000/- and he has paid Rs.1,00,000/- by way of cash and he has paid Rs.5,00,000/- loan in the month of July 1998 to 1st defendant and P.W.2 stated that he has not maintained the counter foil of cheque book, which was issued by State Bank of Mysore in his name in the regular course of business. However, he has maintained passbook issued by State Bank of Mysore in the regular course of banking business and he is producing passbook standing in his name and also stated that there are entries about payments made by him to 1st defendant towards loan amount regarding two cheques, which are entered in his passbook and P.W.2 may be permitted to mark the said passbook produced by him and he also stated that the payment of Rs.1,00,000/- by way of cash is not reflected in the passbook entry and after obtaining loan from him, defendant No.1 had executed mortgage deed in his favour on 22.7.1998 and the said document is not registered, but 1st defendant has agreed to pay interest at one percent per month on Rs.5,00,000/- loan received by him and P.W.2 stated that during 3rd week of April 1999, 1st defendant informed him that he is going to sell the property in favour of plaintiff herein and he is entering into agreement of sale and he will repay the amount of Rs.5,00,000/- received from him after receipt of advance amount and 1st defendant also further informed to him that he will intimate the date and time to keep himself present before the Sub Registrar office to hand over the

documents and to receive the amount of Rs.5,00,000/- and accordingly, on 27.4.1999, 1st defendant informed him that he is going to execute sale agreement in favour of plaintiff on the next day and he directed him to come to Sub Registrar office around 10.30 a.m on 28.4.1999 and accordingly, he went to Sub Registrar office. By that time one Smt.Yeshodamma, plaintiff herein and 1st defendant and one advocate were present and they got prepared agreement of sale by that time and thereafter, 1st defendant executed agreement of sale in his presence and received Rs.13,00,000/- from the plaintiff in his presence and accordingly, he attested the sale agreement and also Smt.Yeshodamma, who was present agreement of sale attested the agreement of sale, wherein P.W.2 identified his signature and P.W.2 further stated that after execution of sale agreement, plaintiff has paid sum of Rs.13,00,000/- by way of cash in the hands of B.Gopal, 1st defendant and he counted the cash tendered by the plaintiff and thereafter, B.Gopal has paid amount of Rs.5,00,000/- to him and received mortgage deed from him and handed over to the same to plaintiff herein. Similarly B.Gopal had paid sum of Rs.5,00,000/- to Smt.Yeshodamma and thereafter, he left the place to attend some work and subsequently he came to know that the sale transaction would not be completed and the property was sold to 2nd defendant, who is brother of plaintiff herein and plaintiff stated that he has no other transaction except the loan transaction with 1st defendant and he has received a sum of Rs.5,00,000/- on 28.4.1999 on the day of execution of sale agreement and that is the reason he has attested the sale agreement executed in favour of plaintiff and P.W.2 stated that he has received summons issued by this court and thereafter, plaintiff approached him and asked him to give evidence in respect of facts known to him and he gave instructions to advocate to prepare an affidavit evidence, since he has received summons issued by this court. Hence, P.W.1 has deposed this chief examination before this court and got marked his passbook issued by State Bank of Mysore , Hoodi Branch, Bengaluru , it is marked at Ex.P.26 and the said passbook is objected for marking through P.W.2, but this court proceeded to mark the passbook produced by P.W.2, which is material document to prove that P.W.2 has lent loan amount of Rs.5,00,000/- in favour of defendant No.1 and accordingly, the passbook produced by P.W.2 is taken on record marking the said document as Ex.P.26.

22. P.W.2 is cross examined by counsel for defendant No.1, wherein he admits that his name is Sri.Ramanjane and 1st defendant was acquainted to his father and his father was meeting 1st defendant in ITI factory and he do not know since how many years ago his father had working in ITI factory and he do not know, in which branch his father was working in ITI factory and P.W.2 admits that he has not kept any documents to show that his father was working in ITI factory and he do not know, in which branch, his late father was serving and 1st defendant had requested his father seeking to finance him in the year 1998 and when his father had financed defendant No.1 during the year 1998, at that time he came in acquaintance with first defendant. The cheque transaction referred by him in chief examination are pertaining to his account and P.W.2 stated that the two cheques issued by him are account payee cheques and he has instructed his counsel to draft his chief examination affidavit and he admits that in the chief examination he has stated that his brother and 1st defendant working in ITI factory and witness P.W.2 state voluntarily that he used to call his father as brother and P.W.2 denied that his father was not serving in ITI factory and defendant No.1 was not acquainted with his late father and he never demanded any financial help from his father and P.W.2 admits that he received summons in this case to depose as witness and counsel for plaintiff has prepared his chief examination affidavit and he has been summoned to appear in this

suit and he approached the office of advocate for plaintiff and plaintiff has given his address of his counsel and plaintiff also requested him to give evidence as witness, but P.W.2 stated that he did not accompanied plaintiff to the office of his counsel and after receipt of summons, he knew plaintiff since about 15 to 20 years ago and statement made by the plaintiff/P.W.1 regarding his acquaintance for the last 25 years is true statement made by P.W.1, wherein P.W.2 stated that his land and that of plaintiff are situated adjacent to each other and hence, he knew plaintiff and he do not know the occupation of plaintiff and he admits that there is distance of 8 K.M from his village to that of plaintiff's village, but lands are abutting each other and he do not know the main occupation of plaintiff is chit Business and he used to run chit business by running chit business of 8 to 10 of different chit transaction and P.W.2 denied that himself and plaintiff together were running chit business and on that count, he came in acquaintance with 1st defendant and P.W.2 denied that the finance made of Rs.5,00,000/- to defendant No.1 was borrowed from the plaintiff herein and he is not aware of the nature of transaction that is existed between plaintiff and defendant No.1 and P.W.2 stated that 1st defendant approached him in his house and informed about the execution of sale agreement dated 28.4.1999 and P.W.2 admits that 1st defendant had cleared off the amount borrowed from him within one year from the date of availment and P.W.2 stated that the amount of loan lent by himself was well within the knowledge of plaintiff and P.W.2 denied his knowledge that 1st defendant in order to discharge his loan has with drawn money from chit business and he had with plaintiff and plaintiff was also present when 1st defendant was discharged the loan amount and P.W.2 stated that he has not seen the plaintiff had obtained custody of Ex.P.23 i.e., mortgage deed dated 22.7.1998 from the custody of 1st defendant on the date of discharge of loan to defendant No.1 and P.W.2 denied his knowledge about the relief sought for by the plaintiff in this suit against defendant No.1 and P.W.2 stated that 1st defendant approached him in the month of April 1999 and intimate him about returning of loan amount by selling the house property and P.W.2 admits that his presence is not necessary in sale transaction of house property by defendant No.1 and P.W.2 admits that thereafter he went to Taluk Office, K.R.Puram office at K.R.Puram , which was located in Santebedi area and when hw went to Taluk Office, except plaintiff and defendant No.1 there were no other persons presence in that office and thereafter, he handed over agreement to 1st defendant, who in turn has paid amount to him and thereafter, he left the premises of Taluk Office, K.R.Puram. After receiving the loan amount paid by the 1st defendant and P.W.1 denied that 1st defendant had not called him to Taluk Office of K.R.Puram on that date and defendant No.1 and plaintiff never present on 28.4.1999 before Taluk Office at K.R.Puram and defendant No.1 did not paid any amount on that day. However, P.W.2 voluntarily stated that on that day, he has handed over documents in the hands of 1st defendant and thereafter, defendant No.1 had repaid his amount and he denied that 1st defendant has paid loan amount in the house of plaintiff and P.W.2 denied that his chief examination affidavit filed in this case is prepared at the instigation of plaintiff through his counsel and P.W.2 denied that he is not fully aware of the contents of his affidavit evidence and P.W.2 also denied that the Sub Registrar office was situated at a distance of 1 K.M at K.R.Puram and according to witness , at present there is distance between Taluk Office and Sub Registrar office, but he denied that since the year 1999, both the offices are located at the same place and P.W.2 stated that he has not participated in any other transaction except his loan transaction in the month of July 1998 with defendant No.1 and P.W.2 denied the suggestion that he is deposing false evidence in this case in order to help the plaintiff.

23. P.W.2 further cross-examined on 18.10.2014, wherein he admits that he has not produced any documents to show that his father was serving in ITI factory. Defendant No.1 was known to his father and he knew defendant No.1 as he lent loan to defendant No.1 and P.W.2 stated that he has lent loan through mediation of his father and he knew plaintiff of this suit since about 20 years ago, wherein the lands of plaintiff and his lands are situated adjoining to each other and himself and plaintiff are related to same village and he do not know whether agreement of sale has been registered before Sub Registrar of K.R.Puram and P.W.2 denied suggestion that himself and plaintiff together were running chit business and he is deposing false evidence in order to help the plaintiff.

24. P.W.3 is the wife of late Krishnappa namely Smt. Gangamma is examined by the plaintiff in this suit as witness for him, wherein she deposed through her affidavit evidence filed as examination-in-chief and stated that she is the wife of late Krishnappa, her husband was working as driver and also he owned agricultural lands and she knows Chandra Reddy since he was a family friend and in view of close family friendship, her husband lent some of Rs.10,00,000/- to Chandra Reddy, wherein her husband got this amount of Rs.10,00,000/- from out of sale proceeds and agricultural lands bearing Sy.No.127/1 situated at Kundalahalli and her husband died during 2006, wherein present plaintiff was paying interest at the rate of 1% p.a for Rs.10,00,000/- during his life time and she is aware of making payment of interest in her house and during life time of her husband, he repaid Rs.5,00,000/- towards principal amount and for remaining amount of Rs.5,00,000/-, he is paying interest at the rate of 1% p.m i.e., Rs.5,000/- and he has promised to pay balance amount shortly and agreement executed by Chandra Reddy is misplaced and is not available with her. P.W.3 by entering into witness box on 9.7.2014, she affirmed her affidavit filed in this case as examination-in-chief and thereafter, counsel for defendant No.1 cross examined P.W.3, wherein she admits that her husband was working as driver and he is agriculturist and he was lorry driver and she do not have any documents to prove the occupation of late Krishnappa was driver like documents D.L of her husband etc., and P.W.3 denied that late Krishnappa was not working as driver and she is deposing falsely and she do not know about the suit filed in this court and she received notice issued by this court and thereafter she approached the counsel for plaintiff and she has received notice issued by the lawyer, but she do not know the contents of the said legal notice, whereas P.W.3 stated that plaintiff requested her to depose in this case as witness for him and plaintiff also told her that he has obtained money from her late husband and P.W.3 stated that her husband had lent loan a sum of Rs.10,00,000/- about 12 years ago and she was present at that time when her husband had lent loan and as plaintiff helped her late husband for that reason, her husband Krishnappa had lent money to the plaintiff. P.W.3 admits that her husband Krishnappa and plaintiff both belongs to some village and they acquainted with each others as plaintiff had financed her at the time of performance of marriage of his sons and P.W.3 do not know from where her husband had brought amount of Rs.10,00,000/- to be paid to the plaintiff and P.W.3 stated that her husband was having some landed property situated at Kundalahalli and she had sold that the said land and got sale proceeds of Rs.50,00,000/- and he has sold the said land about 15 years ago and out of sale proceeds received by him, he had spent some amount towards construction of house and she do not know the extent of land Sy.No.127/1 of Kundalahalli village and she has no documents to show that her husband had sold Sy.No.127/1. The plaintiff has repaid Rs.5,00,000/- and he still due an amount of Rs.5,00,000/- and she do not know the mode of payment made by the plaintiff in respect of Rs.5,00,000/- during life time of her husband namely Krishnappa and she do

not know whether plaintiff had obtained any acknowledgment for having paid an amount of Rs.5,00,000/- to late husband and she do not know whether there was any document in writing came to be executed between plaintiff and her husband for lending loan to the plaintiff and P.W.3 stated that her husband late Krishnappa had lent the loan amount on the interest basis, but she do not have any documents to show that plaintiff had paid interest to her late husband during his life time and P.W.3 admits that she is receiving interest after death of her husband from the plaintiff, but she do not have any documents to show that she is receiving interest from the plaintiff herein and P.W.3 stated that she was present when plaintiff had returned Rs.5,00,000/- to late Krishnappa, but there was no documents executed between her husband and plaintiff in respect of payment of Rs.5,00,000/- and she do not know the occupation of plaintiff, but plaintiff had paid an amount of Rs.5,00,000/- by way of cash to her husband in her presence and she do not know whether plaintiff is doing chit business and she do not know the finance status of plaintiff. However, P.W.3 stated and denied her knowledge whether plaintiff had constructed apartment in 3 acres of land and she requested the plaintiff to repay the loan amount of Rs.5,00,000/- . She do not know whether Airport authority had acquired land Sy.No.127/1 in the year 1973 and she admits that her late husband had got 4 brothers and she do not have any documents to show that Sy.No.127/1 was exclusively belongs to her late husband Krishnappa and P.W.3 denied that she is falsely deposed that her husband had received Rs.50,00,000/- towards sale proceeds of land Sy.No.127/1 about 15 to 16 years ago and she is deposing false regarding acquisition of land by the Government in respect of Sy.No.127/1 in the year 1973 and P.W.3 denied that late Krishnappa did not have any land to alienate Sy.No.127/1 and P.W.3 admits that she is having three children including herself are maintaining their livelihood on rental income as she has constructed 7-8 residential houses and she denied that she is not receiving any income by lease of buildings and she is leading life by doing cooli work and she admits that she has instructed counsel to prepare her affidavit evidence filed in this suit before plaintiff's lawyer and P.W.3 is unable to give door number, in which she is presently residing and even she is unable to give her full address and she do not specifically in which year her husband had Krishnappa died and she cannot say the survey number of land, which her husband had possessed and P.W.3 denied the suggestion that her late husband Krishnappa was not having financial capacity to lend the money to the plaintiff and now she is deposing falsely in respect of lending amount of Rs.10,00,000/- to the plaintiff and P.W.1 admits that she has not informed plaintiff's counsel by preparing her affidavit evidence in respect of execution of agreement by plaintiff in favour of her husband and she do not know about alleged agreement referred in her affidavit evidence and P.W. 3 denied the suggestion that her late husband Krishnappa had not lent any amount to the plaintiff of Rs.10,00,000/- at interest basis at 1% and plaintiff did not returned any amount of Rs.5,00,000/- to her husband and still there is balance of Rs.5,00,000/- to be paid to her by the plaintiff and she is not receiving any interest from the plaintiff and she denied that as plaintiff had helper her family about 10 years ago and on that reason, she is deposing false evidence just to favour the plaintiff in this suit. Hence, plaintiff examined this witness as admitted by him in his cross-examination.

