

Sri. D.R.Murthy vs Sri. V.K. Rajashekaran on 12 July, 2022

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O.S.No.3523/2012

KABC010024962012

IN THE COURT OF THE XX ADDL. CITY CIVIL &
SESSIONS JUDGE(CCH-32), BANGALORE CITY

Dated this the 12th day of July, 2022

Present:

Sri.Shivakumara B., B.A., LL.B.,
XX Addl. City Civil & Sessions Judge,
Bengaluru.

O.S.No.3523/2012

Plaintiff: Sri. D.R.Murthy,
S/o. Late Sri V.G. Doraiswamy,
Aged about 57 years,
Residing at 51/26,
Osborne Road Cross,
Kothandarama Layout,
Bangalore 560 042.

(Party in person.)

/VS/

Defendant: Sri. V.K. Rajashekaran,
S/o. Late Sri V.K.Kumaraswamy,
Aged about 63 years,
Residing at 51/9,
Osborne Road cross,
Kothandarama Layout,
Bangalore 560 042.

(By Sri.R.Heeralal, Advocate.)

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O.S.No.3523/2012

Date of Institution of the suit:

22.05.2012.

Nature of the suit:

Specific performance.

Date of commencement of
recording of evidence:

20.02.2017.

Date on which Judgment

12.07.2022

pronounced:

Total Duration:

Years
10

Months
01

Days
20

JUDGMENT

Plaintiff instituted this suit against defendant for the relief of specific performance of agreement of sale in respect subject matter of the suit.

2. The subject matter of the suit (hereinafter called as 'scheduled property') is all that piece and parcel of land and building in the ground floor bearing Corporation No.51/26, Kothandarama Layout, Osborne Road cross, Bengaluru-560 042, measuring east-west 40 ft. and north-south 60 ft., in all measuring 2400 Sq. ft. and the plinth area of the building is 1250 Sq. ft. Plaintiff described the schedule property with boundaries in the schedule of the plaint.

3. The case of the plaintiff is that, the defendant agreed to sell the suit schedule property bearing No.51/26 to the plaintiff for a valuable sale consideration of Rs.3,00,000/-.

Accordingly, both plaintiff and defendant were entered into an agreement of sale dated 27.1.1998. The defendant requested the plaintiff to pay the full sale consideration at the time of signing the agreement of sale as he was in dire need of money to settle the claims of his mother and sisters in the family. Plaintiff agreed to pay the full sale consideration of Rs.3,00,000/- on the condition that physical possession of the suit property are handed over to the plaintiff immediately on signing the agreement of sale. Both parties agreed to the said condition and thus, the sale agreement was signed by the both parties on 27.01.1998. After signing of the agreement, the defendant retained the original agreement of sale with him and had given a copy of the same to the plaintiff.

4. Plaintiff further pleaded that, the defendant acting in part performance of the agreement of sale dated 27.1.1998 put the plaintiff in actual possession of the suit schedule property and simultaneously received the full sale consideration of Rs.3,00,000/- and the same was acknowledged by the defendant on the date of agreement of sale itself through the cheques drawn on Canara Bank, M.G.Road Branch, Bengaluru. The said Canara Bank had issued a certificate confirming the payment of Rs.3,00,000/- to the defendant.

5. It is further pleaded that, in the said sale agreement, it is specifically agreed by the defendant that he needed sufficient time to collect the title deed of the suit schedule property including the family settlement deed, EC and get the water meter and electricity meter connection transferred to his name from the name of his father Late V.K.Kumaraswamy. Therefore, no time limit was stipulated in the agreement of sale to register the suit schedule property. But the defendant has not complied with the said conditions so far and he has not informed the plaintiff as to when he would execute the sale deed in his favour. The plaintiff and defendant being the relatives, the plaintiff had given

sufficient time to defendant to provide the copy of title deeds and he made several requests to the defendant. But the defendant had not handed over the same till the exchange of legal notices in the matter. Ever since the date of sale agreement dated 27.1.1998, since past 14 years, the plaintiff is residing in the suit schedule property with his family members and the plaintiff has made lot of improvement on the property and he has maintaining the same by spending his own money. Accordingly, the plaintiff has spent Rs.32,000/-. The premises bearing No.51/9, 51/26, 51/27 and 51/28 are all located in the same area where the suit schedule property bearing No.51/26 is situated, which were all built by one late V.K.Kumaraswamy during the year 1967-68 and after his death, his legal heirs consisting of his wife, five daughters and two sons have inherited the entire property. Accordingly, the plaintiff is in possession of one block in the ground floor bearing suit schedule property No.51/26.

6. Plaintiff further pleaded that, as usual practice followed by all apartments, the plaintiff has paid fixed building maintenance charges of Rs.1,000/- and it has been paid to the defendant as he volunteered to this work every year. Then the plaintiff got issued the legal notice dated 6.2.2012 to the defendant to furnish the property documents to prepare the sale deed and register the suit schedule property. The plaintiff expressed his anxiety and readiness to perform his part of contract as per the terms of said sale agreement. But the defendant out of greed became hostile and took a different stand and gave false and untenable reply dated 14.02.2012 refusing to execute the sale deed and given a copy of agreement of sale dated 27.1.1998 and defendant falsely stated that plaintiff is a tenant under him. In this process of dishonesty, defendant had filed HRC No.145/2010 and the said subject matter is now pending before the Hon'ble High Court of Karnataka in HRRP No.65/2012 and the plaintiff is advised to approach this court to file a civil suit for breach of contract and specific performance of agreement of sale dated 27.1.1998 in favour of the plaintiff. It is further pleaded that in HRC No.145/2010, the defendant has not produced lease deed, rental agreement, rent receipts and family settlement deed. The plaintiff has been residing in the suit schedule property since 27.1.1998 on the basis of the agreement of sale with possession. In HRC No.145/2010, the Hon'ble court passed an order on I.A. filed under Order VII Rule 14 by the plaintiff calling upon the defendant to produce the original agreement of sale dated 27.1.1998 entered into between the plaintiff and the defendant. As the defendant failed to produce the said documents, the HRC court passed an order dated 02.09.2010 permitting the plaintiff to produce the secondary evidence in respect of the aforesaid documents in the plaintiff's possession. In W.P.No.46142/2011 (GM/CPC) the Hon'ble High Court of Karnataka had made a mistake in recording the submissions of the plaintiff's counsels in the order dated 24.01.2012. The person who is dead on 24.9.1988 cannot sign on 27.1.1998.

7. Plaintiff further pleaded that, the plaintiff is and has always been ready and willing to perform his contract and he had already paid full sale consideration to the defendant. The plaintiff is anxious to complete the registration of sale deed at the earliest and he is ready with the money for paying the stamp duty, registration fee and other charges. The defendant gave untenable reply in his reply dated 14.02.2012 avoiding performance of the contract. Hence, this suit for specific performance of contract of sale or alternative relief of refund of sale consideration amount of Rs.3,00,000/- and improvement expense of Rs.32,400/- in all totaling Rs.3,32,400/- along with interest at the rate of 24% p.a. compounded annually as per the agreement of sale together with compensation of

Rs.55,000/- and other costs and reliefs.

