

# Smt.N.Manjula vs Sri.S.G.Bhagyanathan @ Bhagya on 7 December, 2015

C.R.P. 67] Government of Karnataka  
Form No. 9 TITLE SHEET FOR JUDGEMENTS IN SUITS  
(Civil)  
Title Sheet  
for IN THE COURT OF THE SMALL CAUSES AT BANGALORE  
Judgment in  
Suits PRESENT: Basavaraj Chengti., B.Com.,LL.B.,(spl)  
(R.P.91) XVI ADDL. JUDGE,  
Court of Small Causes,  
BANGALORE.

Dated this the 7th day of December 2015.

Plaintiff/s : S.C.No.636/2014  
Smt.N.Manjula  
W/o A.Basavaraj  
Aged about 34 years,  
R/at No.112  
Rama Mandira Road,  
Sarakki Village,  
Ist stage, J.P Nagar,  
Bangalore-78.

V/s (By pleader Sri CHR)

Defendant/s Sri.S.G.Bhagyanathan @ Bhagya  
S/o late Guruswamy Achar  
Proprietor  
M/s.S.M.Swamy Granties  
No.206, 10th cross,  
Ist phase Sarakki J.P Nagar,  
Bangalore-78.

SCCH-14 (By pleader Sri MNM)  
2

SC No.636/20

Date of Institution of the suit : 04.06.2014  
Nature of the suit(Suit on  
Pronote, suit for declaration and  
Possession, suit for injunction, etc.,) : Ejectment & Damages  
Date of the commencement of recording  
of the evidence : 27.11.2014  
Date on which the judgment was : 07.12.2015  
Pronounced

Total duration	Year/s	Month/s	Days
	01	06	02
SCCH-14	3		Additional Judge. SC No.636/2014

## JUDGEMENT

This is a suit for ejectment and damages.

### 2. Brief averments of the plaint are as under:

The plaintiff is the absolute owner of the property bearing No.83 and 86, Katha No.142, assessment No.77/1, measuring 80'X40' together with 10 squares of A.C sheet roof building thereon situated at Kothanur village, Uttarahalli Hobli, Bangalore South Taluk, Bangalore is hereinafter referred as schedule property. The defendant approached in the month of March-2013 and requested the plaintiff to let out the schedule property to run his business of granites and accordingly, the parties have come to mutual understanding and the same was reduced into writing on 19.03.2013. The defendant became the tenant under the plaintiff on 19.03.2013 for a period of two years commencing from 01.03.2013 in respect of schedule property on a monthly rent of Rs.6,000/- from 01.03.2013 with a security deposit of Rs.1,00,000/-and he has agreed to vacate and handover the vacant possession of the schedule property to the plaintiff without any demur. The schedule property was let out to the defendant on a monthly tenancy commencing from that of English calendar month i.e., from 1st day of every month to the last day of the same month. During the subsistence of the rental agreement, the defendant has agreed to pay the rents in respect of the schedule property as and when it becomes due every month to the plaintiff and to obtain valid receipt. Since, the term of tenancy of 24 months came to be expired on 28.02.2015. The defendant was irregular in payment of monthly rents. The plaintiff has requested and demanded him to pay the rents, but the defendant went on postponing the same on one pretext or the other for the reason best known to him. Therefore, the plaintiff requested the defendant to quit, vacate and handover the vacant possession of the schedule property on the ground of default in payment of rents. The defendant agreed for the same and later failed to do so. The plaintiff is in need of the schedule property for her bonafide use and occupation. Then, the plaintiff has issued a legal notice on 05.05.2014 to the defendant terminating his tenancy and called upon him to quit, vacate and deliver the vacant possession of the schedule property. The said notice was duly served on the defendant on 12.05.2014. In spite of receipt of notice, the defendant has failed to comply with the demands made in the said notice or to comply the terms of notice.

The defendant is liable to pay the damages @ Rs.13,000/- per month for use and occupation of the schedule property from 05.05.2014 till delivery of vacant possession of the same. Therefore, the plaintiff has filed this suit for ejectment of the defendant from the schedule property.