25. P.W. 4 is the sister of plaintiff Smt.Yeshodamma is examined in this case by the plaintiff as his witness, wherein she deposed through an affidavit evidence filed in this case under Order 18 Rule 4 of CPC as her examination-in-chief and P.W.4 deposed that she know 1st defendant of this suit and plaintiff in this case and she claims to be sister of plaintiff herein and P.W.4 stated further that the

1st defendant requested her to grant a loan of Rs.5,00,000/- and accordingly, she lent a sum of Rs.5,00,000/- to the 1st defendant in the following manner. Rs.1,97,000/- by way of cheque No. "nil and Rs.2,00,000/- by way of cheque No. Nil, and Rs.3,000/- by way of cash and Rs.1,00,000/- by way of cash and all these amounts were paid during July 1995 and 1st defendant has agreed to pay interest at 1% on this amount of Rs.5,00,000/- received by him and she is producing her passbook having account in Karnataka Bank bearing No. 8493 for the relevant period of prove the above payments and P.W.4 stated that during 3rd week of July 1999, B.Gopal informed him that she is going to sell the property in favour of plaintiff and he is entering into agreement of sale and he is ready to repay the amount received by him after receipt of the advance amount and he further informed that he will intimate the date and time later on to approach the office of Sub Registrar to hand over the documents and to receive the amount and accordingly, 1st defendant informed her on 27.4.1999 regarding execution of sale agreement in respect of plaintiff and he requested her to come over to Sub Registrar office of K.R.Puram and requested to come in time at 10.30 a.m and accordingly, she went to Sub Registrar office by that time, plaintiff, 1st defendant and one Ramanjane and one advocate were present and they got prepared an agreement of sale by that time and thereafter, 1st defendant executed agreement of sale in her presence and he received Rs.13,00,000/- from the plaintiff in her presence and she attested the agreement of sale and whereas another witness Ramanjane also attested the document agreement of sale and witness identified her signature and further stated that after execution of agreement of sale, plaintiff had paid sum of Rs.13,00,000/- by way of cash to 1st defendant, but in turn counted the money paid by plaintiff and thereafter, 1st defendant paid a sum of Rs.5,00,000/- to her and similarly paid the said amount of Rs.5,00,000/- to Sri.Ramanjane and thereafter, she left the place as she got some work and subsequently she came to know that sale transaction could not be completed and the property was sold in favour of 2nd defendant, who is brother of plaintiff herein and P.W.4 stated that she has no other transaction except lending of money in favour of defendant No.1 and she has received the said amount of Rs.5,00,000/- on the date of execution of sale agreement dated 28.4.1999 and P.W.4 further examined on 9.6.2014, wherein she identified this affidavit evidence and affirmed its contents are true and correct and also she got marked the passbook produced by her of Karnataka Bank Ltd marked at Ex.P.27 and relevant entries are marked as per Ex.P.27(a) to (c) respectively .

26. Counsel for defendant No.1 cross examined P.W. 4 on 8.7.2014, wherein P.W.4 admits that her father's name is Narayana Reddy and she has given her affidavit evidence and in that evidence, she has shown as daughter of M.Jayarama Reddy and this name refers to her husband. First defendant is related to her as he is the husband of her husband's sister. P.W.4 admits that she is residing in the property address shown by her for the last 22 years and this property, in which he is residing was purchased by her father-in-law and she is having three sons and two daughters. There was division effected in the properties , but she do not remember the date of partition held in their family and there is no other properties held by her except the house property, in which presently she is occupying the same and P.W.4 admits that she is not doing any job and she is house wife and she further admits that her husband was not doing any job and P.W.4 admits that in Ex.P.27, the entry dated 10.12.1994 shows an amount of Rs.2,00,000/- was credited to her account and P.W.4 stated that the said amount was received by her through her mother as she has sold her share of property and P.W.4 denied that except that amount of Rs.2,00,000/- received from her mother, she was not having any amount in her account, but P.W.4 stated that she has received Rs.5,00,000/- towards

sale of her share in property and the said amount has been invested by her in her bank account and she is having documents to show that she is having Rs.5,00,000/- amount with her received through her mother and P.W.4 denied that she was not having any amount in her bank account except the D.D amount of Rs.2,00,000/- credited to her account and P.W.4 stated that 1st defendant had borrowed sum of Rs.5,00,000/- from her in the month of July 1995. But she do not know the purpose of borrowing of loan by defendant No.1 and she has issued cheque for Rs.1,97,000/- to defendant No.1 and Rs.1,03,000/- by way of cash to defendant No.1 and when she paid this amount to 1st defendant, at that time, her husband was present and P.W.4 admits that she has not obtained any documents from 1st defendant for having lent loan to him and P.W.4 stated that 1st defendant was paying interest on Rs.5,00,000/- availed by him at Rs.5,000/- per month, but P.W.4 admits that she has no documents to show that 1st defendant was paying any interest as alleged loan amount to her and P.W.4 stated that she has issued account payee cheque to the 1st defendant, but she is unable to produce the bank statement to show that 1st defendant had encashed the account payee cheque given by her and defendant No.1 had received Rs.1,03,000/- and she has not obtained the signature of 1st defendant on the counter foil of cheque leaf and P.W.4 stated that she can produced the cheque book containing the counter foil receipts of issuance of cheque on her account issued to defendant No.1. P.W.4 admits that 1st defendant's wife died in the accident in the year 1990 and 1st defendant through 1st wife had a daughter, who was minor at that time and P.W.4 denied that 1st defendant along with his minor daughter was residing in her house and she further denied that during that time, 1st defendant himself was looking after their livelihood and after the managing the house. P.W.4 denied that there was no necessity for defendant No.1 to borrow any loan of Rs.5,00,000/- from her and she is deposing false evidence about alleged lending loan amount by defendant No.1 and P.W.4 denied the rest of the cross- examination suggestions directed to her and P.W.4 further cross-examined on Ex.P.27 i.e., passbook relied by the witness, wherein P.W.4 admits that as on 18.12.1994, her account as per Ex.P.27 was showing balance amount of Rs.1,51,322/- and she cannot say the particulars of this amount and she do not know this amount of Rs.1,51,322/- was written in the passbook and this amount was not added to the balance as shown in Ex.P.27 and she do not remember whether an amount of Rs.1,51,322/- is wrong entry made in passbook and it has been scored off. P.W.4 admits that she is having only a daughter and in the previous deposition she has deposed that she is having three sons and two daughters, but the statement of her is wrong and it referred to her father- in-law, wherein her father-in-law is having three sons and two daughters and P.W.4 admits that she has not produced any documents to show that she has invested Rs.5,00,000/- by depositing the same in bank account in the year 1995 and P.W.4 admits that she is having bank balance of Rs.2,00,000/- and she can produced the counter leaf of cheque book to show that she had issued cross cheque in favour of 1st defendant, wherein P.W.4 produced the counter foil cheque book of Karnataka Bank Ltd., from her custody of and in this cheque book, there are 4 cheque leaves, which are blank and the cheque book is marked at Ex.P.28 and P.W.4 stated that she has issued two cheques bearing No.339981 and 339982 respectively drawn in favour of defendant No.1, but P.W.4 admits that she has not obtained any acknowledgment regarding of issuance of these two cheques from the drawee and P.W.4 denied that she is deposing falsely in respect of issuance of these two cheques drawn in favour of defendant No.1/drawee and she is unable to produce account statement on her account to show that the above referred two cheques issued to 1st defendant were encashed and P.W.4 has given explanation that the alleged transaction were about 20 years ago and hence, she could not produce any bank

statement in response to two cheques issued by her and P.W.4 admits that she has not enquired with the bank that she is needed her account statement of the alleged cheque transaction and P.W.4 denied that there was no impediment for her to produce her account statement issued by the bank in respect of encashment of these two cheque transaction and P.W.4 denied the suggestion that these two cheque Nos. 339981 and 339982 are drawn in her self name and utilized the amount for herself and now she is falsely contending that she has lent loan to 1st defendant under these two cheque transactions and P.W.4 denied that defendant No.1 had not received any amount under these two cheques and P.W.4 stated that she do not know any reason for removal of counter foil of cheque leaf bearing No.339984 and 339985 from her cheque book and she admits that the cheque bearing No.339986 along with its counter foil is remained in the cheque book produced by her and it is not used in Ex.P.28 and P.W.4 admits that as per Ex.P.27 entries dated 28.12.1994 her account showing credit balance of Rs.1,98,700/- and she denied that she has not deposited any amount after 28.12.1994 till next date of transaction as per Ex.P.27 and she admits that after withdrawal of Rs.2,00,000/- balance amount is not shown in the passbook and she admits that the transaction entered in Ex.P.27 is in blue ink and it is initialed in the black ink and regarding withdrawal of Rs.2,00,000/- transaction in Ex.P.27, it is written in black ink and initialed in blue ink and P.W.4 admits that except entry in Ex.P.27 remaining entries have not been initialed/signed by the bank officials and she cannot say in Ex.P.27, lost transaction when it was entered with the bank and she denied that except the entry of Rs.1,48,700/- in column No.3 of Ex.P.27, the rest of the transaction/entries in that document are created by her in colluding with plaintiff and she denied that the entries in Ex.P.27 marked as Ex.P.27(a) to (c) are not pertaining to 1st defendant . in respect of loan transaction and P.W.4 stated that she had paid an amount of Rs.1,03,000/- to 1st defendant by way of cash and statement made in her chief examination that she has paid Rs.3,00,000/- in the month of July 1995 is wrong statement made by her and according to witness, she has paid Rs.5,00,000/- to 1st defendant either in the month of July 1995 or as on 29.1.1995 and P.W.4 stated that her brother plaintiff was previously doing agricultural work and at present, she do not know the occupation of plaintiff and she has no personal knowledge about the transaction that have taken place between plaintiff and defendant No.1 and 2 and she has stated in hr chief examination in respect of the transaction entered between plaintiff and 1st defendant in respect of sale of suit house property by defendant No.1 to plaintiff and P.W.4 stated that 1st defendant had told her that he agreed to sell the house property in favour of plaintiff on 26/27th April 1999 and she was not aware the nature of the transaction entered between plaintiff and defendant No.1 till defendant No.1 had informed her and P.W.4 admits that she has not insisted the plaintiff to purchase the schedule property from 1st defendant. However, defendant No.1 had informed her that he is intending to sell the schedule property to her brother and accordingly, plaintiff and 1st defendant asked her to be present in the Sub Registrar office at K.R.Puram and 1st defendant had agreed to sell his house property in favour of plaintiff in her presence and she also admits that in view of 1st defendant's intention to sell the property in favour of plaintiff, her presence was not necessary and P.W.4 stated further that she approached Sub Registrar office on the next day of she received information from 1st defendant to K.R.Puram Sub Registrar office and at that time, one Sri.Ramanjane , plaintiff and defendant No.1 and one advocate were present before the Sub Registrar office on that day, wherein plaintiff had paid an amount of Rs.13,00,000/- to defendant No.1 and thereafter 1st defendant has paid Rs.5,00,000/- out of receipt of advance consideration amount paid to Sri.Ramanjane by defendant No.1 and remaining Rs.3,00,000/- out of sale consideration amount received was

retained by 1st defendant and plaintiff has paid part consideration amount of Rs.13,00,000/- by way of cash, but P.W.4 do not remember the denominations of currency notes consisting of Rs.13,00,000/- paid by plaintiff to defendant No.1 on that day. However, she deposed that she has counted the amount received by her and further defendant No.1 after counting the amount paid by defendant No.1 to her and thereby she has signed the suit agreement Ex.P.1 as attesting witness in the office of Sub Registrar and thereafter, she left the office of Sub Registrar to her home and P.W.4 stated that Sri.Ramanjane also affixed his signature over the agreement of sale Ex.P.1. But she do not remember whether Sri.Ramanjane signed the agreement after she put her signature and P.W.4 stated that in order to visit the Sub Registrar office at K.R.Puram had took about two or three hours on that day and P.W.4 admits that P.W.2, who is sitting in the court hall on that day . P.W.4 admits that she approached the Sub Registrar office at K.R.Puram and in her presence the sale agreement Ex.P.1 was executed and she received amount paid by 1st defendant to her and plaintiff had paid the amount through defendant No.1 and she put her signature on Ex.P.1 as witness and this fact is personally witnessed by her on that day and P.W.4 confronted with her chief examination affidavit, wherein she identified her signature and also she has changed her style of making signature on document since about 4-5 years ago and this fact is not stated by her in hr affidavit evidence in respect of change of signing her signature by change of style signing the same.