8. Upon service of summons to the defendant, defendant appeared through his advocate and filed the written statement contending that, the very suit of the plaintiff is nothing but a colourable litigation to defeat the valuable orders of eviction dated 24.02.2012 passed against him by the Court of Small Causes, Bengaluru and to cause the delay to this defendant from getting back the possession of suit schedule property bearing No.51/26. The plaintiff challenged the said order before Hon'ble High Court of Karnataka by filing HRRP No.65/12. When plaintiff failed in his attempts, he approached the defendant for grant of time for a period of one year to vacate and to deliver the vacant possession of the petition schedule property in his occupation. The defendant to put an end to the long fought out litigation, had agreed to give him a further time of one year till the 30.6.2013 to vacate and deliver vacant possession of the petition schedule property. The plaintiff had agreed to pay damages of Rs.8,000/- p.m. for occupation of petition schedule premises to the defendant commencing from 1.7.2012. The claim of the plaintiff at para No.3 of the plaint that he entered into an agreement of sale dated 27.1.1998 with defendant to purchase the property bearing No.51/26 for sale consideration of Rs.3,00,000/- is totally false, baseless, frivolous and mischievous. It is denied that the defendant requested the plaintiff to pay the full sale consideration amount of Rs.3,00,000/- as he was in dire need of money to settle the claims of his mother and sisters in the family. It is also denied that, the plaintiff was put in possession of the suit schedule property bearing No. 51/26 by virtue of the alleged agreement of sale. There was no such agreement of sale entered into between the plaintiff and defendant. It is denied that the defendant retained the original copy of the sale agreement and he handed over the copy of the same to the plaintiff. In spite of this defendant's application, calling upon the plaintiff to furnish the documents like agreement of sale etc. filed along with plaint, he took time to file the objections to the said application. Then after perusing the said documents, defendant noticed that plaintiff has clandestinely created three false documents such as xerox copy of alleged agreement of sale dated 27.1.1998 and two bogus vouchers/receipts for having spent some amounts for carrying out repairing. The claim of the plaintiff that there is a recital in the alleged agreement of sale regarding handing over the copy of the alleged agreement of sale to the plaintiff is not true. It is also denied that, the defendant has put him in actual possession of the suit schedule property on 28.01.1998 and simultaneously received the full sale consideration of Rs.3,00,000/- and the same is acknowledged by the defendant in the alleged agreement of sale.

9. It is further contended that the plaintiff was on the look out for rental accommodation and this defendant wanted to let out the premises bearing No.51/26 owned by him, to a suitable tenant. Then both plaintiff and defendant were introduced to each other by a common friend by name Sri.Dayanand and accordingly, this defendant had agreed to lease out the suit schedule property in the ground floor to the plaintiff for a period of 3 years on payment of interest free of Rs.3,00,000/- as security deposit and no rent for the occupation of the said premises. The payment of which were made by the plaintiff as stated at paragraph No.4 of the plaint and not as sale consideration as claimed by the plaintiff. Thus, the claim of the plaintiff that he was put in occupation of the entire suit schedule property has no basis. On the other hand, the plaintiff was put in occupation of only a portion of premises bearing No.51/26 on lease basis. Now the plaintiff has come up with new story claiming a bigger portion whereas premises No.51/26 does not have such a huge land share attached to it. The alleged agreement of sale is a got up and sham document which has been prepared to suit

the conveniences of the plaintiff. Even though there was no time limit stipulated in the alleged agreement of sale as alleged by the plaintiff, no prudent purchaser after paying the entire consideration amount, will wait for more than a decade to come up with his claims and that too after his alleged seller has filed an eviction petition against him. The alleged purchaser has not raised his claims even in his reply to the legal notice for eviction from his alleged seller but gives a vague and evasive reply. The plaintiff never made any requests for handing over the title documents of the defendant pertaining to the property at any time, since he has no right to do so as he was only a tenant. The plaintiff is residing in the said property for 14 years. The plaintiff started paying rents at the rate of Rs.1,000/- p.m. from June 2002 to this defendant and requested him to continue the tenancy. Since the defendant was not in urgent need of the premises he allowed the plaintiff to continue the tenancy and accordingly the plaintiff was paying Rs.1,000/- only per month as rent. After few years, the plaintiff started paying rents by cheques. The claim of the plaintiff that he was paying maintenance charges at the rate of Rs.1,000/- p.m. is false. It is admitted that the plaintiff after lapse of nearly 14 years and during the final stage of HRC proceedings, has got issued a legal notice on 6.2.2012 and called upon this defendant to furnish the property documents etc. as stated in paragraph No.9 of the plaint. But it is denied that defendant out of greed became hostile and took a different stand altogether etc. for the first time in his reply. After expiry of stipulated period of 3 years on the request of the plaintiff, this defendant had extended the tenancy for a further period of 2 years. Thereafter again at the expiry of the said two years, during the year 2002, plaintiff had again requested the defendant for further extension and voluntarily started paying a monthly rent of Rs.1,000/- p.m. During the month of March 2008, when the defendant expressed his requirement of the premises to accommodate his son, the plaintiff requested the defendant to accommodate him for a few more months as he was constructing his own house. Then the plaintiff had completed the construction of his new house and performed the house warming ceremony of his newly constructed house i.e. premises bearing No. 303, III B Main road Cross, behind Ganesha Temple, near Jalavayu Vihar, Kammanahalli, Bengaluru on 08.05.2008 consisting of ground and first floor. But the plaintiff was dodging this defendant and postponing to vacate the premises on some pretext or other. Since there was no option, the defendant caused the legal notice dated 24.06.2009 to the plaintiff and requesting him to vacate and hand over the vacant possession of the premises by 31.7.2009. But the plaintiff sent a belated false reply dated 28.07.2009.

10. Defendant further contended that, nearly 11 years after the alleged agreement of sale and after shelling out the entire consideration amount as claimed by the plaintiff, plaintiff just gave a evasive reply and never asserted his rights as a purchaser in the said reply. In spite of that the plaintiff is failed to deliver the vacant possession of the premises. Thus, defendant was forced to file HRC petition No.235/2009 before the court of Small Causes, Bengaluru. But the same was withdrawn by the defendant as there was mistake noticed by the defendant. The permission was granted by the court with liberty to file the fresh petition. Thereafter the defendant had filed HRC petition in HRC No.145/2010 against the plaintiff. After contesting said HRC petition for nearly one year, the plaintiff came up with an application under Section 43 of the Karnataka Rent Act, 1999 which was dismissed against which the plaintiff had preferred a Writ Petition No.46142/2011 before the Hon'ble High Court of Karnataka. The plaintiff who had entered the premises as a tenant taking advantage of the cordial relationships developed between the parties over the years, and the faith reposed by this defendant in him, cleverly taken away the original lease deed on the pretext of

getting xerox and never returned it and is now trying to usurp the property for a meager amount of Rs.3,00,000/-.