3. In pursuance of the summons, the defendant has appeared before the court through his counsel and filed written statement denying the averments of the plaint as false and contended that grand father of the plaintiff's husband was having 3 sons by name Nanjappa, Najundappa and Veerabhadrapa and they were having an ancestral property, that all the 3 brothers were in joint possession and enjoyment of the same bearing Sy.No.77/1 of Kothanur Village, Uttrahalli Hobli, Bangalore South Taluk, Bangalore, that the said property has been partitioned among the 3 brothers through a Registered Partition Deed dated 12.08.1980 and in the said partition, Nanjappa has got 1 acre 21 guntas, Nanjundappa has got 1 acre 20 guntas and Veerabhadrapa has got 1 acre 20 guntas. He has further contended that said Nanjappa has let out 30 ft. X 40 ft vacant site to him for running the Granite business in the year 1988 for a rent of Rs.500/- per month and later on the said Nanjappa and his son N.Basavaraju have entered into a lease agreement with him for enhanced advance of Rs.30,000/- and rent of Rs.750/- per month on 19.03.1997, that the said Nanjappa and his son N.Basavaraj have entered into an agreement of sale with him on 10.05.1997, that they have agreed to execute the sale deed for the land in his favour for a sale consideration of Rs.2,50,000/- and out of which, he has paid Rs.1,00,000/- for installation of 10 HP power to the granite shop during the life-time of Nanjappa and his son N.Basavaraj and later on, N.Basavaraj has taken Rs.13,000/- and Rs.12,000/- from him on 24.11.1997 and 01.12.1997 respectively and issued receipts for the same, that the said Nanajappa S/o Kempaiah has fallen sick and for the purpose of his aliment, he has taken Rs.1,00,000/- from him, that the said N.Basavaraj died in a road traffic accident and his wife and his three children have to take the balance sale consideration of Rs.50,000/- from him and to execute the Registered sale deed in his favour, that he will initiate appropriate specific performance suit against the LRs of late N.Basavaraj i.e., Smt.Sorajamma, Smt. Gayathri, Miss B.Mangalagowri and Miss B.Savitha, that the mother-in-law and husband of the plaintiff have filed a suit in OS No.8677/1997 before XIV Add., City Civil Court, Bangalore (CCH-28) on 26.11.1997 against him, Najappa S/o Kempanna, N.Basavaraj through his LRs stated above and the said Court has passed Judgment and Decree on 23.02.2005 and dismissed the suit as not maintainable, that three brothers and sons of late Kempaiah in registered partition deed have executed a GPA in favour one Sri Jagadeesh Nayak S/o late K.Shanthappa for the purpose of formation of layout and for alienation of property, that one Smt.Shivamma W/o Veerabhadrapa, mother-in-law of plaintiff, V.Basavaraj S/o Veerabhadrapa, husband of the plaintiff have executed a registered sale deed in favour the plaintiff on 24.10.2001 pertaining to the suit schedule property and the said fact is mentioned in judgment of OS No.511/2003, that the said sale deed was without any authority and therefore, the sale deed is not binding upon him, that the plaintiff has filed OS No.511/03 against Sri K.Jagadeesh Nayak before XXIV Addl., City Civil Judge, Bangalore (CCH-6) for permanent injunction and the said suit was decreed in favour the plaintiff as it is uncontested, that the said K.Jagadeesh Nayak has contended in his written statement that the schedule mentioned therein belongs to road and left for the road and it is not possession of the plaintiff, that on the strength of said judgment and decree, the plaintiff has approached the area cooperator and threatened the defendant and got his signature on lease agreement/tenancy agreement and forcibly collecting rent from him and later on caused legal notice to him and filed this false case against him

though she is not the owner of the property which is in his occupation. Hence, he has sought for dismissal of the suit with exemplary cost.

4. During the evidence, the plaintiff has examined her husband and SPA holder as PW.1 and got marked documents as Ex.P1 to Ex.P6. The defendant has examined himself as DW.1 and got marked document as Ex.D1 to Ex.D15.

5. Heard the arguments. The defendant has relied upon following rulings:

1. Air 1977 SC 1680 (State of Uttar Pradesh Vs Nawab Hussain)
2. AIR 1961 SC 1457 (Daryao & Ors Vs State of UP & Ors)
3. AIR 1963 SC 1150 (C.Abdul Shukoor Saheb Vs Arji Papa Rao)
4. ARIR 2005 SC 1008 (Govindraju Vs Mariamman)
5. AIR 1988 SC 1822 (Tukaram Ramachandra Mane Vs Rajaram Bapu Lakule) 6 AIR 2001 SC 266 (Chiranjilal Srilal Goenka Vs Jasjit Singh & Ors)
7. AIR 1996 SC 2025 (T.N.Electricity board & Ors Vs N.Raju Reddiar and Anr)
8. AIR 2005 SC 261 (Commissioner of Central Excise, Calcutta Vs M/s Emkay Investments P Ltd & Anr)
9. AIR 1998 SC 2216 (Ganesh Shet Vs Dr.C.S.G.K Setty & Ors)
10. AIR 1992 SC 1433 (Rajinder Singh alias Kada Vs State of Panjab.) I have gone through said rulings and perused the records.

6. Now, the points that arise for my consideration are:

1. Whether the plaintiff has proved the existence of jural relationship of landlord and tenant between her and the defendant in respect of suit schedule property?
2. Whether the plaintiff has proved that the tenancy of the defendant is duly terminated?
3. Whether the plaintiff is entitled for the relief as prayed for?
4. What order or decree?

7. My answer to the above points are as follows:

Point No.1 : In affirmative Point No.2 : In affirmative Point No.3 : Partly in affirmative Point No.4 : As per final order for the following:

## REASONS

8. POINT NO.1 to 3: These points are interlinked and hence, I have taken them together for common discussion. The plaintiff has relied upon oral evidence of PW-1 and documentary evidence at Ex.P-1 to 6. The defendant has placed reliance on his own oral evidence and documents at Ex.D-1 to 15.

9. PW-1: V. Basavaraj is the husband and SPA holder of the plaintiff. Deed of SPA is at Ex.P-1 by which the plaintiff has authorized her husband to prosecute the matter and to give evidence in the suit. The defendant has contended by way of cross examination of PW-1 that the plaintiff is capable of giving evidence before the Court and her failure to establish the necessity to execute SPA makes the evidence of PW-1 inadmissible. But, it is to be noted that PW-1 is none other than the husband of the plaintiff. By virtue of Ex.P-1, he is authorized to give evidence before the Court. Secondly, as per the provisions of Sec.120 of Evidence Act, PW-1 being the husband of the plaintiff, is competent to give evidence on behalf of his wife. Hence, I am of the opinion that PW-1 is competent to depose regarding the matter in dispute and his evidence is admissible.

The suit property is described in the schedule of plaint as under:

All that piece and parcel of property bearing No.83 and 86 Katha No.142, assessment No.77/1 measuring 80 X 40 feet together with ten squares of A.C sheet roof building thereon, situated at Kothanur village, Uttarahalli Hobli, Bangalore South Taluk, together with electrical fittings and bounded on the:

East by	:	60 feet road
West by	:	site no. 82
South by	:	Road

10. There is no dispute that the defendant is in occupation of the above said property as tenant and he is doing granite business under the name and style of " S.M. Guruswamy Granite Works" and he has got 10 H.P. power connection to the unit. Licence issued by the department of Industries and Commerce, VAT certificate, NOC issued by Tahsildar and photographs at Ex.D-8 to 10 and 13 confirm the existence of said facts.