27. P.W.4 further cross examined on 23.9.2014, wherein she has stated that she has not sworn to an affidavit before the court of Magistrate in respect of change of making signature style and she has not documents to show that she has issued any paper publication for change of signatures style and P.W.4 admits that she do not know the contents of Ex.P.1 and he stated further that when she went to office of Sub Registrar at K.R.Puram, on that day, parties to the agreement have kept ready the agreement of sale for execution and she is not aware of the transaction what had transpired between 1st defendant and plaintiff on that day of execution of Ex.P.1 and P.W.4 stated that her brother, plaintiff did not informed her to approach Sub Registrar office of K.R.Puram on 28.4.1999 and P.W.4 stated that herself and plaintiff have not transacted jointly in purchase of selling of property and P.W.4 stated that one Sri.Uday Shankar son of Nanja Reddy of Tubarahalli had obtained money from her as loan and he did not returned the said loan amount to her, but she do not remember how much the amount, she lent to Sri.Uday Shankar and she admits that except the loan transaction, there was no any other transactions had with Sri.Uday Shankar and she do not remember whether Sri.Uday Shankar has repaid the loan amount and P.W.4 admits that the cheque issued by Sri.Uday Shankar was came to be bounced and she has filed the case against him and P.W.4 stated that she is not doing any money lending business and she do not remember whether any amount was realized from Sri.Uday Shankar or not and P.W.4 denied her knowledge whether plaintiff /P.W.1 is doing chit business in his residence and P.W.4 denied that herself, 1st defendant and one Sri.Ramanjane are doing chit business along with plaintiff and she further denied that taking undue advantage of the blank signatures of 1st defendant obtained in the chit business, wherein plaintiff colluding with them had created the suit agreement Ex.P.1 and P.W.4 denied that she has not filed any cheque bounce case against Sri.Uday Shankar and she do not remember the case numbered filed against Sri.Uday Shankar and she has also denied that there was no any transaction existed between herself and Sri.Uday Shankar, whereas her brother plaintiff had given blank cheque to her and had instigated to file cheque bounce case against Sri.Uday Shankar and P.W.4 denied that on 28.4.1999 she has been to Sub Registrar office at K.R.Puram on that day. She was paid Rs.5,00,000/- towards

return/refund of loan amount by 1st defendant in the office of Sub Registrar . Neither herself nor plaintiff, defendant No.1 and one Sri.Ramanjane were present in office of Sub Registrar at K.R.Puram, Bengaluru and she further denied the suggestion that she has not lent any loan amount to 1st defendant and in turn defendant No.1 had not returned any loan amount of Rs.5,00,000/- to her on 28.4.1999 and she denied that she is deposing false evidence in respect of Ex.P.1 transaction. But P.W.4 specifically denied that Ex.P.1 is concocted document dated 28.4.1999 and she further denied that 1st defendant did not pay any amount to Sri.Ramanjane on 28.4.1999 and P.W.4 denied that Ex.P.1 on blank stamp papers were obtained under alleged chit transaction and making use of said document by using blank signatures available on such document of defendant No.1 by colluding with each other, they have created the suit agreement of sale Ex.P.1 against 1st defendant. Hence, on perusal of the entire cross-examination of P.W.4, wherein she has not given any material admission in order to discard her evidence and on the contrary, P.W.4 though related to plaintiff as he is the younger sister of plaintiff, but she has produced her passbook and also counter foil cheque book of Karnataka Bank Ltd., and P.W.4 has deposed in her evidence regarding attestation of Ex.P.1 on 28.4.1999 and she received back an amount of Rs.5,00,000/- principal amount of loan paid by 1st defendant out of part consideration amount received from the plaintiff and hence, P.W.4 through her affidavit evidence deposed before the court regarding execution of Ex.P.1 by 1st defendant in favour of plaintiff in the presence of herself and one Sri.Ramanjane, who is another attesting witness and hence, the counsel appearing for defendant No.1 was not able to disprove or impeach the creditworthiness of P.W.4 and on the contrary, the evidence of P.W.4 appears to be trustworthy and she is having amount standing in her bank account, wherein P.W.4 had lent loan amount to defendant No.1 as defendant No.1 has related to her (1st defendant is the husband of P.W.4's husband's sister) and hence, there might not have any agreement came to be executed between P.W.4 and 1st defendant in respect of alleged loan transaction. But P.W.4 had produced her passbook and also counter foil cheque book marked at Ex.P.27 and Ex.P.28 and on perusal of passbook and counter foil receipt, cheque book, wherein she has issued two cheques bearing No.339981 and 339982 issued in the name of 1st defendant and P.W.4 in her affidavit evidence though not stated regarding cheque numbers, but after production of cheque book, wherein it is fact proved on record that 1st defendant was having account in the Karnataka Bank and she had maintained cheque facility, wherein there are two cheques issued for Rs.1,97,000/- and Rs.2,00,000/- in favour of defendant No.1 and P.W.4 stated that she has paid Rs.1,03,000/- by way of cash to 1st defendant and this statement of P.W.4 appears to be probable, wherein on perusal of Ex.P.28 though some transactions are not initialed by the bank officials,. But so far as cheque transactions are concerned, the witness P.W.4 has produced Ex.P.27 and P.28 and it is for the 1st defendant to disprove these two documents by producing bank statement to show that the said two cheques were not realized by encashment, but defendant No.1 not produced any bank account statement of his account in order to disprove Ex.P.27 and P.28 in case of clearing all cheques by concerned bank, wherein after clearing of the cheque by sending the said cheque received from the customer, wherein that will be recorded as OBC and cheque clearance will have to be made after the concerned bank had realized the cheque and paid cash to the drawee and so far as cheque clearing transaction are concerned, they are not initialed by the concerned officials in the passbook. Hence, in this case, 1st defendant has not produced any statement of accounts of bank statement to show that he has not received any such cheques and there are no entries in his bank account maintained by him in order to disprove Ex.P.27 and P.28. Hence, an adverse inference has to be drawn against

1st defendant for withholding of production of bank statement pertaining to his account.

28. Defendant No.1 has given rebuttal evidence in this case as he is examined as D.W.1 through his affidavit evidence filed herein under Order 18 Rule 4 of CPC and D.W.1 further examined and deposed that he is the absolute owner of suit schedule property having purchased the same by virtue of sale deed dated 8.7.1994 purchased from one Sarasamma under this registered document and he has constructed the building over the said property consisting of ground and first floor and he has let out the said house to tenant on monthly rents and also he has mortgaged the suit schedule property in favour of ITI Employees Co-operative Society on 12.9.1995 by depositing title deeds of schedule property for Rs.2,13,000/- and he has discharged the said mortgage loan on 20.3.2002 and it is specifically deposed by D.W.1 that plaintiff is running monthly chits and he was member of several chits with plaintiff for long time and D.W.1 stated that he has borrowed an amount of Rs.5,00,000/- from one Sri.Ramanjane (P.W.2), who is known to the plaintiff in the year 1998 by execution of document in his favour and later on in order to clear of the said loan amount of Sri.Ramanjane, D.W.1 had bid the chit for Rs.5,00,000/- on the chit transaction. He was member with the plaintiff and while giving the chit amount of Rs.5,00,000/-, wherein plaintiff has taken his signature on two blank stamp papers and also obtained blank cheque signed by him stating that that as security for the loan and balance payment of installments of chit transaction, he has executed blank stamp papers authorizing the plaintiff to receive rents till chit amount is over and P.W.1 stated that plaintiff in the course of chit transaction had obtained these documents, which are duly signed by 1st defendant and which are blank stamp papers and accordingly, he has signed the blank stamp papers brought by the plaintiff and gave himself a blank signed cheque and thereafter, he paid Rs.5,00,000/- to Sri.Ramanjane in the presence of plaintiff in his house at Kundalahalli and plaintiff had collected original mortgage deed from Sri.Ramanjane and had retained in his custody and D.W.1 stated that plaintiff agreed to return the mortgage deed once chit transaction is completed and on perusal of the evidence of D.W.1, wherein he has denied the execution of sale agreement Ex.P.1 agreeing to convey the schedule property in favour of plaintiff for Rs.14,00,000/- and also denied to receive Rs.13,00,000/- towards part consideration amount and he further denied the parting of possession and authorizing the plaintiff to collect rents from the tenants is under part performance of contract and D.W.1 stated that plaintiff and his henchmen colluding with each other for agreement of sale misusing the blank papers, which are signed by him arising out of chit transaction and hence, D.W.1 stated that he has filed PCR case against one K.N.Ramesh and plaintiff herein in PCR No.20/2003 and police have filed "B" report in view of the civil suit is pending and D.W.1 also stated that he has mortgaged/pledged the schedule property in favour of ITI Employees Co-operative Society and obtained loan and he discharged the loan and redeemed the mortgage transaction on 20.3.2002 and hence, D.W.1 denied the execution of Ex.P.1 in favour of plaintiff on 28.4.1999 and on the contrary, D.W.1 stated that alleged agreement of sale relied by the plaintiff as per Ex.P.1 is concocted, created and forged document and hence, 1st defendant stated that he had no intention of alienating the schedule property to plaintiff and D.W.1 also denied that he had no alleged loan transaction with P.W.4 Smt.Yeshodamma and D.W.1 also stated that though he has received Rs.1,00,000/- loan from the plaintiff for his urgent legal necessity and he has discharged that amount within two months refunding Rs.1,00,000/- to plaintiff and D.W.1 stated that the encumbrance certificate and other documents are produced by him and after redemption of mortgage transaction on 20.3.2002, he has sold the schedule property in favour of defendant No.2

by execution of sale deed dated 20.3.2002 and as such, he has parted with possession to 2nd defendant, who is in possession of schedule property and also collecting rents from the tenants occupying the premises in respect of ground and first floor. Hence, D.W.1 in his rebuttal evidence denied the claim of plaintiff by denying the plaint averments and evidence of P.W.1 and his witnesses and D.W.1 got examined further, wherein Ex.D.1 to Ex.D.32 documents are came to be marked in the oral evidence of D.W.1 and the said documents marked through D.W.1 are as follows:-

Ex.D.1 certified copy of sale deed dated 6-7-1994, Ex.D.2 is the certified copy of mortgage discharge deed dated 20-3- 2002 (original is handed over to defendant No.2), Ex.D.3 is encumbrance certificate dated 21.7.2015, Ex.D.4 is the salary slip of D.W.1 for the month of April 2003, Ex.D.5 to Ex.D.22 are the 18 electricity demand bills along with receipts for having paid consumption charges, Ex.D.5(a) to Ex.D.22(a) are corresponding receipts, Ex.D.23 is the office copy of legal notice dated 29-1-2001, Ex.D.24 is the reply notice dated 28- 2-2001, Ex.D.25 is the certified copy of judgment of CCNo.27232/2001 dated 9-7-2001. Ex.D.26 is the office copy of notice dated 8-11-2012. Ex.D.27 is the certified copy of private complaint in PCR No.20609/2012, Ex.D.28 is the certified copy of deposition of plaintiff herein dated 19-7-2013 recorded in PCR case, Ex.D.29 is the certified copy of order sheet in CCNo.10962/2013, Ex.D.30 is the certified copy of joint memo filed in that criminal case on 4-6-2014, Ex.D.31 and Ex.D.32 are the two RTC extracts in respect of Sy.No.127/1 they are related to witness PW-3.

Hence, D.W.1 by adducing his evidence and by production of Ex.D.1 to Ex.D.32 pray for dismissal of suit filed by the plaintiff.

29. 1st defendant is cross examined by plaintiff' counsel, wherein he admits that he is working as Technical Assistant in ITI factory at Bangalore and he knew about chit transaction and in the written statement filed by him that plaintiff had obtained one blank cheque and also obtained his signature on blank stamp paper and D.W.1 admits that he has filed a criminal case against the plaintiff herein and one K.N.Ramesh alleging that plaintiff herein had given cheque obtained through him to one K.N.Ramesh and plaintiff instigated K.N.Ramesh to file cheque bounce case and D.W.1 confronted with Ex.P14, wherein D.W.1 admitted this document and also further admitted that police have filed "B" summary in the PCR/private complaint lodged against plaintiff and one K.N.Ramesh and D.W.1 stated that the police have filed "B" report in criminal case due to pendency of this suit and he identified Ex.P15 confronted to him and he also admits that K.N.Ramesh had filed cheque bounce case against him and after trial, he was convicted and court has directed to pay cheque amount and also fine amount to the complainant and even the said order was upheld by the Hon'ble High Court and witness confronted with certified copy of order sheet in CCNo.26272/2003, wherein witness identified and admits this document and it is marked at Ex.P29 and D.W.1 admits that when he has filed criminal case(PCR) against plaintiff and one K.N. Ramesh. By that time, plaintiff had already filed this suit against him for specific performance of contract and D.W.1 stated that he has not executed any sale agreement in favour of plaintiff. But P.W.1 by misusing his blank signatures has created the suit document and filed this suit and D.W.1 admits that he has taken defense in his written statement that the plaintiff has forged his signature and had

concocted Ex.P.1 and filed the suit and D.W.1 admits that after filing of written statement by him in this suit in the year 2003, he has lodged PCR against plaintiff and K.N.Ramesh before the criminal courts and D.W.1 admits that there was no impediment for him to plead in his complaint filed before criminal courts that plaintiff had cheated him by misusing the blank stamp paper signed by him and has created and forged his signature in respect of sale agreement Ex.P.1. However D.W.1 admits that plaintiff has caused legal notice as per Ex.P2 and he replied that notice by giving instructions to his counsel while submitting reply. He had instructed his counsel in respect of all the transaction that have taken place transpired between him and plaintiff and D.W.1 on confrontation of Ex.P.16 dated 10-6-2002, it is noticed caused by K.N.Ramesh and he admits that in Ex.P.14 that he stated that in response to notice issued by one K.N.Ramesh at Ex.P16. There was panchayath conveyed in the house of defendant No.2 and D.W.1 admits that the receipt of legal notice as per Ex.P2, in the month of January 2002 and he had informed 2nd defendant after receipt of notice as per Ex.P2 stating that plaintiff herein had misused the blank stamp papers signed by him and created the suit agreement and P.W.1 stated that he has made bid for sum of Rs.82,000/- in a chit transaction as against the value of Rs.5,00,000/- and there are 50 members in the chit business and its duration fixed was 50 months and every month, each member shall contribute depositing of Rs.10,000/- towards chit transaction and out of 50 members in the chit transaction, he was knowing about 3 to 4 members and he has no documentary proof to show that plaintiff has maintained books of account in respect of chit transaction and D.W.1 denied the suggestion that plaintiff never running any chit business and he is I am deposing falsely in respect of avocation of plaintiff.