11. It is also contended that, when there is no agreement of sale itself, there is no point of readiness and willingness to perform their parts of the contract, which point has been suitably answered in the replies sent by the defendant to the notices given by the plaintiff. The defendant is the absolute owner of the premises bearing No.51/26. The defendant has already produced the original documents i.e. memorandum of confirmation of oral partition, sketch of the partitioned property, khatha certificate, tax paid receipts in HRC No.145/2010. There is no cause of action to file the suit, as there is no agreement of sale dated 27.1.1998 as alleged by the plaintiff. The defendant never entered into any agreement of sale in respect of suit schedule property with the plaintiff at any point of time and he is not obliged to sell the suit schedule property to the plaintiff. The suit filed by the plaintiff for the specific performance of the alleged agreement of sale and other alternative reliefs is not maintainable ab- initio in view of the fact that the plaintiff has not produced a genuine agreement of sale before the court. The xerox copy of the alleged agreement of sale on which the plaintiff stakes his claim is already been disbelieved by the HRC court in HRC No.145/2010 as well as by the Hon'ble High Court of Karnataka in W.P.No.46142/2011. As a last resort, the plaintiff in HRRP No.65/2012 has agreed to vacate and deliver the vacant possession of the petition schedule premises to the defendant by 30.6.2013 and also agreed to pay the damages at the rate of Rs.8,000/- p.m. for the unauthorised occupation of the same. Therefore, the suit filed by the plaintiff is not maintainable either in law or on facts. Except the above said contentions raised, rest all the averments of plaint are denied by the defendant. Accordingly, defendant prayed to dismiss the suit.

12. In view of rival pleadings of both parties, my predecessor framed the following issues:

1. Whether the plaintiff to prove that the defendant entered into sale agreement dated 27.1.1998 to sell the suit schedule property for a total consideration of Rs.3,00,000/- and received entire amount on the date of agreement itself?
2. Whether the plaintiff to prove the part performance of the contract, defendant put the plaintiff in actual physical possession of the suit property on the date of agreement itself?
3. Whether the plaintiff further proves that the time is not essence of the contract?
4. Whether the plaintiff further proves that he is always ready to perform the part of his contract?
5. Whether the suit of the plaintiff is maintainable without production of original sale agreement?
6. Whether the suit of the plaintiff is barred by law of limitation?

7. Whether the defendant proves that he was put the plaintiff in occupation of only a portion of premises bearing No.51/26 on lease basis and now the plaintiff is liable to be vacate and deliver the vacant possession of the property in view of the orders passed in HRRP No.65/2012?

8. Whether plaintiff is entitled for the relief claimed in the suit?

9. What order or decree?

13. Plaintiff adduced his oral evidence by examining himself as P.W.1 and produced the documentary evidence marked at Ex.P.1 to P.25. Defendant examined himself as D.W.1. Two witnesses are examined as D.W.2 and D.W.3 and one document is marked.

14. I carefully perused the pleadings of both parties, oral evidence adduced and documentary evidence produced by both parties. Heard the arguments of learned counsels appearing for both parties.

15. My answers and findings to the above issues are as follows:

Issue No.1: In the Affirmative;

Issue No.2: In the Affirmative;

Issue No.3: In the Affirmative;

Issue No.4: Partly in the Affirmative;

Issue No.5: In the Affirmative;

Issue No.6: In the Negative;

Issue No.7: In the Negative;

Issue No.8: Partly in the Affirmative; Issue No.9: As per final order passed for the following REASONS

16. Issue No.1, 2, 5 and Issue No.7: Since these issues being interconnected and interlinked to each other, to avoid repetition of facts and evidence, I have taken these issues together for common consideration.

17. It is the case of the plaintiff that, defendant being owner of schedule property, put the proposal of selling of said property to him for a consideration amount of Rs.3,00,000/-. He accepted the offer and agreed to purchase the schedule property for the said consideration amount. Accordingly, both the parties on 27.1.1998 entered into an agreement of sale. It is further case of the plaintiff that, on

the same day itself, defendant put him in possession of the schedule property, simultaneously received the entire sale consideration of Rs.3,00,000/-. But as defendant not acted upon as per the terms of agreement of sale, he is before this court with the suit, seeking specific performance of agreement of sale, against defendant.

18. Defendant denied the said facts. According to him, he not at all intended to sell the schedule property at any time and he not executed agreement of sale dated 27.1.1998 by receiving sale consideration of Rs.3,00,000/- from the plaintiff.

19. In order to prove his case, the plaintiff got examined himself as P.W.1 and he has re-iterated the entire averments of the plaint in the affidavit filed in lieu of examination-in-chief. He also deposed that, himself and defendant were entered into a sale agreement with respect to the suit schedule property bearing No.51/26 for a valuable sale consideration of Rs.3,00,000/-. Accordingly, as on the date of said sale agreement, the plaintiff had paid the entire sale consideration of Rs.3,00,000/- on the condition that physical possession of the suit property should be handed over to the plaintiff on signing of the agreement of sale and receipt of the sale consideration by the defendant. Both parties agreed to the said condition and the same was incorporated in the sale agreement and accordingly, the same was signed by both parties on 27.1.1998. After signing of both parties, the original agreement was retained by the defendant in his custody till the execution of the sale deed as mutually agreed by the parties and the same was also mentioned at paragraph No.7 of the said sale agreement. The said agreement is duly witnessed by wife of the plaintiff

-Smt.Bhagyalakshmi and also wife of defendant-Smt.Durga Rajashekar. Therefore, by virtue of the said sale agreement, the plaintiff was put in possession of the suit schedule property as on the date of the alleged sale agreement entered into between the plaintiff and defendant.

20. In support of his oral evidence, plaintiff has produced the documents such as Certified copy of writ petition filed in W.P.No.2765/2016(GM-CPC) as per Ex.P.1, Copy of the Agreement of Sale as per Ex.P.2, certified copy of the Canara Bank Certificate as Ex.P.3, Ex.P.4 and 5 are the Bills, Ex.P.6 is the Legal Notice, Ex.P.7 is the Reply Notice, Ex.P.8 is a Re-joinder of the plaintiff, Ex.P.9 is another reply notice, Ex.P.10 and 11 are the certified copies of the Order Sheets, Ex.P.12 is the certified copy of the Petition in HRC No.235/2009, Ex.P.13 is the certified copy of the Affidavit in HRC No.235/2009, Ex.P.14 is the certified copy of the Order Sheet in HRC No.145/2010, Ex.P.15 is the Khatha Certificate, Ex.P.16 is the Paper publication, Ex.P.17 is the Telephone bill, Ex.P.18 is the Receipt, Ex.P.19 is the Water bills along with receipts, Ex.P.20 is the certified copy of the Order Sheet in HRC No.145/2010, Ex.P.21 is the certified copy of the Vakalath, Ex.P.22 is the certified copy of the Complaint, Ex.P.23 is the evidence in HRC No.145/2010, Ex.P.24 is the Sketch, Ex.P.25 is the Khatha Certificate.