11. PW-1:V. Basavaraj has reiterated the averments of the plaint and stated that the plaintiff is the owner of the schedule property and the defendant is tenant under the plaintiff in respect of the schedule property on a monthly rent of Rs.6,000/- p.m., that the plaintiff is in need of the schedule property for her bonafide use and occupation, that she has terminated the tenancy of the defendant by issuing notice on

5-5-2014 which was duly served and in spite of it, the defendant did not quit, vacate and deliver the vacant possession of the schedule property. Hence, he has sought for passing of Judgment and decree against the defendant directing him to quit, vacate and deliver the vacant possession of the schedule property and to pay damages @Rs.13,000/- p.m., from the date of suit till delivery of vacant possession of the schedule property.

12. The plaintiff has produced copy of legal notice dt. 5-5-2014, postal receipt, postal acknowledgment and bank statement to corroborate the oral evidence of PW-1 which are marked as Ex.P-1 to 5. Rental Agreement dt.

19-3-2013 was produced by the defendant, but he did not get it marked during his evidence as it was definitely stamped. The plaintiff has got it marked on her behalf by paying duty and penalty as Ex.P-6.

13. DW-1: Bhagyanathan has deposed as per his defence taken up in the written statement and stated that the plaintiff is not the owner of the schedule property, that one Nanjappa was the owner of the said property who has leased the same in his favour in 1988 on a monthly rent of Rs.500/-, that thereafter, the said Nanjappa and his son N. Basavaraj have entered into fresh lease agreement with him on 19.3.1997 on a monthly rent of Rs.750/-, that in the meantime, Nanjappa and N. Basavaraj have executed an agreement in his favour on 10-5-1997 agreeing to sell the schedule property for a consideration of Rs.2,50,000/-, that out of sale consideration, he has paid Rs.1,00,000/- for the installation of 10 HP power to the schedule property, has already paid Rs.1,25,000/- to them, but in the meanwhile, N. Basavaraj died in road accident and his Lrs are liable to execute registered sale deed in his favour by receiving balance consideration as such he is in possession of the schedule property as purchaser of the property. He has further stated that mother-in-law and husband of the plaintiff filed O.S.No.8677/1997 against him, Nanjappa and N.Basavaraj in respect of the schedule property which came to be dismissed as not maintainable as such the present suit is hit by the principle of resjudicata and in order to overcome the defect, the mother-in-law and husband of the plaintiff have executed a nominal and sham sale deed in favour of the plaintiff which does not create any right, title or interest in her favour, that the plaintiff filed O.S.No. 511/ 2003 against one Jagadeesh Nayak seeking permanent injunction in respect of schedule property in which Jagadeesh Nayak has contended that the property claimed under the suit has been merged in 60' road, that the said suit came to be decreed and the plaintiff on the strength of the said decree, has approached the area corporator who threatened him and obtained his signature on lease/ rental agreement and forcibly collecting rent, that the plaintiff has filed a false suit against him, that she has no right, title or interest over the schedule property, that the alleged notice is bad in law and was issued before expiry of 2 years as such the suit is premature. Hence, he has sought for dismissal of the suit with exemplary cost.

14. The defendant has produced copy of sale deed dt.24-10-2001 executed by Shivamma and Basavaraj through Jagadeesh Nayak in favour of the plaintiff, copy of Judgment and decree in O.S.No.8677/1997, copy of Judgment and decree in O.S.No.511/2003, copy of partition deed dt.2-8-21980, copy of receipt dt.24-11-1997, legal notice dt.11-4-2005, copy of reply dt.24-5-2005,

purchase bill dt. 1-2-1997, encumbrance certificate, copy of agreement dt.10-5-1997 and copy of plaint in O.S.No.1451/2015 in support of his oral evidence and are marked as Ex.D-1 to 7, 11, 12, 14 and 15.

15. Encumbrance certificates at Ex.D-12 confirm the execution of registered sale deed by Shivamma and Basavaraj through their GPA holder Jagadeesh Nayak in favour of plaintiff in respect of the schedule property. The defendant has contended that the said sale deed is sham and nominal as such it does not convey any right, title or interest over the schedule property in favour of the plaintiff as the said vendors had not such right. But, he has not produced any evidence to prove that the schedule property is of the ownership of Nanjappa and his son N. Basavaraj. Partition deed at Ex.D-4 reveals only the division of property, but it does not support the version of DW-1 regarding ownership of Nanjappa and N. Basavaraj in respect of schedule property. Ex.D-15 goes to show that the defendant has filed the suit against the Lrs of N. Basavaraj, the plaintiff and Jagadeesh Nayak challenging the sale deed dt.24-10-2001 and sought for specific performance of contract dt.10-5-1997. The defendant has contended that he is in possession of the schedule property by virtue of agreement of sale and he is not a tenant under the plaintiff. Copy of alleged agreement at Ex.D-14 reads as under:

" ,ÀÈi MAzÀÄ ,Á«gÀzÀ MA"ÉâÈÀÆgÀ vÉÀÆA§vÉÛÄ¼ÀÈÉÄ E ,À« aÉÄÄ aÀiÁ°ÉÄ vÁjÄRÄ °ÀvÀÛg® À È (10-1997) §ÉAUÄ¼ÀÆgÀÄ-78 ,ÁgÀQì UÁæªÄÄ, eÉ. | ÈÀUgÀ À CAZÉ, ÈÀA¢ 101 ÈÉÄ ÈÀA§gÀÄ aÄÄÈÉAiÄÄ°è aÁ, ÀªÁVgÀÄª²æÄ PÉAYÄAiÄÄâÈÀªgÀ aÀiUÄ ,ÄÄªAiÁgÀÄ 70 aÀµÀð aÀAiÄÄ, ÄÄ¼Äi²æÄ ÈÀAdYÄÀ CzÀÈÁÈÄÄ §ÉAUÄ¼ÀÆgÀÄ-78 ,ÁgÀQì UÁæªÄÄ, eÉ. | ÈÀUgÀ, ÈÀA 206:3 ÈÀA§gÀÄ aÄÄÈÉAiÄÄ°è aÁ, ÀªÁVgÀÄª²æÄ UÄÄgÀÄ, Áé«ÄgÀªgÀ aÄÄUÄ ,ÄÄªAiÁgÀÄ 47 aÀµÀð aÀAiÄÄ, ÄÄ¼Äi²æÄ JÈi f "ÁUÄâÈÁxiÈÀ CzÀ ªªÄÄUÉ M|à §gÉ¹ PÉÆIÖ SÁ°Ä eÁUÄzÀ M|àUÉ PÄgÀgÀÄYÄvÀæzÀ PÄæªÄÄªÉÈÈÄzÀgÉB-

ÈÁÈÄÄ ÈÀÈÄß "Á§ÄÛ ÈÀÈÄß aÀiÁ°ÄPÄvÀéPÉi M¼ÀÈYÄnÖgÀÄªÀ "ÉAUÄ¼ÀÆgÀÄ zÀQëtvÁ®ÆèPÄÄ GvÀÛgÀ°À½i°ÉÆÄ§½, PÉÆvÀÛÈÀÆgÀÄ UÁæªÄÄ PÉi ,ÉÄjzÀ ,ÀªÉðÈÀA§gÀ 77:1 gÀ d«ÄÄªÈÀªÉQ ªªªÄÄ UÁæÈÉâmi aÄÄYÁgÀ aÄªª°ÁgÀU¼ÀÈÈÄß aÀiÁqÄ®ªªÄÄUÉ "ÁrUÉUÉ PÉÆnÖzÄÄY ,ÄzÄjÄeÁUÄz° À è ªªªÄÄ UÁæÈÉâmi aÄÄYÁgÀ aÄªª°ÁgÀU¼ÀÈÈÄß aÀiÁrPÉÆAqÄÄ §gÀÄwÛÄj. aÄÄÄÄzÉ ÈÁÈÄÄªÄÄ®ìAqÄ "ÉAUÄ¼ÀÆgÀÄ zÀQëtvÁ®ÆèPÄÄ GvÀÛgÀ°À½i°ÉÆÄ§½, PÉÆvÀÛÈÀÆgÀÄ UÁæªÄÄPÉi ,ÉÄjzÀ ,ÀªÉðÈÀA§gÀ 77:1 gÀ°ègÀÄªÀ 1-10 (MAzÀÄ JPÄgÉ °ÀvÀÄÛ UÄÄAmÉ) d«ÄÄÈÈÄÄß aÀiÁgÁl aÀiÁrzÀ°è DUÀ ÈÁÈÄÄ ,ÄzÄjÄ d«ÄÄÈÀYÉâQ ÈÀªÄÄUÉ JµÄÖÄ d«ÄÄÈÄÄ "ÉÄPÉÆÄ CµÄÄÖ d«ÄÄÈÈÄÄß ÈÁÈÄÄ DUÀ "ÉÄgÉAiÄÄªjUÉ aÀiÁgÁl aÀiÁqÄªªÀ "ÉÉUÉ ªªÄÄUÉ PÄæAiÄÄPÉi PÉÆqÄ®Ä F PÄgÀgÀÄ aÄÄÆ®PÄªÁV M|àPÉÆAargÄvÉÛÈÈÉ. EzÀPÉi ÈÁÈÄÄªÄwgÀPÄªÁV ÈÄqÉzÄÄPÉÆ¼ÄÄªªÄ¢®è ÈÁÈÄÄ d«ÄÄÈÈÄÄß aÀiÁgÁl aÀiÁqÄªªÀUÄ ªªÄÄUÉ w½, ÄÄvÉÛÄÈÉ. DUÀ ªªªÄÄ ªªÄÄUÉ ,ÄzÄjÄ d«ÄÄÈÀ°è JµÄÖ d«ÄÄÈÈÄÄ ªªÄÄUÉ CªÄ±ÄªPÄªÁV "ÉÄPÁVgÀÄvÀÛzÉAiÄÈÆÄ CzÀÈÄÄß ÈÀÈÄUÉ w½¹zÀ°è ÈÁÈÄÄ AiÄiÁªÄzÉÄ jÄwAiÄÄ vÀPÄgÀgÀÄU¼ÀÄªªÄqÄzÉ ÈÁÈÄÄ "ÉÄgÉAiÄÄªjUÉ AiÄiÁªÀ zÀgÀzÀ°è aÀiÁgÁl aÀiÁqÄªªvÉÛ ÈÉAiÈÆÄ

CzÉÃ zÀgÀPÉÌ ¤ÃªÀÀ PÉÃ¼Äªª d«ÄÃ£À£ÀÄß ¤ªÄÄUÉªÀiÁgÀÁlªÄÄÁqÀ®Ä  
§zÀÝ£ÀÁVgÄÄvÉÜÃ£É JA§ÄzÀÁV M|à §gÉ¹PÉÆlÖ M|àUÉ PÀgÁgÄÄ YÀvÀæ"

16. The above portion of the agreement makes it clear that measurement and identity of the property under sale is not mentioned. Sale consideration and time are not fixed. No amount is paid by the defendant as advance. Ex.D-5 is silent regarding agreement. Details of the property are not mentioned in the receipt. I am of the opinion that Ex.D-14 does not constitute any contract between the defendant and Nanjappa. However, the matter is pending before competent civil Court and rights of the parties will be decided in O.S.No.1451/2015. Under the facts of the case, I hold that the possession of the defendant in respect of the schedule property is not as prospective purchaser.