30. D.W.1 further cross-examined on 24/11/2015 wherein he admits that in the said transaction while making payment, the usual procedure is that, after deducting chit amount, balance amount will be paid. D.W.1 admits that he was receiving rent from suit schedule property for a sum of Rs.10,000/- per month. The chit transaction was started in the month of 1998. He do not have any documents to show that he was receiving rent of Rs. 10,000/- per month of the suit schedule property from 1998 onwards till filing of suit in the year 2002 and D.W.1 further stated that the tenants in respect of suit schedule property are changing from time to time during this period and D.W.1 denied that whenever, tenants vacated the suit schedule property, their security amount was repaid to the tenants by the plaintiff himself. D.W.1 admits that he has not obtained any separate receipt for having refunded advance amount received from the tenants. However, the witness volunteers that at the time of vacating the leased premises by the tenants, he made an endorsement on the lease agreement itself regarding refund of advance money to the tenants and D.W.1 admits that he has no such document or lease agreement copies produced by him for return of security amount by him to the tenants and D.W.1 voluntarily stated that after refund of advance amount to the tenants, he used to tore out the lease agreements and their copies and whenever, new tenants is inducted in the suit schedule property, there will be lease agreement afresh entered into with the said tenant and D.W.1 do not remember the names of tenants who have occupied the suit schedule property when he executed the sale deed in favour of second defendant and D.W.1 admits that he has issued Legal notice to the tenants informing them to pay rent in future in favour of defendant No.2 and he has issued notice of attornment of lease after execution of sale deed in favour of 2nd defendant through counsel by name Sri.Chandrashekar and D.W.1 was confronted with Ex.P.18 rental/lease agreement wherein he identified this lease deed and further stated that it is created document and as such denied this Ex.P.18. He further deposed that plaintiff never collecting any

rents from the tenants. However, D.W.1 voluntarily stated that he allowed the plaintiff to collect chit amount only and P.W.1 was not running any chit business, whereas he is running the chit business.

31. D.W.1 admits that he was not having any account in Syndicate Bank Branch at Vasanthanagar, Bengaluru and he was not holding of City Bank card and he admits that one Smt. Manjula is his wife and he has got daughter by name Sahithya and further D.W.1 admits that he has signed on two blank stamp papers and the said signatures were obtained on two blank stamp papers just about 3/4th space of the stamp paper and witness D.W.1 confronted with Ex.P.1 and directed to identify the signatures appeared on each page and also at page No.4 wherein witness identified the signature found on page No.1 to 3 on Ex.P.1 and also already marked signatures at page No.4 on Ex.P.1(a). Hence, further signatures are marked at Ex.P.1(e)(f)(g) respectively and D.W.1 stated that he cannot identify the signature of Sri.Ramanjane and Smt.Yeshodamma. According to him, the total sale agreement itself has been forged and D.W.1 admits that he has filed criminal case against plaintiff herein and one Ramesh and in that criminal case 2nd defendant is the witness for him and D.W.1 stated that, he has obtained loan sum of Rs.1,00,000/- from the plaintiff and he had repaid the said loan within two months by way of cash and D.W.1 stated that at that time, he was not having cheque book with him and he approached the plaintiff by way of cash. Further D.W.1 stated that he was having bank account when he repeatedly repaid the loan to the plaintiff. But, he had not drawn Rs.1,00,000/- from his bank account. But, D.W.1 stated that he has pooled that amount of Rs.1,00,000/- in his house and he has obtained some amount from his friends and paid to the plaintiff and P.W.1 cannot spell the name from whom, he has obtained money for the purpose of repay the um to the plaintiff and D.W.1 denied that he had filed cheque bounce case against one Keshava Reddy alleging that, cheque for Rs.5,00,000/- given by him was bounced and D.W.1 also denied that when he signed the blank stamp papers, he has handed over the encumbrance certificate to the plaintiff and D.W.1 denied that, he has executed Ex.P.1 agreement of sale dated: 28/4/1999 in favour of plaintiff. But, he is falsely denying the execution of Ex.P.1.

32. Second defendant is examined in this case as D.W.2, wherein D.W.2 has filed his affidavit evidence under Order 18 Rule 4 C.P.C as examination-in-chief affidavit and D.W.2 further examined himself in the form of his affidavit evidence as chief examination interest in the suit and D.W.2 got marked the documents Ex.D.33 to 53 in his oral evidence and on perusal of evidence of D.W.2, wherein he has deposed in his affidavit evidence and denied his knowledge about existence of Ex.P.1 executed between plaintiff and first defendant. The plaintiff has filed this suit after lapse of three years from the date of alleged execution wherein plaintiff has filed this suit on 21/3/2002 for specific performance of contract and D.W.2 has denied his knowledge of alleged agreement of sale and further he denied his knowledge regarding pendency of suit filed against first defendant till he receives notice and notice is served on him and D.W.2 claims to be the sole owner of suit schedule property measuring 30 x 40 feet along with constructed building on the basis of alleged sale deed executed by defendant No.1 in his favour on 20/3/2002 and D.W.2 stated that first defendant put him in possession of suit schedule property on the date of execution of sale deed and also directed the tenants, who were in occupation of the schedule property to attorn the tenancy in his favour and to pay rents to him. Hence, D.W.2 stated that suit schedule property was mortgaged by defendant No.1 with ITI Employees Co-operative Credit Society Ltd., defendant No.1 had mortgaged the property and obtained loan from the said society. D.W.2 stated that even prior to execution of sale

deed of schedule property by defendant No.1, he has paid advance amount of Rs.2,00,000/- to the first defendant on 13/3/2002 to discharge the loan obtained by him from the ITI Employees Co-operative Credit Society Ltd., and thereafter defendant No.1 has discharged the mortgage by paying the entire amount due to said society and obtained discharge certificate and returned the original documents pertaining to suit schedule property on 18/3/2002 and also produced discharge receipt and got registered sale deed before Sub-Registrar on 20/3/2002 and thereafter defendant No.1 executed registered sale deed on 20/3/2002 in his favour before Sub-Registrar, Bangalore South Taluk, Bengaluru and D.W.2 stated that first defendant attorned the tenancy in his favour since the suit schedule property was in occupation of the tenants and katha has been changed in his name and he is paying tax to the Bruhat Bengaluru Mahanagara Palike since the date of sale deed and he has executed rent agreements in favour of tenants, who are occupying suit schedule property and this defendant had purchased the suit schedule property from its vendor Smt.Sarasamma on 6/7/1974, much less D.W.2 stated that he is bonafide purchaser of suit schedule property for value after verifying the encumbrance certificate over the property and plaintiff is his elder brother and he knows that D.W.2 has purchased the suit schedule property from first defendant. But, plaintiff has concocted the agreement of sale and even according to evidence of defendant No.1, wherein defendant No.1 also denied the execution of sale agreement Ex.P.1 and hence, D.W.2 stated that suit filed by the plaintiff only against defendant No.1 and thereafter he has been impeladed in this case as D.W.2 and hence, D.W.2 stated that plaintiff was running chit transaction in his house for which he is also a member in the chit transaction and after receipt of court notice, he enquired that, first defendant about the alleged agreement of sale and case filed by his brother at that time, who is defendant discloses to him that his brother had concocted that sale agreement in this case by himself and utilizing the blank stamp paper given to his brother for security purpose when he received chit amount by misusing the said blank stamp papers and has filed suit. D.W.2 stated that, he obtained loan from Srinidhi Souharda Co-operative Bank Niyamitha by depositing title deeds in a bank in respect of suit schedule property dated: 28/05/2002 for repair and renovation of the suit schedule building and said original documents are with the said bank and the loan is yet to be discharged and hence, D.W.2 claims to be bonafide purchaser of suit schedule property from first defendant under sale deed dated: 20/3/2002 and D.W.2 also stated that plaintiff had filed an application in I.A.No.4 seeking for injunction against him not to interfere in the possession and collecting rents from the tenants and I.A.No.4 was dismissed on 29/3/2004. Later on, MFA No. 4495/2004 was preferred by plaintiff before Hon'ble High Court of Karnataka. But, he said MFA came to be dismissed by confirming the order passed by this court. Hence, D.W.2 stated that he is in possession of suit schedule property as a bonafide purchaser and absolute owner as per sale deed and he collecting rents from the tenants since the date of sale deed. Hence, D.W.1 got marked documents referred in his affidavit evidence. Hence, D.W.2 by his oral evidence coupled with Ex.D. 33 to 53 prays for dismissal of suit filed by the plaintiff.

33. Counsel for plaintiff cross-examined D.W.2 wherein he admits that he knew first defendant since about 20 years ago in between him and first defendant, there was sale talks were held in the month of December-2001 wherein first defendant has informed him that he intended to sell his property prior to execution of sale deed, he personally visited the suit schedule property and after inspecting the same, he had purchased the suit schedule property and D.W.2 admits that when he inspected the suit schedule property, at that time, tenants were in occupation of suit schedule property . But,

she did not enquire with tenants from whom they are paying rent and it is informed to him by first defendant that who are the tenants occupying the schedule property and also informed the quantum of rent payable by them to him and there are two tenants by name Nagaraj, who has occupied ground floor premises and one Balamurugan in the first floor premises and first defendant told him that, he is receiving rent from the said tenants of sum of Rs.5,250/-. The first defendant did not show him any rent agreements executed by him in favour of tenants and the tenants in occupation of suit schedule property were paying rent to the first defendant himself and D.W.2 admits that he did not enquire the tenants regarding payment of rent to first defendant so as to confirm the said fact. D.W.2 admits that he has purchased the suit schedule property and caused Legal notice to tenants through his counsel. But, he did not enquire with his counsel Sri. Nanjareddy, whether tenants have replied his notice. D.W.2 further admits that first defendant has filed written statement in this case and he did not read over it personally the contents of written statement filed by first defendant in this case. But, the witness volunteers that after receiving of the notice of this suit, he approached the first defendant and enquired about the suit wherein first defendant informed him that plaintiff has obtained his signature on two blank papers in connection with said transaction and has filed this false suit against him and D.W.2 denied the suggestion that, first defendant had informed in respect of tenants who are paying rents to the plaintiff.

34. D.W.2 admits that first defendant had filed criminal complaint against plaintiff and one Ramesh and in that case, he was one of the witness and he has deposed in that case and D.W.2 denied that he has filed suit against the plaintiff in the year 1987, but, D.W.2 stated that himself and his brother K.Chandra Reddy jointly filed as suit against one Akkayamma in respect of property in which plaintiff herein was looking after that suit. But, he did not remember as their relations stained and accordingly, they got appointed separate counsel in the previous litigation filed in the year 1987 and D.W.2 admits that, he informed the contents of complaint filed by first defendant and then only he has given his evidence as witness for defendant No.1 before criminal court and his relationship between him are in cordial terms except in respect of certain land dealings and there are some disputes between him and plaintiff and D.W.2 denied that he has attended funeral ceremony of his mother at the time of death. In this regard, his relationship with plaintiff were strained and defendant No.1 admits that he has filed complaint against plaintiff and one Ramesh, wherein present defendant No.2 is examined as witness and first defendant was examined in that case and she was personally admitted in the court hall and P.W.4 in this case is related to him as elder sister and D.W.2 admits that he purchased the suit schedule property and thereafter he took fresh lease agreements from the tenants and he is receiving rents from the tenants and he has not produced any rental agreements obtained by defendants in the suit and D.W.2 admits that except his oral evidence he has no documentary evidence to show that his brother is running chit transaction and plaintiff is residing in H.V.Reddy Layout since 1995 and witness volunteers that himself and plaintiff are residing in the said house till 1998 and as such he knew the plaintiff's avocation and defendant No.2 state that he is also putting chits with his brother and the said Sale transaction and plaintiff has not obtained any signature of him on blank stamp papers and D.W.2 denied that plaintiff was not running any chit business and on the other hand, first defendant was running chit business and D.W.2 denied that, he had knowledge about the sale agreement took place between plaintiff and defendant No.1 and he had finance to purchase the suit schedule property and he has sold the property measuring 2 acres 8 guntas of land in favour of one Nagaraj and George in Sy.No. 19/2 and

invested the said amount in bank and he was putting chit with plaintiff and he utilized that amount for purchasing the schedule property and D.W.2 admits that he is issued with pass book from his banker and the persons who are putting chit with plaintiff such persons are having knowledge of chit business run by plaintiff and according to D.W.2, about 15 to 20 persons who are members in the said chit transaction, they are aware of plaintiff doing that business and D.W.2 denied that in order to defeat the claim of plaintiff, himself and first defendant together have created the sale deed in favour of defendant No.2 and D.W.2 in his evidence he has stated that plaintiff was aware of the present sale deed to be executed in his favour. He has deposed in his evidence that plaintiff was aware of the sale deed to be executed by first defendant in his favour and D.W.2 volunteers that, plaintiff is residing in his vicinity in the village and hence, on that count plaintiff was having knowledge of sale deed. Further D.W.2 got cross-examined by producing certified copy of written statement filed by plaintiff in O.S.No.7939/2011 dated: 17/1/2013 along with verifying affidavit and it is marked at Ex.D.54.

35. Counsel for plaintiff again cross-examined to D.W.2 wherein he admits that he came to know about the filing of suit in O.S.No.7939/2011 when he met daughter in law of plaintiff wherein she informed him about the suit filed by her in O.S.No.7939/2011 against her father-in-law and in that, she did not remember specific date, when he met daughter-in-law of plaintiff. But, according to D.W.2, about weeks ago, he had met daughter-in-law of plaintiff and D.W.2 stated that copy of written statement was given to him by daughter-in-law of plaintiff as she has applied and obtained copy of Ex.D.54 prior to the date when he met daughter-in-law of plaintiff. He was not aware about the suit filed against 1st defendant in O.S.No.7939/2011 prior to one week ago on the last date of hearing when he met daughter-in-law of plaintiff in the court premises and previous to that occasion, he did not meet her from the year 2011 to 2016 and he never has an occasion to meet the daughter-in-law of plaintiff to ascertain the contents of Ex.D.54 written statement and suit filed by daughter-in-law of plaintiff was against plaintiff herein and D.W.2 denied the suggestion that he is aware of all the transaction in respect of plaintiff herein. Hence, D.W.2 by his oral evidence coupled with documentary evidence marked through him from Ed 33 to 54 prayed for dismissal of suit by declaring him as bonafide purchaser of suit schedule property for value without notice of Exp 1 and D.W.1 has taken defence in his written statement under section 19(b) of Specific Relief Act. Hence, he prays to dismiss the suit.