21. On the other hand, in order to prove his case, the defendant himself got examined as D.W.1 and has re-iterated the written statement averments in his affidavit filed in lieu of examination-in-chief. He also deposed that he was not entered into an agreement of sale dated 27.1.1998 with the plaintiff in respect of schedule property. No such agreement was ever executed by him in favour of the plaintiff and the said alleged agreement is a forged and fabricated document. The plaintiff being a

qualified Chartered Accountant has not produced even a scrap of paper as title deeds in respect of schedule property except the fabricated sale deed. The amount of Rs.3,00,000/- was given as consideration towards execution of the lease deed and he was never in need of any money for payment to any of his family members as alleged by the plaintiff. The plaintiff was put in possession of the schedule property only as a tenant and never under the alleged fabricated agreement to sell. The two receipts produced by the plaintiff towards amount spent for repairs etc. fabricated documents. Since the alleged agreement to sell dated 27.1.1998 itself does not exist, the question of considering the terms contained therein does not arise at all. D.W.1 further deposed that, the value of the schedule property during the year 1998 was much more than Rs.25 lakhs. The plaintiff was introduced by a common friend by name Dayanand stating that the former was looking for a suitable rented premises and accordingly, agreed to rent out the schedule property to the plaintiff and he was put in possession of the same after the lease amount of Rs.3,00,000/- was paid by the plaintiff in favour of the defendant. After some time, the plaintiff with malafide intentions approached the defendant stating that he wanted to take copies of the lease deed and took back the original lease deed dated 27.1.1998 and failed to return the same. The plaintiff has clandestinely made use of the said lease deed dated 27.1.1998 to fabricate the alleged agreement to sell dated 27.1.1998 and that is the reason why he is unable to produce the original alleged agreement to sell dated 27.1.1998 or any other title deeds pertaining to the schedule property. The plaintiff never took any such contention before the trial court in HRC No.145/2010 as to the existence of the alleged agreement to sell. The same is an after thought. Then on 7.5.2010, the defendant got issued the legal notice to the plaintiff calling upon him to quit, vacate and deliver the vacant possession of the schedule property. But the plaintiff sent a reply dated 27.5.2010 to the said notice through his advocate. Even in the said notice, the plaintiff has not taken any contention that he is in possession of the schedule property in his capacity as an agreement holder to purchase the same.

22. D.W.1 also deposed that there is no family settlement at all and the allegations made by the plaintiff that he sought time to produce copies of the mother deed, family settlement deed, encumbrance certificate etc. are all false, frivolous and baseless. The theory of family settlement is an imagination of the plaintiff. The defendant succeeded to the schedule property by virtue of registered Will dated 19.01.1938.

23. It is the definite case of the plaintiff that the plaintiff himself and defendant were entered into an agreement of sale dated 27.1.1998 with respect to the suit schedule property for a valid sale consideration of Rs.3,00,000/-. As per the conditions of the said sale agreement, the plaintiff was put in physical possession of the suit schedule property. As on the date of execution of the sale agreement. The plaintiff has also paid the entire sale consideration of Rs.3,00,000/- to the defendant. Then the defendant had sought for time to get the title deeds, i.e. mother deed, family settlement deed, Khatha, encumbrance certificate, tax paid receipts to enable the plaintiff to prepare the sale deed for registration. But the defendant never provided the said documents and dragged the matter with ulterior motives to defraud the plaintiff inspite of the plaintiff requesting the defendant to provide the title deeds. After taking possession of the suit schedule property on 27.1.1998, the plaintiff and his family have been residing in the said property and he had spent Rs.11,100/- towards replacing the old water line, installing water tank etc. The plaintiff has also spent Rs.5,700/- towards installation of water pump, replacing electrical cables etc. and accordingly, he had spent a

total sum of Rs.16,800/- towards capital improvement on the property. In spite of legal notice issued by the plaintiff to the defendant to get execute the registered sale deed, the defendant failed to do so. Hence, he had filed the suit against the defendant for the relief of specific performance of contract based upon the said sale agreement.

24. On the other hand, it is the case of the defendant that the plaintiff was introduced by a common friend by name Dayanand that plaintiff was in need of house on rental basis and accordingly, the defendant was also intending to lease out the schedule property and therefore, the defendant agreed to let out the suit schedule property to the plaintiff. The defendant had let out the suit schedule property to the plaintiff for a period of 3 years on depositing the interest free deposit amount of Rs.3,00,000/- and no rent for the occupation of the said premises. Therefore, the claim of the plaintiff that he was put in occupation of the entire suit schedule property has no basis. On the other hand, the plaintiff was put in possession of the occupation only a portion of premises bearing No.51/26 on lease basis. Another main contention of the defendant is that, he has not at all executed any alleged sale agreement in favour of the plaintiff and no such agreement was entered into between the plaintiff and defendant. Accordingly, the defendant has denied the execution of the said sale agreement alleged to have been executed in favour of the plaintiff.

25. It is to be noted that, as already discussed above, the heavy burden is on the plaintiff to prove that the plaintiff himself and defendant entered into the sale agreement with respect to the suit schedule property for a valid consideration of Rs.3,00,000/- and accordingly, as on the date of signing the said sale agreement dated 27.1.1998, the plaintiff had paid the entire sale consideration amount to the defendant and as per the condition of the said agreement, the plaintiff was put in possession of the suit schedule property. Therefore, according to the plaintiff, the possession of the suit schedule property was handed over to the plaintiff as on the date of agreement. Hence, such being the facts, the heavy burden is on the plaintiff to prove as to whether the defendant has executed the said sale agreement in his favour with respect to the suit schedule property. In order to prove the alleged execution of sale deed, plaintiff has produced the copy of the sale agreement dated 27.1.1998, which is marked as Ex.P.2 as secondary evidence. As per the version of the plaintiff and as per the terms and conditions of the said sale agreement, the original agreement to sale was remained with the defendant and copy thereof was given to the plaintiff. Therefore, the plaintiff has produced the copy of the sale agreement during the course of evidence, which is marked as Ex.P.2. It is significant to note that at the time of marking the said sale agreement, the learned counsel for the defendant has objected the same as it was xerox copy and unregistered document and stamp duty paid is insufficient. Taking into consideration of the pleading and also condition on Ex.P-2, wherein it is already stated that the original agreement was with the defendant, therefore, Ex.P.2 was marked subject to objection. Against the marking of the said copy of the sale agreement as Ex.P.2, defendant has preferred writ petition before the Hon'ble High Court of Karnataka in W.P.No.2765/2016 (GM/CPC) marked as Ex.P.1. On careful perusal of Ex.P.1, Order dated 22.8.2016 passed by the Hon'ble High Court of Karnataka, it has been held and made observation that, "The submissions of the learned counsel have received my thoughtful consideration. In paragraph No.3 of the plaint, the respondent has made the necessary averment that he has paid consideration of Rs.3 Lakhs towards the purchase of the suit schedule property, that both the parties have signed the sale agreement on 27.1.1998, that the defendant (petitioner herein) retained the said original sale agreement and that

its copy is given to the plaintiff (respondent herein). Under these circumstances, I do not see any legal impediment in admitting the said sale agreement as secondary evidence".

By virtue of the order passed by the Hon'ble High Court of Karnataka as per Ex.P.1, this court admitted the said sale agreement as secondary evidence.