17. The counsel for the defendant has argued that PW-1 has admitted that khata of schedule property is standing in the name of Nanjappa, that consideration mentioned in sale deed dt.24-10-2001 is not paid to them, that page no.1 and 2 of Ex.P-6 are not signed as such the contents of the same are not binding upon the defendant, that Ex.P-6 was executed on 19-3-2013 and period of lease was 2 years from 1-3-2013, that said period expired on 28-2-2015, but the plaintiff has issued quit notice on 5-5-2014 and filed this suit on 4-6-2014 and hence, the suit is premature. He has further argued that rights of Shivamma and Basavaraj are already determined in O.S.No.8677/1997 and the plaintiff is claiming right under them. Their suit is dismissed as not maintainable. Hence, the suit is barred by res-judicata.

18. On careful perusal of the Judgment in O.S.No.8677/1997, it reveals that the finding of the Hon'ble Court does not operate as res-judicata. Hon'ble Court has opined as under:

"It is for the plaintiffs to proceed as per law after due notice terminating the tenancy. If it is not agricultural property or to take necessary steps under the provisions of Land Reforms Act".

19. The observation of the Hon'ble Court makes it clear that there was no hurdle for the plaintiffs therein to file fresh suit after complying the provisions of Sec.106 of T.P. Act. O.S.No.8677/1997 was adjudicated on 23-2-2005. The said plaintiffs have executed registered sale deed in favour of the present plaintiff on 24-10-2001 i.e., much earlier to passing of Judgment in the said suit. That is why the plaintiffs therein have not proceeded further against the defendant. Ex.D-6 and 7 go to show that after disposal of O.S.No.8677/1997, the plaintiff herein has issued legal notice calling upon the defendant to quit, vacate and deliver the vacant possession of the schedule property. The defendant has replied the notice denying the title of the plaintiff to the schedule property. But, it is to be noted that this Court can not investigate and give finding regarding title. The scope of the suit is very limited. Discussion of evidence regarding title is not necessary. However, the admissions of PW-1 pointed out by the counsel for the defendant do not take away the credibility of the witness. PW-1 has admitted that they have not received sale consideration amount from the plaintiff under Ex.D-1, but he said that the amount was paid to Jagadeesh Nayak, the GPA holder of the vendors. Payment of amount to GPA holder of the vendors legal and valid. It does not make the sale deed sham and nominal. Finding of Hon'ble Court in O.S.No.8677/1997 does not operate as resjudicata. The rulings relied upon by the defendant in that regard are not applicable to the facts of this case.



Hence, argument of the counsel for the defendant are liable to be rejected.

20. Argument of the defendant in respect of Ex.P-6 is two fold. One is, it is not properly executed as its first two pages do not bear signatures of the parties to the deed as such it can not be relied upon. The other one is, the deed was executed on 19-3-2013 with lease period of 2 years from 1-3-2013 and such period expired on 28-2-2015 and hence, the notice dt.5-5-2014 and suit dt.4-6-2014 are premature. It is to be noted that the deed at Ex.P-6 was with the defendant himself and he has produced it before the Court. Since, it was deficitely stamped, he did not get it marked. The plaintiff has got it marked by paying deficit duty and penalty. The rulings relied upon by the defendant lay down following principles:

AIR 2001 SC 266:

"(A) Hindu Adoption and Maintenance Act (78 of 1956), S.13, S12- Adoption -rights of adoptive parent to dispose property by will- Is limited by agreement to contrary between parties - oral agreement alleged to have been dictated by adoptive father in form of letter-No signature of adoptive father on it-Letter not stating that during lifetime adoptive father will not be entitled to dispose his property from natural parent-Offer letter not reflecting any agreement but as unilateral offer giving child on adoption-Term of letter that after death of adoptive father and his wife, adopted son alone will have full right on property belonging to them-Does not restrain adoptive father to execute will".

AIR 1996 SC 2025 :

"(A) Evidence Act (1 of 1872), S.91 terms of contract-interpretation of agreement a written agreement -written agreement appearing to contain whole terms of contract oral evidence can not be led to ascertain terms of contract -tenderer appending letter along with tender. He, inserting in letter, certain terms by writing in ink- No signature of persons submitting tender of persons receiving tender on hand written portion - certified copy of letter by electricity board, receiver of tender, of date before date tender was submitted containing hand written-

same being impossible, held, that hand written portion was not there initially".

AIR 2005 SC 261:

"The name or mark is equated to symbol, monogram label, signature or invented word or writing. But a mere finding of symbol, monogram etc. on the goods would not bring the matter within explanation VIII, so as to fall within the exception to the exemption set out in clause 7 to the notification. Something more is required by explanation VIII and that is, the above markings must have been used in relation to the specified goods for the purpose of indicating or so as to indicate a connection in the course of trade between such specified goods and BHEL using such name or mark

with or without any indication of the identity of BHEL. Here, there is no symbol, no monogram, no label and no signature of any nature much less of BHEL found on the components manufactured by the Units. The markings or inscriptions found on the components may amount to invented words or writings. But the markings or inscriptions have not been and are not being used by BHEL at all. They have been used and are being used by the Units and Units alone, may be pursuant to the contractual requirements between BHEL and the units even as per the averments in the counter affidavit of respondent 1 to 3. The markings or inscriptions, individually or cumulatively do not go to constitute a name or a mark such as symbol, monogram etc, of BHEL, used by BHEL in relation to the components manufactured by the units. They may have a purpose to serve. But certainly they do not by themselves constitute a name or mark used by BHEL. But the stress, which we could spell out cumulatively from the language used in explanation VIII, is that the name of mark such as symbol, monogram etc, should have been used by BHEL for the purpose of indicating or so as to indicate a connection in the course of trade between the components and BHEL. Using such name or mark. It is true that by a bare looking at the inscriptions or markings or by a bare visual inspection, there need not be an indication of the identity of BHEL. But fundamentally these markings or inscriptions do not go to constitute a name or mark of BHEL; much less used by BHEL in relation to such components. There is a faltering with regard to the satisfaction of the primary ingredient required by Explanation VIII".