36. On appreciation of evidence placed on record by P.W.1 to 4 and that of D.W.1 and 2, wherein it is specific case of the plaintiff that defendant No.1 who is the owner of suit schedule property agreed to convey the suit schedule property consisting of house property measuring 30 X 40 feet having consisted of ground floor and first floor premises inducted with tenants as on the date of agreement of sale namely one Nagaraj and Prakash Chandra Reddy and defendant No.1 agreed to sell the suit schedule property for his legal and family necessity and to perform marriage of his daughter for total consideration amount of Rs.14,00,000/- and on receiving Rs.13,00,000/- as advance amount/part sale consideration amount paid by the plaintiff by way of cash in the presence of attesting witnesses and execution of sale agreement dated:28/4/1999 agreeing to convey the suit schedule property within 11 months by receiving balance sale consideration amount of Rs.30,000/- from the plaintiff and it was agreed to retain Rs.70,000/- by the plaintiff out of balance sale consideration amount of Rs.1,00,000/- payable to the tenants who are occupying the suit schedule property towards return

of their security deposit amount by the plaintiff to the tenants. Hence, plaintiff filed this suit for specific performance of contract by issuance of Legal notice dated: 28/1/2002 marked at Ex.P.2. After refusal by defendant No.1 for execution of sale deed and defendant No.1 had denied the execution of sale agreement dated:

28/4/1999 in his reply notice Ex.P.4 dated: 6/2/2002. Hence, plaintiff filed this suit for specific performance of contract . It is the case of the plaintiff that first defendant has suppressed the fact of availment of loan with ITI Employees Co-operative Credit Society Ltd., by first defendant for Rs.2,13,000/- and on 12/9/1995 by creating mortgage of suit schedule property for the collateral security for the loan and defendant No.1 has produced encumbrance certificate at the time of execution of sale agreement as per Ex.P.5 and said encumbrance certificate do not reflect the mortgage, loan transaction dated:

12/9/1995 with ITI Employees Co-operative Credit Society Ltd., and except this encumbrance certificate there was no other encumbrance certificate standing over the suit schedule property. Hence, it is the case pleaded by plaintiff that defendant No.1 was the exclusive owner of suit schedule property purchased under the sale deed dated: 8/7/1994 from one Smt. Sarasamma, who has acquired the property of defendant No.1 and plaintiff stated that, he has paid amount of Rs.13,00,000/- by way of cash in the presence of attesting witnesses and it was agreed by defendant No.1 that after receipt of part sale consideration amount from the plaintiff, he has to discharge the loan of one Sri.Ramanjane (mortgage loan) dated: 22/7/1998 and to pay debt outstanding payable to plaintiff's sister namely Smt.Yeshodamma of Rs.5,00,000/- .

Out of balance earnest amount received by the first defendant to these persons and defendant No.1 had retained an amount of Rs.3,00,000/- after payment of loan liability in respect of discharge of mortgage transaction in favour of Sri.Ramanjane and loan amount in favour of Smt.Yeshodamma respectively and since defendant No.1 did not come forward to execute sale deed , hence, plaintiff constrained to file this suit against defendant No.1 initially and based upon demand notice dated:

28/1/2002(Ex.P.2). It is served upon first defendant as per Ex.P.3. Defendant No.1 has taken up specific plea that plaintiff is running chit transaction and he has bid the chit for Rs.82,000/- and period of 40 months at the rate of Rs.5,000/- is granted to pay the amount and he authorized the plaintiff to collect the rents from two tenants who are occupying the suit schedule property till an amount of Rs.5,00,000/- towards chit transaction as contemplated and hence, defendant No.1 denied the claim of plaintiff for parting with possession under constructive possession of property under part performance of the contract under Sec. 53(A) of T.P.Act in favour of plaintiff under Ex.P.1 on 28/4/1999 and authorizing the plaintiff to recover the rent from tenants under part performance of contract. D.W.1 specifically contended that, he has executed blank stamp papers duly signed by him and also handed over one cheque of Syndicate Bank, Vasantha Nagar, Bengaluru to the plaintiff in respect of

chit transaction and now plaintiff has misused the said blank stamp paper and created suit agreement in collusion with his henchmen. Hence, defendant No.1 denied the execution of Ex.P.1 in favour of plaintiff and it is outcome of manipulation, creation and forgery.

37. After impleading of defendant No.2, who has purchased the suit schedule property from defendant No.1 under sale deed dated: 20/3/2002 wherein just preceding one day of filing this suit, defendant No.2 has purchased the suit schedule property from defendant No.1 under a sale deed dated:

20/3/2002 and defendant No.2 denied his knowledge about Ex.P.1 and he contended that plaintiff has created this agreement of sale Ex.P.1 and filed the suit and defendant No.2 claims to be bonafide purchaser of suit schedule property for value.

38. After scrutiny of evidence of P.W.1 to 4 and by considering the documents produced by plaintiff, wherein Ex.P.1 is marked in this case through P.W.1 and this document is styled as absolute agreement of sale and first defendant confronted with his signatures that were obtained on blank stamp papers. But, D.W.1, who is a retired employee working as Technical assistant in ITI Factory and qualified person, who knows pros and consequences of execution of blank documents duly signed by him and on the contrary, as per decision relied by the counsel for the plaintiff wherein as per Apex court decision and as per section 66 of Evidence Act a party seeking to prove execution of a document is not required to prove that the executant knew the contents thereof when the executant denies to sign it and leads that it is a forgery. On the contrary, there is no iota of documentary evidence on record by the defendants to show that plaintiff is running a chit transaction and he has obtained blank stamp papers of Rs.200/- duly signed by first defendant in respect of chit transaction except oral testimony and self-serving statements of defendant No.1 and 2 in this case. On the contrary, plaintiff[w.1 specifically denied the contention of defendants that, he is running chit transaction and obtaining of blank stamp papers in a transaction raising of chit transaction. Hence, considering the evidence of P.W.1, wherein he has deposed regarding sale agreement Ex.P.1 and also P.W.1 stated that, on 28/4/1999 first defendant redeemed a mortgage deed with P.W.2 Sri.Ramanjane by paying loan amount of Rs.5,00,000/-. P.W.2 has produced mortgage deed and defendant No.1 in turn has given the said mortgage deed in the hands of plaintiff under part performance of contract as per Ex.P.23 and considering the evidence of P.W.2, wherein he has deposed corroborative evidence stating that, he was present at the time of execution of sale agreement Ex.P.1 by first defendant and plaintiff has parted with money of Rs.13,00,000/- to first defendant on 28/4/1999 and P.W.2 identified Ex.P.1 and his signature signed on Ex.P.1 as attesting witness. Admittedly, there is custody of mortgage deed dated: 22/7/1998 came into the custody of plaintiff after first defendant redeemed by discharging loan of Rs.5,00,000/- due to Sri.Ramanjane ie., P.W.2. It is the specific case of the plaintiff that defendant No.1 had borrowed the amount of Rs.5,00,000/- from Yashoda ie., P.W.4 as loan amount and first defendant had agreed to repay the said amount with interest at 1% per annum in favour of Smt.Yeshodamma and according to the statement of P.W.4, she has paid that amount to first defendant by issuing two cheques of Karnataka Bank Ltd., consisting of Rs.1,97,000/- and Rs.2,00,000/- respectively and she has paid Rs.1,03,000/- by way of cash to first defendant and though P.W.4 in her affidavit evidence has not

mentioned the cheque leaf particulars, out of her account with Karnataka Bank Ltd. But, P.W.4 has got produced her Pass-Book marked at Ex.P.27 and also produced cheque book at Ex.P.28 and by considering the entries in Ex.P.27 and 28, wherein there is entry and mentioning of cheque leaf particulars in the name of first defendant bearing Cheque No.339982 and 339986 and though P.W.2 is cross-examined by doing lengthy cross-examination by counsel for defendant No.1 regarding her financial status, but, considering the evidence of P.W. 4, wherein she is having property and also receiving rental income through that property and P.W.4 stated that her mother had sold her share and said amount received during 1995 and as such considering the document Ex.P.27, wherein P.W.4 Smt.Yeshodamma was having amount standing in her credit to pay an amount of Rs.1,97,200/- and Rs.2,00,000/- by way of cheque transaction and also she was having amount to pay Rs.3,000/- and Rs.1,00,000/- in further transactions and hence, there is documentary evidence submitted by P.W.4 to show that, she has lent amount to defendant No.1 of Rs.5,00,000/- and P.W.4 has deposed in her evidence that she was personally present on 28/4/1999 and received the amount paid by first defendant and she has signed agreement of sale as attesting witnesses on 28/4/1999 and P.W.2 Sri.Ramanjane has produced his pass-book marked at Ex.P.26. On scrutiny of P.W.2's evidence as compared to Ex.P.23 ie., unregistered mortgage deed, wherein there is reference of payment of Rs.2,00,000/- each by P.W.2 to defendant No.1 under cheque No.001873 and cheque No.001874 of State Bank of Mysore, Hudi branch, wherein P.W.2 in his affidavit evidence referred the said cheques in respect of payment of amount to defendant No.1 of Rs.2,00,000/- each and P.W.2 stated that he has paid Rs.1,00,000/- by way of cash. Hence, evidence of P.W.2 is trust-worthy to accept that there was loan transaction between P.W.2 and first defendant existed and Ex.P.23 executed by defendant No.1 mortgaging the suit schedule property in favour of P.W.2 by receiving Rs.5,00,000/- as loan amount and P.W.2 stated that he has the document Ex.P.1 after discharge of mortgage transaction by redemption on that day and there is an order passed by this court for marking of un-registered mortgage deed vide Order dated: 24/3/2011, wherein this court permitted the plaintiff to mark the rental agreement dated: 1/4/2002 and simple mortgage deed dated: 22/7/1998 as exhibit in this case. Hence, though document Ex.P.23 is unregistered document, but, plaintiff is making use of this document for collateral purpose to prove that there is redemption of mortgage as it is loan transaction as it is simple mortgage deed.

39. It is the specific case of the plaintiff that he had money with him of Rs.3,00,000/- as on the date of execution of sale agreement and he had borrowed loan amount of Rs.10,00,000/- from the husband of P.W.3 namely Krishnappa wherein plaintiff and Krishnappa are ailing from same village ie., Kundanahally and husband of P.W.3 is now no more. However, P.W.1 admitted in his cross-examination to examine the wife of Krishnappa to prove his contention regarding obtaining loan from deceased Krishnappa of Rs.10,00,000/- and it is the case of the plaintiff that Krishnappa was having alienated the property bearing Sy.No. 127/1 and he has sold that property and received sale proceeds and plaintiff borrowed amount of Rs.10,00,000/- from deceased Krishnappa and paid to defendant No.1 and plaintiff got examined P.W.3 namely Gangamma, who is the wife of said Krishnappa and P.W.3 has deposed before this court by filing her affidavit evidence stating that, she is the wife of late Krishnappa and he was working as Driver and owned agricultural lands and plaintiff is her family friend and due to close family friendship, her husband had lend sum of Rs.10,00,000/- to plaintiff herein and P.W.3 cross-examined at length wherein she deposed evidence before this court stating that, there is balance of Rs.5,00,000/- to be paid to her by the

plaintiff and she is receiving interest from the plaintiff . Even though, P.W.3's evidence is discarded as there is no document produced by her to show that her husband had lent an amount of Rs.10 lakhs to plaintiff. But, it is proved fact that husband of P.W.3 and plaintiff herein are friends and are ailing from same village ie., Kundanahally and late Krishnappa was driver and having agricultural lands, wherein said Krishnappa having capacity to lent money to the plaintiff. Hence, considering the evidence of P.W.3 and even though her evidence is not accepted on record, but, plaintiff to discharge his burden in order to overcome his admission in the cross- examination he has examined P.W.3 as witnesses for him. However, this fact proved on record by evidence of P.W.1, P.W.2 and 4, wherein to lent amount of Rs.5,00,000 due to P.W.2 was paid by first defendant on 28/4/1999 and P.W.2 has handed over document Ex.P.23 to defendant No.1 and thereafter it reached to the custody of plaintiff under part performance and P.W.4, who got payment of Rs.5,00,000/- paid by first defendant on 28/4/1999 as she was present when Ex.P.1 was executed. Hence, it is proved fact that plaintiff had Rs.3,00,000/- amount with him and as amount of Rs.5,00,000/- each was paid to P.W.2 and 4 respectively and hence, there is passing of amount of earnest money by way of cash to defendant No.1 under Ex.P.1 by the plaintiff. Though defendants have produced Records of rights extracts marked at Ex.D.31 and 32, wherein Ex.D.31 is in the name of Central Civil Aviation department and this property was standing in the name of Ramaiah, S/o Chinnanna of Kundalahally village. Ex.D.32 is the RTC standing in the name of Airports Authority of India under M.R.No.24/2005-06(land Acquisition by Central Trash Missioner measuring 1 acre 14 guntas. Though defendant No.1 has relied upon this document, but, there is positive evidence placed by the plaintiff by examining P.W.2 and 4 to show that first defendant has received Rs.13,00,000/- under Ex.P.1 transaction and he has paid Rs.10,00,000/- amount to defendant No.2 on 28/4/1999 and evidence of P.W.2 and 4 is acceptable and trust-worthy evidence, wherein they have produced Bank documents like Pass-book, cheque book and P.W.2 has produced Ex.P.23 on 28/4/1999 and D.W.1 has redeemed the mortgage transaction created under Ex.P.23. Hence, though plaintiff has not produced any document for having obtained Rs.10,00,000/- from deceased Krishnappa, husband of P.W.3 by producing any agreement to loan etc., but, the statement made by P.W.3 that he had borrowed an amount of Rs.10,00,000/-, which he reiterated in the pleadings and also in the affidavit evidence filed by him, which is probable and proximate to be accepted on record. Hence, I hold that first defendant had received an amount of Rs. 13,00,000/- paid by the plaintiff on 28/4/1999 under Ex.P.1 transaction and defendant No.1 had got Rs.10,00,000/- out of that earnest amount to discharge outstanding loan of Rs.5,00,000/- each to P.W.2 and P.W.4 on that day and P.W.2 and P.W.4, who are present on that day of execution of Ex.P.1, have attested the document Ex.P.1 as attesting witnesses.