26. Then the defendant has preferred writ petition before the Hon'ble High Court of Karnataka by questioning the Writ Petition No.14514 and 14515/2018 (GN/CPC) C/W W.P.No.5675/2018 by challenging and questioning the order passed by this court on I.A.No.X and also questioning the admission and marking of Ex.P.2 pending before the IT and cancel such admission and marking of Ex.P.2. After having heard on both sides, the Hon'ble High Court of Karnataka has allowed the said writ petitions and set aside the orders passed on I.A.No.X and XI. The Hon'ble High Court of Karnataka has passed an order stating that the order passed marking Ex.P.2 subject to objections on 15.09.2017 is set aside with a direction to trial Court to consider marking of the document after taking note of the objections of the defendant regarding its marking in light of the observations made above. It is further held that the Order on I.A.No.X is set aside with a direction that I.A.No.X would be considered at the time of marking of Ex.P.2. Subsequently, by virtue of the order passed by the Hon'ble High Court of Karnataka in W.P.No.14514-515/2018 (GM-CPC) C/W W.P.No.5675/2018, this court by considering the objection raised by the defendant, passed an order on I.A.No.XVII and the plaintiff who is party in person was directed to pay Rs.2,23,000/- + Rs.22,500/- for a total sum of Rs.2,45,500/- as stamp duty and penalty on Ex.P.2 within one month from the date of passing the order by this court and otherwise, the document under Ex.P.2 will be impounded. Accordingly, plaintiff is liable to pay the stamp duty and penalty as imposed by this court by its order dated 8.9.2020.

27. Subsequently, the plaintiff filed an application I.A.No.XVIII under Section 11 read with Section 153 of CPC seeking withdrawal of order in respect of levy of Rs.2,45,500/- as duty and penalty on the document marked under Ex.P.2 passed by this court dated 8.9.2020. But, the defendant not filed any objections to the said application and then this court has passed an order and dismissed I.A.No.XVIII filed by the plaintiff under Section 11 read with Section 153 of CPC. Since the plaintiff has not complied the order dated 8.9.2020 on the document marked under Ex.P.2, the same requires to be impounded. This court has passed an order dated 4.3.2021 and directed the office to send the copy of the agreement of sale dated 27.1.1998 to the District Registrar for realizing the stamp duty and penalty as calculated by this court by retaining the copy of the said document along with the order dated 8.9.2020 and also for his report.

28. In the meanwhile the arguments of both sides were heard by the court. Apart from that, the learned counsel for the defendant filed synopsis of argument on merits. The plaintiff had already filed written arguments. Hence, the matter was posted for passing of judgment. Thereafter this court observed that, this court has not received the report of the District Registrar regarding realizing the stamp duty and penalty on copy of agreement of sale dated 27.1.1998. Hence, the office was directed to resend the copy of the agreement of sale dated 27.1.1998 to the District Registrar, Bengaluru Urban District for realising the stamp duty and penalty as calculated by this court along with order dated 8.9.2020. In spite of issuance of reminder to the District Registrar, no report was received by

this court. Later on show cause notice was also issued to the District Registrar (Stamps), Bengaluru Urban for non-furnishing of the report, which was duly served. Then the District Registrar, Bengaluru given explanation to this court stating institution of proceedings for recovery of deficit stamp duty. Thereafter the case was posted for awaiting report of the District Registrar, Bengaluru Urban District. Subsequently, the plaintiff who is party in person files a memo stating that he has already argued the case orally and also filed written final arguments along with several citations on 26.9.2019, 25.02.2020 and 06.04.2021 and hence, he prays for posting the matter for passing the judgment. On the other hand, the learned counsel for defendant also present before the court and heard the reply argument on both sides.

29. It is to be noted that, the learned counsel for defendant while addressing arguments, has relied upon a decision of Hon'ble High Court of Karnataka reported in 2013 SCC Online Kar.10138 = 2014(10 KCCR 881 in the case of Suman -Vs- Vinayaka & Others, wherein the Hon'ble High Court of Karnataka at paragraph No.17 while referring the decision rendered by Hon'ble High Court of Karnataka i.e. Co-ordinate Bench of Hon'ble High Court of Karnataka in the case of Lakshmi Narayanachar Vs. Narayan, wherein it was held and discussed at paragraph No.14 of the above said decision that:

"The position therefore, according to the scheme of the statute is that when a document chargeable to duty act produced into Court in connection with a proceedings before it is found by that Court to be either not stamped at all or is insufficiently stamped, it is bound to impound it. But the idea of impounding is to enforce collection of duty or deficient duty together with penalty. When a document has come before Court for the purpose of being used in evidence, the first jurisdiction of determining the duty and penalty is that of the Court. It is only when that stage has crossed and the document is not tendered in evidence that it ceases to be a document impounded by the Court which by law has authority to receive evidence and has admitted the same in evidence; though the first part of the description applies to the document, the second part has ceased to be applicable. It is then and then only that a document comes within the description of "in every other case contained in sub-section (2) of S.37".

It is further discussed that, "To contend that there is power to the Court to send an instrument impounded by it when it is sought to be tendered in evidence by referring the matter to the Deputy Commissioner for adjudication and to await for his decision thereon would be fraught with fallacies. Court cannot be made subservient to the jurisdiction to be exercised the Deputy Commissioner or in other words the Court cannot be made to await the decision of the Deputy Commissioner for proceeding in a matter, since such instrument or document sought to be tendered in evidence may be a suit document. If that was intention of the legislature it would have been expressly stated to in Section 3 itself. The very intention of the legislature to vest the jurisdiction with the Court and the Deputy Commissioner independently itself would indicate that Section 34 and 39 operate in different spheres. As otherwise, the very provisions would become nugatory.

30. In the case on hand, this court before impounding of Ex.P.2, copy of the sale agreement, calculated duty and penalty and directed the plaintiff to pay a total sum of Rs.2,45,500/- as stamp duty and penalty on the said document within one month from the date of passing the order or otherwise Ex.P.2 will be impounded. But the plaintiff has failed to pay the duty and penalty and accordingly, this court impounded the Ex.P.2 and sent the same to the District Registrar to recover the duty and penalty from the plaintiff. But the District Registrar has not submitted report for recovery of the duty and penalty on Ex.P.2. However, this court has calculated the duty and penalty and sent the same to the concerned authority for recovery of the same. As per the above said decision of Hon'ble High Court of Karnataka as relied upon by the learned counsel for the defendant, the court cannot be made to await the decision of the Deputy Commissioner for proceeding in a matter, since such instrument or document sought to be tendered in evidence may be a suit document. Under such circumstances and in view of the above said decision of Hon'ble High Court of Karnataka, the decision of the District Registrar for reporting recovery of the duty and penalty from plaintiff cannot be made await by this court since it is a suit document. It is significant to note that, even the plaintiff who is party in person has filed a memo before this court that he has already argued the case and also filed written arguments along with several citations and hence, the case may be posted for judgment and decree. However, this court while passing the order for sending Ex.P.2 to the District Registrar for recovery of duty and penalty ordered to be kept the copy of Ex.P.2.