AIR 1998 SC 2216:

"Another argument was that in his evidence, 1st defendant admitted that he signed the draft agreement. Appellant's counsel has contended that this is with reference to Ex.P3 while respondent's counsel has submitted that this evidence of the 1st counsel has reference to Ex.D11, the draft set up by 1st defendant for Rs.6.50 lakhs. It has also been contended for respondents that there is no signature of 1st defendant on Ex.:P3".

AIR 1992 SC 1433:

"PW-14 further stated that the dying declaration was sent by him to the area Magistrate but corrected himself that police station Ghall khurd fell within his jurisdiction and stood shifted to another Magistrate. He also stated that he had resigned from the post of Judicial Magistrate, First class, ferozepur, He while giving the evidence described himself as a practicing advocate at Kharar, a tehsil town, In his memorandum Ex.P.N besides his version and narration, there is no signature of Dr.Sandhu even though his name prominently figures in it. Even after recording it Dr.Sandhu was not asked to certify recording or it. Accordingly to PW-14 there was no necessity for it because he was himself satisfied that Chamkaur Singh was fit to make a statement all though. Memorandum Ex.PN was not put to Dr.Sandhu or he even apprised to know its contents. The prosecution dare not risk it. Dr.Sandhu may

have totally denied the involvement in the recording of the first dying declaration. Another significant factor emerging from the first dying declaration is that the names of the two eye witnesses Harbans Singh PW-3 and Hakam Singh PW-4 do not find mentioned as persons who had seen the occurrence. Others were so named".

21. In this case, Ex.P-6 rental agreement contains 3 pages. The parties and witnesses have signed on the last page. None of them has signed the first two pages. But, it is to be noted that the defendant himself was the custodian of the said document. He has not contended that the first two pages of the deed are changed after execution. Hence, the principles mentioned above are not applicable to this case. Consequently, the first argument of the defendant regarding Ex.P-6 falls on the ground.

22. Sec.34 of the Karnataka Stamp Act bars admissibility of document which is insufficiently stamped for any purpose. Ex.P-6 came to be marked on payment of deficit duty and penalty by the plaintiff. Mere marking of the document can not be construed as its admissibility. The contents of the document play a vital role regarding the same. In this case, Ex.P-6 is rental agreement for 2 years. Sec.107 of T.P.Act reads as under:

Sec.107 of Transfer of property Act.

"A lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee;

Provided that the state government may from time to time, by notification in the official gazette, direct that leases of immovable property, other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent, or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession".

23. The agreement between the parties to Ex.P-6 is nothing but lease. The period of lease mentioned therein is 2 years. As per the above provision, Ex.P-6 is a compulsorily registerable document, but the said document is not registered in accordance with law. Effect of non-registration of a document which is compulsorily registerable is described in Sec.49 of Registration Act which reads as under:

Sec.49 of Registration Act;

"Effect of non-registration of documents required to be registered - No document required by Sec.17 (or by any provision of the Transfer of Property Act, 1882 (4 of

1982)), to be registered shall-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt or

(c) be received as evidence of any transaction affecting such property or conferring such power;

Unless it has been registered;

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument".

24. The above provisions make it clear that Ex.P-6 is not admissible as to the terms and conditions and as to rights or liabilities of the parties mentioned therein. It can only be admitted for collateral purpose i.e., to find out the nature of possession of the defendant. Therefore, the defendant can not place reliance on Ex.P-6 to say that the notice and suit are premature. Since, Ex.P-6 is an unregistered rental agreement, it is inadmissible and can not be relied upon.

25. Ex.D-2 is a copy of Judgment and decree in O.S.No.8677/1997. It reveals that the mother-in-law and husband of the plaintiff filed the said suit against the present defendant, Nanjappa and N. Basavaraj. Brief facts of the said suit as narrated in Ex.D-2 are as under:

"It is further alleged that plaintiffs have confidence with defendant No.2. It is alleged that 3rd defendant who is son of the defendant No.2 put up construction consisting of roof of asbestos sheet in a portion measuring 21'X49', which is described in plaint 'B' schedule. He leased it in favor of defendant No.1 on monthly rent of Rs.1,000/-. The said tenancy is with effect from 08.07.1997. Defendant No.2 started collecting rents himself. He did not pay the rent to plaintiffs in spite of their request and demands".

26. The above facts are binding upon the plaintiff as she is claiming right over the schedule property by virtue of sale deed executed by the plaintiffs therein. The said facts are clear admission by the said plaintiffs that the defendant was inducted in the schedule property by Nanjappa on monthly rent of Rs.1,000/-. Custody of Ex.D-10 and 11 indicates that the defendant has obtained power connection and put up AC sheet roof building in the schedule property in or about 1997. Thus, the contents of Ex.D-2, 10 and 11 go in favour of the defendant, but averments of written statement in para no.8 and cross examination of PW-1 at page no.5 are nothing but admission by him that he has entered into lease agreement with the plaintiff and paying rent to her. The said portion of written statement and cross examination are as under:

Written statement Para No.8:

"The defendant begs to submit that on the strength of the said Judgment and Decree, the plaintiff herein has approached the area Corporator and threatened the defendant and got the signature of the defendant to the lease agreement/tenancy agreement and forcibly collecting the rent from him".