40. The plaintiff has claimed constructive possession of schedule property through tenants occupying the ground floor and first floor premises namely Nagaraj and Prakash Chandra Reddy and it is the case of the plaintiff that 1st defendant after execution of sale agreement dated 28.4.1999 has authorized him to collect the rent from both the tenants and also authorized him to pay a security deposit amount paid by the tenant and also authorized him to induct new tenant by execution of lease agreements and on the contrary, 1st defendant denied the plaintiff's possession under part performance of contract pleaded under Sec. 53(A) of T.P.Act and also denied the execution of Ex.P.1 a sale agreement in favour of plaintiff dated 28.4.1999 and it is created agreement out of the chit transaction. But considering the oral and documentary evidence placed on record, wherein

defendant No.1 had filed criminal case in PCR against plaintiff herein and one K.N.Ramesh alleging that he has entered into chit transaction for Rs.2,00,000/- and has given cheque of Syndicate bank, Vasanthanagar, Bengaluru as security for chit transaction and in this case, defendant No.1 has taken defense of alleged chit transaction of Rs.5,00,000/- by bidding chit transaction of Rs.82,000/- and he authorized the plaintiff to collect rent in a sum of Rs.5,000/- each for 50 months from February 1999 to March 2002. But there is no iota of evidence to show that there exist chit transaction between plaintiff and defendant No.1 and PCR filed by the 1st defendant against plaintiff herein and another K.N.Ramesh and subsequently criminal case was registered before ACMM Court at Bengaluru, wherein "B" report was filed in PCR No.20/2003 by the concerned investigation officer as per Ex.P.14 and P.15 and it is a fact that K.N.Ramesh had filed complaint under Sec. 138 of N.I Act against defendant No.1 herein, wherein defendant No.1 after trial was convicted and thereafter, 1st defendant has preferred criminal petition after dismissal of criminal appeal before Hon'ble High Court, wherein there was some modification of payment of fine amount before the Hon'ble High Court and as per Ex.P.29, the 1st defendant, who was accused in criminal case had suffered conviction for the offence under Sec. 138 of N.I.Act in the cheque bounce case filed by K.N.Ramesh against defendant No.1 herein, wherein on 12.1.2006, 1st defendant was convicted for an offence under Sec. 138 of N.I.Act and directed to pay fine amount of Rs.2,60,000/- and thereafter, 1st defendant had preferred criminal petition in No.202/2008 before Hon'ble High Court, wherein the Hon'ble High Court has reduced the fine amount and directed 1st defendant to pay a fine amount of Rs.2,05,000/- and hence, the entire defense set up by defendant No.1 and 2 alleging that plaintiff has created document Ex.P.1 dated 28.1.1999 is created and forged document, but their defense is not supported by any cogent and oral and documentary evidence and on the contrary, it is fact proved on record that 1st defendant is retired employee of ITI factory and he is qualified person having executed sale agreement by knowing the contents of Ex.P.1 and in view of Hon'ble Apex Court decision, once document is signed by the person and it is presumed that contents of the documents are read over and admitted and as per Ex.P.1, 1st defendant has authorized the plaintiff to collect rents and the recitals of Ex.P.1 clearly discloses that plaintiff has exercised right of collecting rent from tenants as per Ex.P.1 terms and Ex.P.18 to P.21 are the lease/rental agreement entered into with tenants by the plaintiff, wherein plaintiff himself has paid security deposit amount to tenant and also obtained endorsement on the reverse page of Ex.P.18, Ex.P.20 and hence, plaintiff claimed his constructive possession over tenants as per Ex.P.1 and plaintiff also produced bank documents to show that he has refunded Rs.30,000/- to tenants as per Ex.P.18 by refunding Rs.25,000/- after deducting one month rent due from the tenant and Ex.P.18 to P.21 are the rental agreements, which are produced by the plaintiff and these documents are not denied by defendant No.1 and though plaintiff has not examined any tenants, but these documents are admitted in evidence and they are admissible piece of documentary evidence to prove the possession of plaintiff under constructive possession in pursuance of Ex.P.1 authorizing him to collect the rents and Ex.P.1 is impounded as per orders on I.A.No.6, wherein 1st defendant had filed an application to impound Ex.P.1 on the ground of insufficient stamp duty and penalty and accordingly, this court allowed I.A.No.6 and directed plaintiff to pay duty and penalty and plaintiff has paid duty and penalty on Ex.P.1 by paying an amount of Rs.15,37,800/- and there is endorsement made on Ex.P.1 regarding payment of duty and penalty. Hence, Ex.P.1 is admitted into evidence as plaintiff complied the order passed on I.A.No.6 under Sec. 33 and 34 of Stamp Act. It is the specific case of the plaintiff that 1st defendant had demanded payment of additional sum of Rs.1,00,000/- on account of his need for

legal necessity and also to perform marriage of his daughter within short period of execution of Ex.P.1 and in order to prove this fact, P.W.1 has stated that he has issued cheque drawn on State Bank of India, Kundalahalli branch of his sons account regarding payment of additional sum of Rs.1,00,000/- to 1st defendant. Though defendant No.1 in his evidence contended that he has obtained an amount of Rs.1,00,000/- not as additional advance, but it is loan transaction and he has repaid within two months to plaintiff, but there is no piece of documents produced by the 1st defendant regarding refunding of this amount within two months from the date of availment. But on the contrary, plaintiff by producing bank account extract at Ex.P.8 of his son K.Lokesh Reddy has proved that he has issued cheque for Rs.1,00,000/- bearing cheque No.962087 on 1.2.2003 and also there is cheque bearing No.962086 showing withdrawal of Rs.50,000/- in the account of deceased son of plaintiff and plaintiff also produced Ex.P.9 to show that he has paid amount to tenants of Rs.25,000/- by issuance of cheque on 3.11.1999. Hence, plaintiff has proved that he has exercised right of recovery of rent from the respective tenants, who are inducted in the ground floor and first floor premises and though defendant No.1 has stated that he is attorned tenancy in favour of defendant No.2 and there is suppression of reply notice given by the tenants by defendant No.1 in this suit and hence, by considering the documents produced by the plaintiff, wherein plaintiff was having constructive possession through tenants under part performance of contract Ex.P.1 under Sec. 53(A) of T.P.Act and subsequently the 1st plaintiff's possession has been ousted under alleged document i.e., alleged sale deed executed by defendant No.1 in favour of defendant No.2 on 20.3.2002 under alleged title deed in favour of defendant No.2, which is during subsistence of agreement of sale. Hence, by producing documentary evidence, plaintiff has proved Ex.P.1 is an agreement to sell dated 28.4.1999 executed by defendant No.1 in his favour and Ex.P.1 is not created or forged document and entire defense taken by 1st defendant is not proved on record and on the contrary, 1st defendant, who is signatory to Ex.P.1 and also he has produced Ex.P.5 to the plaintiff when he entered into agreement of sale with plaintiff and plaintiff had proceeded to purchase schedule property as per Ex.P.1 and hence I hold that the plaintiff by examining himself and P.W.2 and 4 and by producing documentary evidence has proved that Ex.P.1 is out right sale transaction entered into by 1st defendant and it is sale agreement and even defendant No.1 has received additional sum of Rs.1,00,000/- from the plaintiff apart from advance amount of Rs.13,00,000/- on 28.4.1999 and defendant No.1 has paid and discharged mortgage transaction by redeeming the mortgage transaction in favour of P.W.2 dated 22.7.1998 on that day and also discharged loan of Rs.5,00,000/- to P.W.4 on that day out of receipt of earnest amount paid by the plaintiff. Hence, plaintiff proved Ex.P.1 as it is sale agreement entered into by 1st defendant and himself and on the contrary, defendant No.1 failed to prove that Ex.P.1 is forged and fabricated document and hence, I answer Issue No.1 and 3 in affirmative and Issue No.2 in negative, addition Issue No.1 framed on 29.5.2010 is answered in affirmative.

41. Issue No.4: The plaintiff filed this suit for specific performance of contract though plaintiff has pleaded his readiness and willingness as required under Sec. 16(c) of Specific Relief Act and P.W.1 also deposed in his evidence by reiterating the facts stating that he was ready and willing to perform his part of contract and only balance sale consideration amount of Rs.30,000/- was remaining payable to 1st defendant and plaintiff though requested 1st defendant. But 1st defendant did not come forward to execute sale deed and thereafter, 1st defendant executed sale deed in favour of defendant No.2 on 20.3.2002 and plaintiff relying upon legal notice dated 28.1.2002, filed this suit

for specific performance of contract, wherein the legal notice was served upon 1st defendant and he sent reply dated 6.2.2002 denying execution of Ex.P.1 in favour of plaintiff and denied to execute sale deed and informed the plaintiff that it is only chit transaction and he executed blank stamp papers and also issued blank cheque of Syndicate Bank, Vasanthanagar Branch, Bengaluru. Hence, defendant No.1 denied to execute sale deed in favour of P.W.1. It is admitted fact that the defendant No.1 has sold the suit schedule property in favour of defendant No.2 on 20.3.2002, wherein the suit is filed on 21.3.2002, seeking for specific performance of contract and plaintiff has issued notice dated 28.1.2002 to defendant No.1 and it is served upon defendant No.1 and he issued reply on 6.2.2002 and plaintiff has relied upon Ex.P.5, encumbrance certificate issued by Sub Registrar, Bengaluru, wherein it is for the period from 1.7.1994 to 23.5.2001, wherein it shows that defendant No.1 has purchased the property under sale deed dated 8.7.1994 from one Smt. Sarasamma and Ex.P.6 is another encumbrance certificate, wherein it shows that the 2nd defendant has purchased the schedule property on 20.3.2002 and there was loan transaction of ITI Employees Co-operative Society obtained by 1st defendant dated 12.9.1995 and this loan was discharged on 20.3.2002 and defendant No.1 has proved the fact of availing loan by him of Rs.2,13,000/- by offering security of schedule property from ITI Employees Co-operative Society at the time of entering into contract with plaintiff and it reveals from the perusal of sale deed of defendant No.2, wherein there is no mention of discharge of loan of ITI Employees Co-operative Society dated 12.9.1995 and defendant No.2 stated that he has issued Demand Draft for Rs.2,00,000/- on 13.3.2002 to discharge loan with ITI Employees Co-operative Society by defendant No.1 and plaintiff also issued paper publication after he obtained agreement of sale, wherein plaintiff produced Ex.P.10, it is paper publication issued by the plaintiff in Prajavani dated 2.7.2002. The 1st defendant inspite of injunction order not to alienate the suit schedule property granted in this suit and inspite of issuance of legal notice dated 28.1.2002 inspite of paper publication dated 2.7.2002, wherein he alienated the schedule property in favour of defendant No.2 and plaintiff has already proved that he has parted with amount on 28.4.1999 paid under Ex.P.1, wherein defendant No.1 has signed Ex.P.1 acknowledging the receipt of Rs.13,00,000/- on 28.4.1999 from the plaintiff and as such, plaintiff has paid 90% of sale consideration amount agreed out of Rs.14,00,000/- wherein plaintiff also paid deposit amount to tenants and as such, as per the agreement, out of balance sale consideration amount only Rs.1,00,000/- to be paid at the time of sale deed and out of that amount, 70% was to be withheld by the plaintiff payable to tenants of ground floor and first floor of their security deposit amount paid in a sum of Rs.30,000/- and 40,000/- and as such, plaintiff was ready to pay balance amount and though time of 11 months fixed under agreement of sale Ex.P.1. But there is no pleadings by either parties that this time of 11 months fixed under Ex.P.1 is agreed period and time is the essence of contract and Ex.P.1 also not recited with obtaining any permission under Sec. 230(A) of Income Tax Act and it is admitted fact on record that the 2nd defendant has deposed as witness in favour of 1st defendant in criminal case filed by 1st defendant against the plaintiff one K.N.Ramesh and it is also fact admitted by D.W.2 in his cross-examination that he is witness deposed in criminal case on behalf of defendant No.1, who has given deposition in PCR No.20/2003 and plaintiff has produced certified copy of deposition of defendant No.1 and 2 deposed as P.W.1 and 2 in PCR No.20/2003. Hence, the 1st defendant has already sold schedule property in favour of defendant No.2 on 20.3.2002 even after issuance of legal notice and also injunction order subsisting granted in this suit and hence, once the property is alienated and plaintiff had filed the suit for specific performance of contract, wherein this issue regarding readiness and willingness becomes redundant. However

plaintiff has proved his readiness and willingness, wherein he has paid major portion of sale consideration amount shown in Ex.P.1 and plaintiff remains to pay balance sale consideration amount payable Rs.30,000/- only out of sale consideration amount of Rs.14,00,000/- and also issued notice Ex.P.4 , which is within the period of limitation of 3 years from the date of Ex.P.1 and also issued paper publication and hence, plaintiff also proved his readiness and willingness, which is mandatory under Sec. 16(c) of Specific Relief Act. I have perused the decisions cited on record by both sides in respect of Sec.16(c) of Specific Relief Act, wherein the plaintiff in this case has proved Ex.P.1, which is a sale transaction entered into between himself and 1st defendant on 28.4.1999 in respect of sale of schedule property and accordingly, Issue No.4 is answered in affirmative.