31. As already discussed above, the heavy burden is on the plaintiff to prove Issue No.1 with regard to execution of Ex.P.2-sale agreement entered into between the plaintiff and defendant with respect to the suit schedule property for a valuable sale consideration of Rs.3,00,000/-. On the other hand, the heavy burden is also cast upon the defendant to prove the Issue No.7 as to whether the plaintiff was put in occupation of only a portion of premises bearing No.51/26 on lease basis and now the plaintiff is liable to vacate and deliver the vacant possession of the property in view of the orders passed in HRRP No.65/2012. It is significant to note that except the oral evidence, the defendant who is examined as D.W.1 has not placed any material or documentary evidence to prove that, the plaintiff was put in occupation of only a portion of premises bearing No.51/26 on lease basis which is subject matter of this suit. It is to be noted that during the course of cross-examination of P.W.1, the learned counsel for the defendant has confronted the certified copy of the delivery warrant issued in Ex.No.807/2012 in HRC No.145/2010. Apart from D.W1., the defendant also got examined two independent witnesses as D.W.2 and D.W.3. On going through the evidence of D.W.2, who is none other than the wife of defendant, wherein she has deposed that her husband has not executed any agreement of sale dated 27.1.1968. Ex.P.2-the alleged agreement of sale is a morphed document and she has not signed on it. No such document dated 27.1.1998 ever existed. The entire suit is based on forged, fabricated and morphed document. On going through the cross-examination of D.W.2 done by the plaintiff, wherein she has stated that, "I do not know whether my husband-defendant received an amount of Rs.3,00,000/- from the plaintiff on 27.1.1998 or not. I do not know whether my husband received Rs.3,00,000/- and executed the document under Ex.P.2. It is true to suggest that plaintiff was the agreement holder of lease. I do not know in whose custody the said lease agreement is lies. It is false to suggest that there is no any lease agreement at all".

32. On going through the evidence of another independent witness i.e. D.W.3 wherein he has stated that, he knows about the suit filed by the plaintiff, who is the tenant under the defendant. He also knows that the defendant had entered into a deed agreeing to let out the premises in question in favour of D.R.Murthy who has filed the present suit and that the same was signed by Durga Rajashekar, his wife as a witness and he had signed the said document. The defendant had informed him that the said plaintiff, the tenant has filed a false suit against him by using morphed, forged and fabricated document styling it as an agreement of sale. The defendant also told that he has never executed any such document in favour of the plaintiff. The defendant had no intentions or necessity to sell the property in question at any point of time. Whereas on going through the cross-examination of D.W.3 by the plaintiff, wherein he has stated that, "The agreement stated in para No.4 of my affidavit is refers to the rental agreement. I do not know about the custody of the said rental agreement. The said rental agreement was written on stamp paper".

33. Further, he denied the suggestion that there is no such rental/lease agreement. He further stated that he does not know whether defendant executed the agreement of sale to meet his family and legal necessities or not.

34. It is significant to note that on going through the cross-examination of defendant who is examined as D.W.1 by the plaintiff, wherein he has stated that he has produced the document to show that plaintiff is the tenant of suit schedule property and the said documents have been produced before the SCC-3 i.e. Court of Small Causes. D.W.1 admitted the suggestions that he has not produced in this case to show that the plaintiff is the tenant of suit schedule property. Therefore, the above said version of D.W.1 clearly goes to show that, he has not produced any documentary evidence to show that the plaintiff was a tenant of suit schedule property based upon the rental/lease agreement. Whereas on going through the evidence of D.W.3, wherein he has clearly stated that the defendant had entered into a deed agreeing to let out the premises in favour of the plaintiff and the same was signed by the wife of defendant i.e. D.W.2 and he had seen the said document. If such being the fact, the defendant could have produced the rental agreement before the court to show that the plaintiff was a tenant of the portion of the suit schedule property and deposited the lease amount of Rs.3,00,000/-. Even D.W.1 himself has stated in his cross-examination that he had produced the rental agreement and receipts before the Court of Small Causes in HRC No.145/2010. If such being the fact, he could have obtained either certified copies of the same or he could have obtained the said original documents and can be produced before the court. But, the defendant has not done so. It is significant to note that, during the course of cross-examination of D.W.1 by the plaintiff, the signature found on Ex.P.2 in the alleged sale agreement has been shown to D.W.1. D.W.1 admitted that the said signature belongs to him and accordingly, the same is marked as Ex.P.2(a). D.W.1 further admitted the suggestion that Durga Rajashekar is his wife. She is a witness to Ex.P.2.

35. It is to be noted that during the course of cross- examination of D.W.1 by the plaintiff, D.W.1 has admitted the suggestions that plaintiff is maintaining the suit schedule property. Ex.P.24 i.e. sketch of the schedule property has been shown to the D.W.1 and he admitted his signature thereon. Accordingly, the signature is marked as Ex.P.24(a). It is further admitted by D.W.1 that as per Ex.P.24 the ground of the suit schedule property is an independent unit with separate gate and the

schedule property comprises of one hall, two bed rooms, veranda, a kitchen and a garage. But D.W.1 has denied the suggestion that he has filed HRC No.145/2010 to defraud Rs.3,00,000/- paid by the plaintiff and also to gain the suit schedule property by short cut method. D.W.1 denied the suggestion that, he breached the agreement of sale and accordingly, he is liable to pay Rs.12,000/- p.m. for illegal occupation of suit schedule property. Even during the course of cross-examination of D.W.1, the deposition of the witness i.e. D.W.1 in HRC No.145/2010 was confronted, for which he admitted the said document and the same is marked as Ex.P.23. D.W.1 in his cross-examination further stated that he had not issued any legal notice terminating the agreement of sale and he voluntarily stated that there was no any agreement of sale at all. But D.W.1 has clearly admitted that the amount of Rs.3,00,000/- received by him is still with him.

36. On going through the documentary evidence of the plaintiff i.e. Ex.P.23 is the certified copy of deposition of the present defendant who was the petitioner in HRC No.145/2010, wherein this defendant has stated in his cross- examination by the learned counsel for respondent who is the plaintiff herein, D.W.1 clearly admitted the suggestion that his father has built the petition schedule property in the year 1967-68 and his father was died on 24.9.1988 and his father has not made any Will in respect of petition schedule property. The defendant/D.W.1 further admitted that lease agreement, rental agreement and rent receipts are not produced. Further, he has clearly admitted that on 27.1.1998, the respondent has paid Rs.3,00,000/-. The above said admission given by the defendant in HRC No.145/2010 has clearly and specifically goes to show that he has not produced any lease agreement, rental agreement and rent receipts before the said court or before this court in the present suit to show that the plaintiff was put in occupation of the only portion of the premises bearing No.51/26 and he has not executed any alleged sale agreement in favour of the plaintiff as per the Ex.P.2. However, the defendant/D.W.1 in the present suit as well as in HRC No.145/2010 has clearly admitted the fact that on 27.1.1998 the present plaintiff has paid Rs.3,00,000/-. Therefore, there is clear admission on the part of the defendant herein with respect to the receipt of Rs.3,00,000/- from the plaintiff. But, the defendant has failed to prove by producing the cogent and convincing both in oral and documentary evidence to show that the plaintiff was put in possession and occupation of the suit schedule property on the basis of lease agreement and the plaintiff has deposited the said amount of Rs.3,00,000/- towards the advance amount of lease.

37. As I already discussed above, there is clear admission on the part of D.W.1/defendant during the course of cross-examination with respect to the signature found on Ex.P.2 in the alleged sale agreement and accordingly, the defendant has clearly admitted his signature found on Ex.P.2, which is also marked as Ex.P.2(a). Even D.W.1/defendant has also admitted and stated in his cross-examination that his wife Smt. Durga Rajashekar has also put her signature as witness to the said Ex.P.2. Therefore, on combine reading of evidence of the parties, except Ex.D.1, no other documentary evidence or documents are produced before the court by the defendant to show that he had received the amount of Rs.3,00,000/- from the plaintiff for the occupation of the suit schedule property on rental basis.