Cross examination of PW-1 "It is false to suggest that the suit scheduled property belongs Smt. Sarojamma and her daughters and inspite of it I committed fraud and by putting pressure from the local corporator, I have got executed the lease deed from the defendant by showing advance amount of Rs.1,00,000/- and monthly rent as Rs.6,000/-".

"It is false to suggest that though the plaintiff is not the owner of schedule property, we got lease deed from the defendant and getting rent from him illegally and filed a false case against him".

27. It is his defence that on the strength of sale deed at Ex.D-1 and decree in O.S.No.511/ 2003, the plaintiff approached area corporator who pressurized him to execute rental agreement in favour of the plaintiff and rent is being collected from him forcibly. Except oral evidence of DW-1, there is nothing on record to believe that the defendant was threatened to execute rental agreement and to pay rent to the plaintiff. Therefore, defence as to coercion to execute rental agreement and to pay rent is unbelievable and is liable to be rejected.

28. It is rule of evidence that admitted facts need not be proved. The above pleading and cross examination of PW-1 are admissions by the defendant as to execution of rental agreement and payment of rent to the plaintiff. DW-1: Bhagyanathan has categorically admitted as to existence of jural relationship of tenant and landlord between him and the plaintiff. Portions of cross examination of DW-1 are as under:

"It is true to suggest that the suit property is number as site no. 83 and 86.

It is true to suggest that the said sites are situated in sy. no.77/1 of Kottanur Village. It is true to suggest that total measurement of those two sites is 60'X40'. It is true to suggest that a building measuring 10 squares is situated in the said sites".

"It is true to suggest that I have paid Rs.1,00,000/- as advance to the plaintiff as on the date of agreement.

Witness volunteers that he paid the said amount in two installment of Rs.50,000/- each. It is true to suggest that the said payments were made through cheques in the name of plaintiff".

"It is agreed that the rent of the suit property is Rs.4,500/- per month. It is true to suggest that since 10 years, I am paying rent to the plaintiff by way of cheque every month".

"It is true to suggest that even after filing of the suit, I have paid rent to the plaintiff. It is true to suggest that I paid rent to the plaintiff till September-

October-2014. The last paid monthly rent was Rs.6,000/-. It is true to suggest that as per the say of Councilor Nataraj, I paid enhanced rent for time to time to the plaintiff. I have not paid rent pertaining to the suit property to any person other than the plaintiff. Sarojamma w/o Basavaraj, Smt. B. Gayatri d/o N. Basavaraj, Miss B. Mangala Gowri d/o N. Basavaraj and Kum. B. Savitha d/o N. Basavaraj have never demanded me to pay rent in respect of suit property".

"I have not filed any complaint against the councilor Nataraj for pressurizing me to enter into rental agreement with the plaintiff. About 10 villagers were there along with councilor at the time of executing the agreement. I have not filed any complaint against those villagers. It is true to suggest that I have occupied the suit property as tenant of the plaintiff since 06.07.2005".

"It is true to suggest that the plaintiff is the owner of the sites mentioned Ex.D8 and Ex.D9".

"Nobody pressurized me to execute lease agreements dated: 28.11.2008 and 19.03.2013 in favour of plaintiff. Original agreements are with the plaintiff".

29. The above admissions made it abundantly clear that the plaintiff is the landlord of the defendant in respect of the schedule property and the defendant is paying rent every month to the plaintiff right from 2005. He has paid rent to the plaintiff even after filing of the suit. Ex.P-5 is bank statement of the plaintiff which confirms the payment of rent by the defendant into the account of the plaintiff from time to time. The last paid rent is Rs.6,000/- p.m., The rent was payable every month. Ex.P-5 discloses that the defendant has remitted the rent amount to the bank account of the plaintiff every month. Therefore, I am of the opinion that though the defendant was inducted as tenant in the schedule property by Nanjappa, he continued to be the tenant of the plaintiff from 2005 onwards and paid rent to her. There is nothing on record to believe that the schedule property is of the ownership of Nanjappa, N. Basavaraj and his Lrs. DW-1 has admitted that Lrs of N. Basavaraj have not demanded him to pay rent in respect of schedule property. Hence, I believe the evidence of PW-1 and contents of Ex.P-5 and hold that the plaintiff is the landlord and the defendant is tenant under the plaintiff in respect of the schedule property on monthly rent of Rs.6,000/-.

30. Ex.P-6 is rental agreement, but it is inadmissible. In the absence of contract, provisions of Sec.106 of T.P. Act determine the nature of tenancy. The schedule property is not an agricultural land. It is used for commercial purpose. Hence, the tenancy of the defendant was monthly tenancy terminable by 15 days prior notice. Ex.P-2 is copy of quit notice and it was issued on 5-5-2014. Postal acknowledgment is at Ex.P-4 and it reveals that the notice was duly served on the defendant on 7-5-2014. However, the plaintiff has asserted that the notice was served on 12-5-2014. Let us assume that the notice was served on 12-5-2014. Statutory period expired on 27-5-2014. The

tenancy of the defendant stood terminated on 27-5-2014. The suit is filed after expiry of 15 days period from the date of service of notice. There is nothing on record to believe that the notice is invalid. The defendant did not quit, vacate and deliver vacant possession of the schedule property even after termination of his tenancy. His possession is unauthorized w.e.f. 28-5-2014. He is liable to pay damages for use and occupation of the property. The plaintiff is claiming damages @ Rs.13,000/-, but there is no corroboration to the evidence of PW-1 in that regard. I am of the opinion that the tenancy of the defendant is duly and validly terminated by quit notice. The plaintiff is entitled for vacant possession of the schedule property. The defendant is liable to quit, vacate and deliver the vacant possession of the same. He is also liable to pay damages @ Rs.6,000/- p.m., from the date of suit till delivery of vacant possession of the schedule property in favour of the plaintiff. Hence, I answer the points as above.