42. Additional Issue framed on 29.1.2005: This issue is framed in view of addition/impleading of defendant No.2 in this case by allowing I.A.No.3 filed by the plaintiff under Order 1 Rule 10(2) of CPC and defendant No.2 appeared and filed his written statement contending that he is having no knowledge of Ex.P.1 existed between plaintiff and defendant No.1 and defendant No.2 set up defense that he verified the documents of title and also verified the schedule property, which are in occupation of tenant inducted by defendant No.1 and after perusal of encumbrance certificate, and after discussion with 1st defendant, he entered into sale transaction, wherein 1st defendant disclosed loan outstanding due to ITI Employees Co-operative Society dated 12.9.1995 and 2nd defendant offered to purchase the schedule property from 1st defendant and he has paid Rs.2,00,000/- by way of D.D to discharge loan transaction of ITI Employees Co-operative Society by defendant No.1 on 13.3.2002 and accordingly, 1st defendant discharged loan transaction on 20.3.2002 and thereafter, 1st defendant executed sale deed in favour of defendant No.2 on 20.3.2002 by execution of sale deed and 1st defendant has received sale consideration amount of Rs.8,40,000/- paid by 2nd defendant and accordingly, 2nd defendant came in possession through sale deed dated 20.3.2002 and he got obtained katha in the BBMP records and he is paying tax to the property as owner thereof and also he has inducted tenant and there was attornment of tenancy in favour of defendant No.2 by 1st defendant by issue of notice of attornment of tenancy after execution of sale deed. Hence, defendant No.2 claimed to be the bonafide purchaser of schedule property for value without notice of alleged agreement of sale Ex.P. 1 dated 28.4.1999. In order to prove this defense, 2nd defendant has deposed his evidence and got marked documents from Ex.D.33 to Ex.D.54 and D.W.2 deposed in his evidence and also in his pleadings (written statement) filed in this case has denied his knowledge about Ex.P.1 and D.W.2 stated that he is bonafide purchaser of property for value from defendant No.1 and it is fact elicited on record, wherein plaintiff and defendant No.2 are full brothers and defendant No.1 is related to both plaintiff and 1st defendant and defendant No.1 had lost his wife, who was related to plaintiff and 2nd defendant and it is also fact that the relationship between plaintiff and defendant No.2 are strained and their relations are not cordial and they are residing separately and also there was partition held amongst plaintiff and defendant No.2 in respect of their family properties and they are residing separately and there was previous suit filed in the year 1997 in respect of partition, in which plaintiff and defendant No.2 are party and this is admitted facts on record and it is also elicited on record that plaintiff's son had expired leaving behind his wife and daughter, wherein as per Ex.D.54, the daughter-in-law of plaintiff had filed the suit against plaintiff herein seeking for partition and separate possession in O.S. No.8939/2011 and Ex.D.54 is plaintiff copy in O.S. No.7939/2011 produced by the defendant No.2 in his evidence. Though defendant No.2 has claimed that he is bonafide purchaser for value under sale deed dated 20.3.2002 from defendant

No.1. But plaintiff has proved the existence of sale agreement Ex.P.1 between him and 1st defendant, wherein 1st defendant has suppressed the fact of loan transaction dated 12.9.1995 in favour of ITI Employees Co-operative Society and 1st defendant has borrowed loan from P.W.2 and there was mortgage transaction dated: 27.7.1998, which is discharged on 28.4.1999 and 1st defendant knowingly full well that there was injunction order and also paper publication and legal notice issued by the plaintiff has executed sale deed in favour of defendant No.2 and it is fact that defendant No.2 has given evidence on behalf of defendant No.1 in criminal case in PCR No.20/2003 and as such, defendant No.2 was well aware of all the transaction entered into between defendant No.1 and plaintiff and as defendant No.2 is full brother of plaintiff in this suit and it is also fact that 2nd defendant stood as surety for the release of defendant No.1 and he has offered the schedule property as security for release of 1st defendant on bail in C.C.No.26272/2003, wherein defendant No.2 stood as surety in favour of defendant No.1 and offered the schedule property as security for the release of 1st defendant in pursuance of order passed by the criminal Court after disposal of criminal appeal in No.15022/2006 and hence, defendant No.2 was well within the knowledge of all the transaction that were existed between defendant No.1 and plaintiff and defendant No.2 has not enquired with tenant by approaching the tenant, who are in occupation of schedule property before purchase of schedule property from defendant No.1 and even defendant No.2 has not issued any paper publication prior to he purchased the schedule property from defendant No.1

43. D.W.2 in his cross-examination stated that after he purchased the schedule property, he caused legal notice to the tenants through his lawyer. But D.W.2 admits that he did not enquired with his counsel about the receipt of reply from the tenants, who are in occupation of schedule property to the said legal notice caused by him and D.W.2 admits that he did not personally read over the contents of written statement filed by 1st defendant, but D.W.2 stated that after he received notice in this suit, he approached 1st defendant and enquired about the suit, wherein defendant No.1 informed him that the plaintiff has obtained his signature on two blank bonds in connection with chit transaction and has filed this false suit against him and D.W.2 admits that 1st defendant has filed criminal complaint against plaintiff herein and one K.N.Ramesh and D.W.2 admits that he was one of the witnesses deposed in that criminal case filed by defendant No.1 and D.W.2 also admits that he understood the contents of complaint filed by 1st defendant and then only he has given evidence as witness for the 1st defendant before the criminal court and D.W.2 admits that his relation with the plaintiff as on today is in cordial terms in respect of certain land dealings and there are some disputes pending between him and plaintiff and D.W.2 admits that when 1st defendant was examined in this suit, he was personally present in the court hall and D.W.2 admits that after he purchased the schedule property, he took fresh lease agreement from the tenants and he is receiving rents. But D.W.2 admits that he has not produced any such rental agreement obtained by him from the tenants in the suit and D.W.2 also admits that except his oral evidence regarding alleged chit business run by the plaintiff, he has no documentary evidence to show that his brother is running chit business and D.W.2 admits that plaintiff is residing in H.V.Reddy Layout since 1995 and further D.W.2 voluntarily stated that himself and plaintiff are residing in same house till 1998 and as such, he knew the plaintiff's avocation since that year and D.W.2 denied the suggestion made by plaintiff's counsel that he had knowledge of the sale agreement took place between 1st defendant and plaintiff and D.W.2 stated that he has finance to purchase the schedule property as he had sold the property measuring 2 acres 8 guntas of land in favour of one Nagaraj and George in Sy.No.19/2 and D.W.2

stated that he has kept the sale proceeds in his bank account and also he was putting chit with the plaintiff and utilized that amount also for purchasing the schedule property and D.W.2 in his evidence stated that the plaintiff was aware of the sale deed to be executed by 1st defendant in his favour and D.W.2 voluntarily stated that plaintiff is residing in his vicinity in the village and hence, on that count, plaintiff was having knowledge of the sale deed. But on scrutiny of evidence of D.W.2 though he has relied upon Ex.D.36 certified copy of sale deed dated 20.3.2002, which is executed just preceding one day of filing this suit by the plaintiff, wherein the sale deed is obtained for sale consideration amount of Rs.8,40,000/-, wherein in this sale deed recitals, though sale consideration amount of Rs.8,40,000/- is shown (a) to (e) and Rs.2,00,000/- tendered on 13.3.2002 through D.D bearing No.968963 drawn on Vijaya Bank, Bengaluru, but in this sale deed, there is no reference made in respect of discharge of loan transaction by defendant No.1 of ITI Employees Co-operative Society on 20.3.2002 of loan transaction of security of schedule property created on 12.9.1995 and though D.W.2 produced documents by producing encumbrance certificate Ex.D.43 in respect of mortgaging the schedule property with Srinidhi Sowhardha Sahakara Niyamitha in respect of loan transaction and creation of deposit of title deed and also D.W.2 has produced the Xerox copy of legal notice addressed to tenants namely M.Nagaraj Reddy, B.Selva Vinagam and Sri.Balamurugan, wherein defendant No.2 sent this attornment notice dated 8.4.2002 informing the tenants that defendant No.2 has purchased the schedule property under sale deed dated 20.3.2002 and directed the tenants to accept his ownership and directed the tenants to pay rent regularly to defendant No.2. But defendant No.2 has not produced any reply received from the tenants in this case, for this notice dated 9.4.2002. Hence, an adverse inference has to be drawn against defendant No.2 for non production of reply notice under Sec. 114(g) of Evidence Act. Though D.W.2 has produced documents at Ex.D.33 to Ex.D.54 and contended that plaintiff has no sufficient financial capacity to invest the amount towards purchase of schedule property as per his own pleadings in the written statement marked at Ex.D.54. But this contention of defendant No.1 and 2 regarding financial capacity of plaintiff cannot be accepted, wherein it is fact that plaintiff and defendant No.2 are brothers and they had got family lands situated at Kundalahalli and plaintiff is also doing business and considering the property as shown in the written statement (Ex.D.54), wherein the plaintiff is having financial capacity and also properties were partitioned held by the joint family of plaintiff and defendant No.2, wherein the father of the plaintiff and defendant No.2 Narayana Reddy had five children, wherein plaintiff, his brother defendant No.2 herein and Smt. Akkayamma wife of Narayana Reddy and three daughters, Kamalamma, Smt.Yeshodamma and Rathnamma are the sisters of plaintiff and defendant No.2 and one of the sisters Smt.Akkayamma had filed the suit against the present plaintiff and his brother defendant No.2 herein in O.S. No.4976/1987 for partition and separate possession of the properties that were allotted to Narayana Reddy under partition deed dated 3.4.1961 and in that partition suit, the parties have filed compromise petition and the said suit was decreed in terms of compromise and it is pertinent to note that the defendant No.2 has obtained sale deed executed from 1st defendant on 20.3.2002 without obtaining any prior agreement of sale and defendant No.2 directly purchased the schedule property without proper verification of documents and enquiry from defendant No.1 or from the tenants, who are occupying the schedule premises as on 20.3.2002 and defendant No.2 is younger brother of plaintiff herein and it is admitted by D.W.2 that he has deposed as witness for defendant No.1 in PCR case filed by 1st defendant as witness and also defendant No.1, who is related to both plaintiff and defendant No.2 and as such, the transaction entered into between plaintiff and 1st defendant was well within

the knowledge of defendant No.2 herein and 1st defendant allowed the plaintiff to recover rental amount from the tenants and also authorized him to execute fresh rental agreements and also handed over original rent karar executed by him to the custody of plaintiff under part performance of contract as per Ex.P.18 and this court allowed the plaintiff to mark rental agreement dated 1.4.2002 as per order dated 24.3.2011, even though it is unregistered lease agreement entered into between plaintiff and one Nagaraj Reddy in respect of schedule property. Hence, considering the oral evidence on record and also interse relation existed between plaintiff and defendant No.1 and 2 and hence, plaintiff, who has obtained an agreement of sale executed from 1st defendant in respect of suit schedule property under Ex.P.1 on 28.4.1999 and also plaintiff came in constructive possession of schedule property as he is legally authorized to recover rent from the tenants as per the terms of Ex.P.1 and also plaintiff has paid advance lease amount to the respective tenants under Ex.P.18 to P.20 and has exercised his right of ownership as per Ex.P.1 over the tenants, but defendant No.1 in order to cheat the plaintiff, he colluded with defendant No.2 had alienated the suit schedule property in favour of 2nd defendant on 20.3.2002 by execution of sale deed as per Ex.D.30 on 20.3.2002 for Rs.8,40,000/- showing lass valuation/value less than the sale consideration amount agreed under Ex.P.1 in order to defeat the rights of plaintiff agreed under Ex.P.1 and plaintiff has filed this suit initially against defendant No.1 and obtained interim order against 1st defendant on 23.3.2002 not to alienate the schedule property to any 3rd party and thereafter, 2nd defendant is ordered to be impleaded as per order on I.A.No.3 on 20.11.2002. The plaintiff has filed I.A.No.4 seeking ad-interim temporary injunction against defendant No.2, but the said application filed in I.A.No.4 under Order 39 Rules 1 and 2 came to be dismissed on 29.3.2004. Against dismissal of I.A.No.4 by the trial court, wherein plaintiff had preferred miscellaneous first appeal before the Hon'ble High Court and said MFA No.4495 of 2004 filed by the plaintiff came to be dismissed before Hon'ble High Court by order dated 2.9.2005 since there was sale deed in favour of defendant No.2 and in the said order, it is observed that the trial court observations made in I.A.No.4 is upheld by the Hon'ble High Court and confirmed the order on I.A.No.4. But however the amendment application filed by the plaintiff in I.A.No.5, 6 and 12 are allowed by this court and plaintiff got amended the pleadings to incorporate the facts that 2nd defendant in collusion with 1st defendant and tenants has dispossessed him from the constructive possession. Hence, though defendant No.2 has contended that he is bonafide purchaser of schedule property from 1st defendant without having knowledge/notice of Ex.P.1. But from the circumstances, which are surrounded and brought in the suit, wherein defendant No.1 and 2 having close intimacy each other and defendant No.2 has given evidence as witness for defendant No.1 in criminal case filed by 1st defendant and also 2nd defendant stood as surety for the 1st defendant in criminal case by offering schedule property as surety before the criminal court and hence, it appears to the court that defendant No.2 was having well within the knowledge of all the transaction of the 1st defendant, he entered into with the plaintiff and also D.W.2 is well aware of the transaction of his elder brother P.W.1 in respect of suit schedule property. But 1st defendant and 2nd defendant colluding with each other have created sale deed dated 20.3.2002 suppressing the fact of Ex.P.1 and also injunction order, which is operating against 1st defendant granted in the suit and 1st defendant executed sale deed on 20.3.2002 in favour of 2nd defendant knowingly subsisting agreement of sale Ex.P.1 is subsisting as on that day and plaintiff also caused legal notice to defendant No.1 on 28.1.2002 calling upon him to execute sale deed and also caused paper publication in Prajavani dated 2.7.2002 as per Ex.P.10 and plaintiff has paid Rs.1,00,000/- extra amount other than the amount mentioned