38. It is significant to note that during the course of cross-examination of P.W.1, the learned counsel for defendant has made suggestion, wherein he has stated as follows:

"It is true to suggest that defendant took possession of petition schedule property in the year 2014 in HRC No.145/2010".

Another suggestion was also put by the learned counsel for the defendant during the cross-examination of P.W.1, wherein he has stated as follows:

"It is true to suggest that the petition schedule property in HRC No.145/2010 and the suit property in this suit are distinct and different".

As per the above said suggestions put by the defendant during the course of cross-examination of P.W.1, made it clear that the present suit schedule property which is subject matter of the alleged sale agreement and petition schedule property in HRC No.145/2010 are different and not one and the same. Even it has also come in the evidence of P.W.1 that the defendant has already taken possession of the petition schedule property in the year 2014 itself in HRC No.145/2010. When such being the case, the question of vacating and delivery of the vacant possession of the premises bearing No.51/26 by the plaintiff would not arise. As already discussed above, though the defendant has denied the due execution of the alleged sale agreement dated 27.1.1998, but in his cross-examination done by the plaintiff has clearly admitted his signature found on Ex.P.2, which is marked as Ex.P.2(a) and also D.W.1 has admitted that his wife Durga Rajashekara is also one of the attesting witness to Ex.P.2. It is to be noted that as per the version of plaintiff/P.W.1, as per the condition mentioned in Ex.P.2- agreement of sale, he had paid the entire sale consideration amount of Rs.3,00,000/- and the possession of the suit schedule property was delivered in his favour and he was put in possession and occupation of the same. Even there is a recital at Ex.P.2 with respect to delivering the possession in favour of the plaintiff.

39. P.W.1 has produced two bills dated 17.10.1998 and 24.11.1998 for having carried out repair work in the suit schedule property and had spent total sum of Rs.16,800/- which are marked as Ex.P.4 and P.5. According to the defendant, the above said Ex.P.4 and P.5 are only the bills and not amount paid receipts. Hence, they cannot be taken into consideration. It is to be noted that on perusal of Ex.P.4 and P.5, they are the bills issued by one Balakrishna Mudaliyar for charging the sum of Rs.11,100/- and Rs.5,700/-. But the above said bills did not disclose that for which building the said repair works were carried on. Moreover, mere production of documents without examining the author of the said document is not a conclusive proof. Hence, Ex.P.4 and P.5 bills are not acceptable one. Under such circumstances, considering the evidence of P.W.1 and D.W.1 to 3, material placed on record and also for the foregoing reasons, I am of the opinion that, the plaintiff has proved that the defendant had executed an agreement of sale dated 27.1.1998 for total consideration of Rs.3,00,000/- and also delivered the suit schedule property as on the date of the said agreement. On the other hand, the defendant has failed to establish the fact that the plaintiff was put in occupation of only a portion of premises bearing No.51/26 on lease basis and now the plaintiff is liable to vacate and deliver the vacant possession of the property. There are no any material placed on record to prove the Issue No.7. In the result, I answer Issue No.1, Issue No.2, Issue No.5 in Affirmative and Issue No.7 in the Negative.

40. Issue No.3 & 4: Since both issues are interconnected with each other, to avoid repetition of the facts, I have taken both issues together for common discussion.

41. It is to be noted that, as per the version of the plaintiff the time is not essence of the contract for no time was fixed for registering the registered sale deed in his favor by the defendant and therefore, he is always ready to perform his part of contract. It is to be noted that on careful going through the contents of Ex.P.2, at paragraph No.3 of the said agreement, wherein it is mentioned that, "The vendor has informed the purchaser that the Khata, electricity and water meter are all in the name of his father Sri.V.K.Kumaraswamy and he would soon get the same transferred on his name and it would take considerable time and thereafter he would execute the sale deed.

Hence, no time limit is fixed for execution of the sale deed by him".

The above said recital of Ex.P.2 goes to show that for the said reasons that no time limit was fixed for executing the sale deed in favour of the plaintiff. As I discussed above, the total sale consideration of Rs.3,00,000/- was paid by way of cheques and the same is evident from Ex.P.3-bank account statement produced by the plaintiff. When the plaintiff has paid the entire sale consideration, the question of readiness and willingness does not arise. But merely because the plaintiff has paid the entire sale consideration amount of Rs.3,00,000/-, it is bounden duty of the plaintiff to perform his part of contract by approaching the defendant to get execute the sale deed in his favour. It is significant to note that admittedly the alleged sale agreement was made and entered into between the plaintiff and defendant on 27.1.1998. But as per Ex.P.2, there was a condition that the vendor agrees to collect the documents of title such as mother deed, settlement deed duly signed by his family members, khatha, encumbrance certificate, tax paid receipts etc. Once the above said documents are obtained by him, the vendor agrees to inform the purchaser in writing enclosing a set of the above documents to enable the purchaser to prepare the sale deed and thereafter the parties shall proceed for registration of the sale deed. The costs of the stamp paper, registration fee and other charges shall be payable by the purchaser. The vendor agrees to answer all reasonable requisitions on title to be made out by the purchaser or his counsel. Therefore as per the said terms and conditions, after obtaining and collecting the necessary documents as stated supra, the vendor had to be informed to the purchaser in writing to get prepare the sale deed. But in this case after executing the sale agreement dated 27.1.1998, the plaintiff had not made any attempts to approach the defendant to get information as to whether he has collected the necessary documents, title deeds with respect to the suit schedule property. It is significant to note that the present suit was filed by the plaintiff on 21.5.2012. Prior to filing of the suit, the plaintiff got issued a notice as per Ex.P.6 dated 6.2.2012 to the defendant called upon him to get execute the sale deed after collecting the necessary documents. After lapse of about 13 to 14 years, the plaintiff got issued the legal notice for the first time from the date of execution of Ex.P.2 sale agreement. During the said period, the plaintiff had not made any attempt and endeavor to approach the plaintiff by issuing the legal notice in getting the sale deed registered in his favour. If really the plaintiff is always ready and willing to perform his part of contract, he would have been made attempt to get the sale deed registered in his favour by approaching the defendant. Therefore, there is lack on the part of plaintiff to prove that he is always ready and willing to perform his part of contract. For the said long duration from the date of execution of the sale agreement, plaintiff kept quiet and prior to filing of the suit he got issued the

legal notice as per Ex.P.6 for the first time.

42. When defendant is denying the execution of agreement of sale, it is expected from plaintiff that he must be very cautious and diligent in respect of his claim of specific performance. The long silence of plaintiff over 13 to 14 years shows that he not intended to purchase the schedule property and not made his willingness to have the sale deed.

43. It is significant to note that to the said Ex.P.6 legal notice issued by the plaintiff, the learned advocate for the defendant got issued reply-cum-notice as per Ex.P.7, wherein it is stated that even otherwise, the value of the premises was more than Rs.25,00,000/- during 1998, the year of the above said alleged agreement of sale and it cannot be sold for a song as claimed by the plaintiff as todays market value of the said premises is more than Rs.60,00,000/-. Again the plaintiff got issue a re-joinder to the reply notice given by the defendant by denying the reasons assigned in Ex.P.7. At Ex.P.8, the plaintiff has nowhere stated or whispered about the actual market value of the suit schedule property as on the date of the execution of sale agreement as stated in Ex.P.7 that as on the date of executing sale agreement in the year 1998, the market value of the premises was more than Rs.25,00,000/- and even as on the date of filing of the suit, the present market value is more than Rs.60,00,000/-.