31. POINT NO.4: In view of above discussion and findings, I proceed to pass following:

ORDER The suit of the plaintiff is decreed with cost.

The defendant is directed to quit, vacate and deliver the vacant possession of the schedule property in favour of the plaintiff within 2 months from the date of order.

The defendant is further directed to pay damages @ Rs.6,000/- pm, to the plaintiff from the date of suit till the date of delivery of possession of the schedule property.

Draw decree accordingly.

(Dictated to the Stenographer, directly on computer and then corrected by me and pronounced in the open court, on this the 7th day of December 2015.) (Basavaraj Chengti) XVI ADDL.JUDGE, Court of Small Causes, BANGALORE.

SCHEDULE All that piece and parcel of property bearing No.83 and 86 Katha No.142, assessment No.77/1 measuring 80 X 40 feet together with ten squares of A.C sheet roof building thereon, situated at Kothanur village, Uttarahalli Hobli, Bangalore South Taluk, together with electrical fittings and bounded on the:

East by :	60 feet road
West by :	site no. 82
South by :	Road

(Basavaraj Chengti)  
XVI ADDL.JUDGE,  
Court of Small Causes,  
BANGALORE.

ANNEXURE

LIST OF WITNESSES EXAMINED AND DOCUMENTS MARKED FOR PLAINTIFF  
AND DEFENDANTS:

PW.1                      V.Basavaraj

Defendants

DW.1                      Bhagyanathan @ Bhagya

Ex.P1 - Deed of SPA  
Ex.P2 - Copy of Notice  
Ex.P3 - Postal Receipt  
Ex.P4 - Acknowledgment  
Ex.P5 - Statement of account  
Ex.P6- Rental agreement

Defendant 's

Ex.D1                      Copy of Sale deed  
Ex.D2                      Certified copy of Judgment and decree in OSNo.8677/1997  
Ex.D3                      Certified copy of Judgment and decree in OS No.511/03  
Ex.D4                      Copy of partition deed  
Ex.D5                      Certified copy of Cash Paid receipt  
Ex.D6                      Legal notice dated: 11.04.2005 issued by the Plaintiff.  
Ex.D7                      Copy of Reply dated: 24.05.2005  
Ex.D8                      Licence for running Granite Shop  
Ex.D9                      VAT Registration Certificate  
Ex.D10                      NOC issued by Tahasildar  
Ex.D11                      Cash bill regarding purchase of AC Sheet  
Ex.D12                      EC (2 in nos)  
Ex.D13                      Photographs (2 in nos) (subject to objection)  
Ex.D14                      Copy of agreement  
Ex.D15                      Copy of plaint in OS No.1451/2015

XVI Addl.Judge,  
Court of Small Causes,  
Bangalore.

DECREE  
S.C.C.H.NO.14

IN THE COURT OF SMALL CAUSES COURT, AT BANGALORE.



S.C.No.636/2014 Plaintiff/s : Smt.N.Manjula W/o A.Basavaraj Aged about 34 years, R/at No.112 Rama Mandira Road, Sarakki Village, Ist stage, J.P Nagar, Bangalore-78.

V/s

(By pleader Sri CHR)

Defendant/s

Sri.S.G.Bhagyanathan @ Bhagya  
S/o late Guruswamy Achar  
Proprietor  
M/s.S.M.Swamy Granties  
No.206, 10th cross,  
Ist phase Sarakki J.P Nagar,  
Bangalore-78.

(By pleader Sri MNB)

CLAIM: Suit filed on \_\_\_\_\_ prays for directing defendant to quit and vacate the vacant possession of the schedule premises.

This suit coming on ` for final disposal before Sri.Basavaraj Chengti ., XVI Addl. Judge, CSC, Bangalore, in the presence of Sri/Smt Advocate, for the plaintiff and Sri/Smt Advocate, for the defendant.

ORDER The suit of the plaintiff is decreed with cost.

The defendant is directed to quit, vacate and deliver the vacant possession of the schedule property in favour of the plaintiff within 2 months from the date of order.

The defendant is further directed to pay damages @ Rs.6,000/- pm, to the plaintiff from the date of suit till the date of delivery of possession of the schedule property.

Draw decree accordingly.

Given under my hand and the seal of the Court this Day of 2015.

REGISTRAR, COURT OF SMALL CAUSES, BANGALORE.

MEMORANDUM OF COST INCURRED IN THIS SUIT

	By the
Plaintiff	Defendant

Court fee on plaint	
Court fee on power	
Court fee on exhibits	

Service of process + Postal charges  
Commissioner's fees  
Pleaders fee  
Total of Rs.

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Amount payable by the defendant to the plaintiff is Rs.

SCHEDULE

Decree Drafted      Scrutinised by      REGISTRAR,  
   COURT OF SMALL CAUSES,  
   BANGALORE

Decree Clerk      SHERISTEDAR

Dt. 07.12.2015  
P-CHR  
D- MNM  
For Judgment

Order pronounced in open court vide  
separate judgment.  
ORDER

The suit of the plaintiff is decreed with cost.

The defendant is directed to quit, vacate and deliver the vacant possession of the schedule property in favour of the plaintiff within 2 months from the date of order.

The defendant is further directed to pay damages @ Rs.6,000/- pm, to the plaintiff from the date of suit till the date of delivery of possession of the schedule property.

Draw decree accordingly.

XVI ADDL.JUDGE, Court of Small Causes, BANGALORE.

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