in Ex.P.1 to defendant No.1 and hence, the sale deed executed by 1st defendant in favour of 2nd defendant dated 20.3.2002 is during subsistence of sale agreement entered into by defendant No.1 with the plaintiff and defendant No.2 ought to have enquired with the tenants, who are in occupation of the schedule properties regarding payment of rental amount in respect of schedule property i.e., ground floor, first floor to whom they are paying rents. But defendant No.2 has not made any enquiry with tenants, who are occupying the schedule property as on the date of alleged sale deed Ex.D.36. Hence, it appears to the court that defendant No.1 and 2 colluding with each other and defendant No.2 knowingly proceeded to purchase the property from defendant No.1 without making any proper enquiry and hence, the sale transaction entered into between defendant No.2 and defendant No.1 dated 20.3.2002 is apparently during subsistence of the agreement of sale Ex.P.1 relied by the plaintiff in this suit. Hence, I hold that the defendant No.2, who is having knowledge of the plaintiff, who came in constructive possession of schedule property under Ex.P.1 transaction and also plaintiff had obtained rent agreements from the tenants and also he has paid deposit amount to tenants, who have vacated the property and 1st defendant also given the original rent karar in the custody of plaintiff under part performance of contract and D.W.1 in his cross-examination clearly admits his signature appearing on Ex.P.1 on page No.1 to 3 and also he has identified signature on page No.4 at Ex.P.1(a) and also P.1(3)(f) and (g). Hence, D.W.1, who is qualified and educated witness and no prudent man signed the document, which are blank documents, even though they reposed confidence in each other and it is a rule that a prudent man puts the signature on the documents, the responsibility casted upon such party that the normal presumption that party after reading the contents has signed the document and executed the same and hence considering the defense filed by defendant No.2, wherein he is impleaded on record, subsequently on 20.11.2002 as per orders on I.A.No.3 and though D.W.2 has taken a specific defense that he is bonafide purchaser of schedule property without having knowledge of Ex.P.1. But after appreciation of evidence of D.W.2 and considering his cross-examination directed to D.W.2 by plaintiff's counsel and considering the relation of plaintiff, defendant No.1 and defendant No.2 elicited on record, wherein 1st defendant is related to both plaintiff and defendant No.2 and as such, defendant No.2 ought to have made proper and detailed enquiry with the tenants, who are in occupation of ground floor and first floor premises before defendant No.2 obtained sale deed from defendant No.1, but defendant No.2 has not made any proper enquiry with the tenants. Hence, plaintiff by producing the documents of criminal case and also Ex.P.18 to P.21 and these documents will prove that defendant No.1 and 2 have colluded with each other and defendant No.1 has sold the schedule property in favour of defendant No.2 on 20.3.2002 during subsistence of Ex.P.1 agreement of sale between plaintiff and defendant No.1 and considering the limitation aspect also, wherein Ex.P.1 is dated 28.4.1999 and though 11 months time is fixed for performance, But none of the parties have pleaded that this period of 11 months is time is the essence of contract. But from the date of execution of sale agreement, a period of 3 years is computed from 28.4.1999 3 years completes on 28.4.2002 and Ex.P.1 is in limitation and suit filed by the plaintiff relying upon demand notice Ex.P.4 dated 28.1.2002 and the suit is filed on 21.3.2002. Hence, plaintiff has proved that defendant No.1 and 2 have colluded with each other and obtained sale deed on 20.3.2002 during subsistence of agreement of sale Ex.P.1 and as such, the sale transaction hit by Sec.52 of T.P.Act and defendant No.2 was having knowledge of the Ex.P.1 through defendant No.1 and also issuance of legal notice by plaintiff to 1st defendant. Hence, I hold that defendant No.2 is not bonafide purchaser of schedule property for valuable consideration under sale deed dated

20.3.2002 and on the contrary, defendant No.2, who was having knowledge of Ex.P.1 and obtained sale deed from defendant No.1 for lesser consideration amount from defendant No.1 in order to cheat his own brother, plaintiff herein. Hence, defendant No.2 cannot take a defense under Sec. 19(b) of Specific Relief Act. Hence, I answer Additional Issue No.1 framed on 29.1.2005 in negative against defendant No.2.

44. Issue No.5, Additional Issue No.2 and 3 framed on 29.5.2010: The plaintiff has filed this suit for specific performance of contract against defendant No.1 and 2, wherein 1st defendant had executed Ex.P.1 in favour of plaintiff dated 28.4.1999 and defendant No.2 is purchaser of schedule property from defendant No.1 during subsistence of agreement of sale dated 28.4.1999 and plaintiff got amended the pleadings by filing I.A.No.5, 6 and 12 and all these amendment applications were allowed by this court and defendants have filed their additional written statement and plaintiff got inserted para No.17(a) to (c) and also amended prayer column, wherein it is proved by the plaintiff that the 1st defendant, who has produced encumbrance certificate for the period from 1.7.1994 to 23.5.2001, which did not disclosed the mortgage created by the 1st defendant in favour of ITI Employees Co-operative Society and 1st defendant made believe the plaintiff of his absolute ownership over the plaintiff had entered into Ex.P.1 and as such, this act of 1st defendant proves that he has committed an act of fraud on plaintiff suppressing the fact of mortgage of schedule property with ITI Employees Co-operative Society dated 12.9.1995 and subsequently the constructive possession is ousted by defendant No.2 by virtue of sale deed dated 20.3.2002 and plaintiff has proved that defendant No.1 has executed sale agreement agreeing to convey the schedule property for Rs.14,00,000/- and there is payment of Rs.13,70,000/- to 1st defendant and there remains balance amount of Rs.30,000/- payable towards balance sale consideration amount since this court hold that defendant No.2 is not bonafide purchaser of schedule property from defendant No.1 and hence, plaintiff is entitled for the relief of specific performance of contract, who has paid duty and penalty on Ex.P.1 and Ex.P.1 is admitted in evidence and hence, there is no legal impediment for this court to grant the relief of specific performance of contract in favour of plaintiff and after exercise of discretion as vested under Sec.20 of Specific Relief Act, wherein plaintiff is entitled for the relief of specific performance of contract in respect of Ex.P.1 transaction and defendant No.2, who has purchased the schedule property from defendant No.1 during subsistence of sale agreement entered between plaintiff and defendant No.1 and hence, defendant No.2 also shall have to join hands with defendant No.1 in execution of sale deed and hence, plaintiff is entitled for the relief of specific performance of contract. The plaintiff has prayed for possession relief and also mesne profits from the defendants, but the defendant No.2 is in possession of schedule property as per alleged sale deed dated 20.3.2002 and also tenants are in occupation of the schedule property and hence, the plaintiff is entitled for the relief of possession to be obtained by the plaintiff through process of law and the enquiry regarding mesne profits is kept open for enquiry in execution petition to be filed by the plaintiff, wherein a detailed enquiry is required to grant the relief of mesne profits. Hence, plaintiff has proved that his constructive possession is dispossessed from the schedule premises by defendant No.1 and 2 by defendant No.2 and tenants from 20.3.2002 and hence, I hold that plaintiff is entitled for the relief of specific performance of contract based upon Ex.P.1 against defendant No.1 and 2. Hence, Issue No.5 is answered in affirmative, additional Issue No.2 is answered in affirmative and additional Issue No.3 framed on 29.5.2010 is not considered in this suit and enquiry is contemplated in the execution proceedings regarding mesne profits.

45. Issue No.6: In view of my findings arrived and discussed and reasons given on Issue No.1 to 5, additional Issue No.1 framed on 29.1.2005 and 29.5.2010, wherein the suit filed by the plaintiff deserves to be decreed with costs against both the defendants. Hence, I proceed to pass the following:-

O R D E R The suit filed by the plaintiff for specific performance of contract based upon Ex.P.1 dated 28.4.1999 is hereby decreed with costs against both the defendants i.e., defendant No.1 and 2.

It is further ordered and directed to defendant No.1 and 2 jointly to execute the registered sale deed in favour of plaintiff in respect of suit schedule property at the cost of the plaintiff by receiving balance sale consideration amount of Rs.30,000/- to be deposited by the plaintiff within three months from the date of drawing up of decree.

Plaintiff shall deposit balance sale consideration amount of Rs.30,000/- in this suit within one month from the date of passing of judgment and in case, if defendants fails to execute the sale deed within the time granted by this court, the plaintiff is at liberty to obtain sale deed executed through process of law under Order 21 Rule 34 of CPC.

The ad-interim injunction order granted on I.A.No.7 against defendant No.2 not to alienate the schedule property is made absolute till plaintiff obtained regular sale deed executed through process of law.

The enquiry in respect of relief of mesne profits is deferred to hold enquiry in execution case to be filed by the plaintiff.

Draw decree accordingly.

{Dictated to the Judgment writer , transcribed by her, corrected and then pronounced by me in open court this 29th day of March, 2016.} (S.V.KULKARNI) XI
ADDL.CITY CIVIL JUDGE BANGALORE CITY.

ANNEXURE List of witnesses examined for plaintiff:-

P.W.1	Sri. K.N.Chandra Reddy
P.W.2:	Sri. Ramanjane
P.W.3:	Smt. Gangamma
P.W.4:	Smt. Smt. Yeshodamma

List of documents exhibited for plaintiff:-

Ex.P.1	Agreement of sale dated 28.4.1999
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Sri. K. N. Chandra Reddy vs B.Gopal on 29 March, 2016
executed by defendant No.1 in favour
of plaintiff

- Ex.P.2: Copy of Legal notice sent through
advocate for plaintiff to the defendant
No.1 dated 28.1.2002
- Ex.P.3: Postal acknowledgment for having
served the notice on defendant No.1
- Ex.P.4: Reply notice sent to plaintiff through
the advocate for defendant No.1
dated 6.2.2002
- Ex.P.5 & P.6: Two encumbrance certificates in
respect of suit schedule property
- Ex.P.7: Receipt given by plaintiff to Lucent
Technologies
- Ex.P.8: Bank statement extract of plaintiff
- Ex.P.9: Another bank account in respect of
plaintiff
- Ex.P.10: Public notice published in paper
publication in daily newspaper
dated 2.7.2002
- Ex.P.11: Certified copy of order sheet in PCR
No.20/2003
- Ex.P.12: FIR in respect of PCR No.20/2003
- Ex.P.13: Certified copy of deposition of
witness of defendant in PCR
No.20/2003
- Ex.P.14: Certified copy of complaint in PCR
No.20/2003
- Ex.P.15: Certified copy of "B" report in PCR
No.20/2003

Ex.P.16 & 17: Certified copies of two notices in PCR No.20/2003 Ex.P.18: Rental
agreement dated 5.10.1998 Ex.P.19: Rental agreement dated 1.2.2001 executed by
Lucent Technologies in respect of plaintiff Ex.P.20 Rental agreement executed by
Narasimha dated 25.10.2000 Ex.P.21: Rental agreement executed by Balamurgan
dated 11.1.2002 Ex.P.22 Rental agreement executed by Nagaraj Reddy dated 1.4.2002
P.22(a) to (c) Signatures of Nagaraj Reddy, Krishna Reddy, and Muniraja Reddy

Ex.P.23: Mortgage deed executed by defendant No.1 in favour of Ramanjane dated 22.7.1998 Ex.P.24: Office copy of complaint given to police dated 30.7.2002 Ex.P.25: O/c of complaint given to KEB authority Ex.P.26: Pass book of P.W.2, Ex.P.27: Pass book of P.W. 4 Ex.P.28 Cheque book Ex.P.29 Certified copy of order sheet in C.C.26272/2003 List of witnesses examined for defendant:

DW.1 Sri. Gopal List of documents exhibited for Defendant:-

Certified copy of sale deed dated Ex.D.1 6.7.1994 Ex.D.2 Certified copy of mortgage deed dated 20.3.2002 Ex.D.3: Encumbrance certificate dated 21.7.2015 Ex.D.4: Salary slip of D.W.1 for the month of April 2003 Ex.D.5 to 18 electricity demand bills along with Ex.D.22 receipts for having paid consumption charges Ex.D.23 Office copy of legal notice dated 29.1.2001 Ex.D.24: Reply notice dated 28.2.2001 Ex.D.25: Certified copy of judgment in C.C.No. 28232/2001 dated 9.7.2001 Ex.D.26 Office copy of notice dated 8.11.2012 Ex.D.27: Certified copy of private complaint in PCR No.20609/2012 Ex.D.28: Certified copy of deposition of plaintiff dated 19.7.2013 recorded in PCR case Ex.D.29: Certified copy of order sheet in C.C.No.10962/2013 Ex.D.30: Certified copy of joint memo filed in the criminal case on 4.6.2014 Ex.D.31 & 32 Two TRC extracts in respect of Sy.No.127/1 Ex.D.33 and 34 Certified copies of encumbrance certificates from 14.1983 to 31.3.2004 Ex.D.35: Carbon copy of receipt dated 19.3.2002 in respect of purchase of stamp papers Ex.D.35: Certified copy of sale deed dated 20.3.2002 executed by 1st defendant in the name of defendant No.2 Ex.D.36: Certified copy of sale deed dated 20.3.2002 executed by 1st defendant in favour of defendant No.2 Ex.D.37 & 38: Katha certificate katha extract dated 30.10.2014 respectively Ex.D.39 & 40: Property tax paid receipts dated 28.5.2014 and 28.4.2015 Ex.D.41 Certified copy of deed of supplementary mortgage dated 6.1.2000 in favour of Srinidhi Sowhardha Sahakara Niyamita Ex.D.42: Certified copy of supplementary mortgage deed in favour of Srinidhi Sowhardha Sahakara Niyamita dated 27.9.2013 Ex.D.43: Encumbrance certificate for the year 1.4.2004 to 28.6.2015 Ex.D.44: Statement of accounts issued Srinidhi Sowhardha Sahakara Niyamita from 26.2.2009 to 7.10.2015 Ex.D.45: Letter issued by Assistant Accounts Officer dated 27.11.2015 Ex.D.46 to Four demand bills issued by BWSSB D.49:

Ex.D.50 to Four receipts for having paid water D.53: consumption charges to BWSSB Ex.D. 54 Certified copy of written statement filed in O.S.No.7939/2011 XI ADDL.CITY CIVIL JUDGE, BANGALORE CITY