44. It is pertinent to note that on going through the contents of Ex.P.2-sale agreement at paragraph No.6 of the terms and conditions, wherein it is mentioned that:

"If a good and marketable title is not made out or if the schedule property is found to be encumbered or if the vendor commits any breach of the agreement, the purchaser shall be at liberty to rescind the agreement and the vendor shall in that event refund the entire sale consideration of Rs.3,00,000/- (Rupees three lakhs) only paid above with interest at 24% per annum compounded annually from the date of this agreement till the entire amount is paid back".

45. As I discussed above, as per the agreement of sale-Ex.P.2, there was terms and conditions which binds both the parties. It is bounden duty of the plaintiff to inform the defendant about his readiness and willingness to perform his part of contract. But the plaintiff has utterly failed to perform his part of contract as stated supra. Under such circumstances, the material available on record and also for the foregoing reasons, I am of the considered opinion that the plaintiff is not entitled for the relief of specific performance in executing the sale deed in his favour as sought for. Utmost the plaintiff is entitled for the relief of recovery of earnest money of Rs.3,00,000/-. Plaintiff is claiming earnest money with interest at the rate of 24% p.a. compounded annually from the date of executing the sale agreement dated 27.1.1998 till the entire amount is paid back. However, considering the facts and circumstances of the case and for the foregoing reasons, I am of the opinion that if the defendant is directed to pay earnest money of Rs.3,00,000/- along with interest at the rate of 6% p.a. from the date of execution of Ex.P.2-sale agreement, it would meet the ends of justice. In the result, I answer Issue No.3 in the Affirmative and Issue No.4 Partly in the Affirmative.

46. Issue No.6: Defendant in his written statement took a contention that suit filed by the plaintiff is hopelessly barred by law of Limitation.

47. Plaintiff is seeking specific performance agreement of sale dated 27.1.1998 against defendant. As per the terms and conditions of said agreement of sale, as the vendor has to transfer the Khata, electricity and water meter from the name of his father Sri.V.K.Kumaraswamy on his name and it would take considerable time and thereafter he would execute the sale deed. Hence, no time limit is fixed for execution of the sale deed by the vendor.

48. Further the plaintiff has relied a decision reported in AIR 2006 SC 1556 in the case of Gunwantbhai Mulchand Shah & Others Vs. Anton Elis Farel & Others, wherein it has been held that, Suit for specific performance of agreement to sell and for perpetual injunction filed more than 29 years after agreement and no date fixed for performance in agreement. Plea of plaintiff that they had paid entire consideration and had been put in possession. Case would be covered by second limb Art.54 of Limitation Act. Question of Limitation required investigation on terms of agreement and on basis of evidence produced by parties. Dismissal of suit as barred by limitation by deciding issue of limitation as preliminary issue is not proper".

Accordingly, as per the condition of the agreement of sale and also dictum laid down in the above said decision, it cannot be stated that suit claim of plaintiff is barred by limitation. Therefore, my answer to Issue No.6 is in Negative.

49. Issue No.8: Plaintiff sought specific performance of agreement of sale dated 27.1.1998. This court while answering issue No.4 held that, plaintiff is not entitled for the relief of specific performance in executing the sale deed in his favour as sought for. On the other hand plaintiff is entitled for recovery of earnest money of Rs.3,00,000/- from the defendant along with interest at the rate of 6% p.a. from the date of execution of agreement of sale. Therefore, I hold that plaintiff is not entitled for specific performance of agreement of sale dated 27.1.1998. Accordingly, my answer to Issue No.8 is in Partly in Affirmative.

50. Issue No.9: In view of my observations and answers to issue No.1 to 8 as above discussed, I proceed to pass the following ORDER Suit of the plaintiff is partly decreed.

The plaintiff is entitled for recovery of earnest money of Rs.3,00,000/- along with interest at the rate of 6% p.a. from the date of the execution of agreement of sale i.e. 27.1.1998, subject to payment of duty and penalty as imposed by this court in confirmation with the report of the District Registrar, Bengaluru.

The suit of the plaintiff with respect to specific performance of the suit schedule property with respect to the sale agreement is hereby dismissed.

Both parties shall bear their own costs.

Draw decree accordingly.

(Dictated to the Judgment Writer, computerized by her, corrected and then pronounced by me in open court on the 12 th day of July 2022.) (Shivakumara B.) XX ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU.

ANNEXURE List of witnesses examined for the Plaintiff:

P.W.1: Sri.D.R.Murthy.

List of documents marked for the Plaintiff:

Ex.P.1 Certified copy of writ petition filed in W.P.No.2765/2016(GM-CPC).

Ex.P.2 Copy of the Agreement of Sale.
Ex.P.3 Certified copy of the Canara Bank Certificate.
Ex.P.4 & 5 Bills.
Ex.P.6 Copy of legal notice dated 6.2.2012.
Ex.P.7 Reply Notice dated 14.2.2012.
Ex.P.8 Rejoinder Notice dated 3.3.2012.

Ex.P.9 Another reply notice.
Ex.P.10 & 11 Certified copies of the Order Sheets.
Ex.P.12 Certified copy of the Petition in HRC No.235/2009.
Ex.P.13 Certified copy of the Affidavit in HRC No.235/2009.
Ex.P.14 Certified copy of the Order Sheet in HRC No.145/2010.
Ex.P.15 Khatha Certificate.
Ex.P.16 Paper publication.
Ex.P.17 Telephone bill.
Ex.P.18 Receipt.
Ex.P.19 Water bills along with receipts.
Ex.P.20 Certified copy of the Order Sheet in HRC No.145/2010.
Ex.P.21 Certified copy of the Vakalath.
Ex.P.22 Certified copy of the Complaint.
Ex.P.23 Evidence in HRC No.145/2010.
Ex.P.24 Sketch.
Ex.P.25 Khatha Certificate.

List of witnesses examined for the defendant:

D.W.1 : Sri.V.K.Rajashekar. D.W.2 : Smt.Durga Rajashekar. D.W.3 : Sri.G.Murali.

List of documents marked for the defendant:

Ex.D.1 Certified copy of decree passed in HRC No.145/2010.

(Shivakumara B.) XX ADDL.CITY CIVIL & SESSIONS JUDGE, BENGALURU.

Judgment pronounced in the open court (vide separate judgment).

ORDER Suit of the plaintiff is partly decreed.

The plaintiff is entitled for recovery of earned money of Rs.3,00,000/- along with interest at the rate of 6% p.a. from the date of the execution of agreement of sale i.e. 27.1.1998, subject to payment of duty and penalty as imposed by this court in confirmation with the report of the District Registrar, Bengaluru.

The suit of the plaintiff with respect to specific performance of the suit schedule property with respect to the sale agreement is hereby dismissed.

Both parties shall bear their own costs.

Draw decree accordingly.

XX Addl.C.C & S.J., Bengaluru.