

## R. Gopal Reddy vs Narayanappa on 18 November, 2019

C.R.P.67

Govt. of Karnataka

Form No.9 (Civil)

Title Sheet for  
Judgments in Suits  
(R.P.91)

TITLE SHEET FOR JUDGMENTS IN SUITS  
IN THE COURT OF THE VIII ADDITIONAL CITY CIVIL  
AND SESSIONS JUDGE (CCH-15) AT BENGALURU  
Dated this the 18th day of November, 2019.

PRESENT:

Sri MALLANAGOUDA, B.Com.,LL.M.,  
VIII Additional City Civil and Sessions Judge (CCH-15),  
Bengaluru.

ORIGINAL SUIT No.1253/2012

PLAINTIFF : R. Gopal Reddy,  
S/o. Late K. Rama Reddy,  
Aged about 54 years,  
Residing at No.64, "Sapna  
Sadana", M.C.H.S. Colony,  
5th 'A' Cross, B.T.M. Lay-out  
2nd Stage, Bangalore - 560  
076.  
(By Sri Y.R. Sadasiva Reddy,  
Advocate)

-VERSUS-

DEFENDANTS : 1. Narayanappa,  
S/o. Chikkapillaiah,  
Aged about 89 years.(Dead).  
2. B.N. Ramaiah Reddy,  
S/o. Narayanappa,  
Aged about 64 years;  
3. B.N. Vasudeva Reddy,  
S/o. Narayanappa,  
Aged about 60 years;  
4. B.N. Janardhana Reddy,  
S/o. Narayanappa,  
Aged about 57 years;

Cont'd..

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O.S. No.1253/2012

5. B.N. Krishna Reddy,  
S/o. Narayanappa,  
Aged about 54 years;  
6. B.N. Chandrashekara,  
S/o. Narayanappa,

7. Aged about 50 years;  
B.N. Somashekara,  
S/o. Narayanappa,  
Aged about 47 years.  
Defendants 2 to 7 are  
residing at Bellandur  
village, Varthur hobli,  
Bangalore South taluk.  
(Defendant No.2 by Sri  
K.A.M., Advocate)  
(Defendant Nos.3 to 7 by  
Sri R.N., Advocate)

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Date of Institution of the Suit : 13-02-2012  
Nature of the Suit (Suit on : Specific Performance.  
pronote, Suit for declaration  
and possession, Suit for injun-  
ction etc,)  
Date of the commencement : 27-01-2017  
of recording of the evidence  
Date on which the Judgment : 18-11-2019  
was pronounced  
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Year/s Month/s Day/s  
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Total duration : 7 years, 9 months, 5 days.  
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(MALLANAGOUDA)  
VIII Additional City Civil and Sessions Judge,  
An&/- Bengaluru.

-3- Cont'd..  
O.S. No.1253/2012

#### JUDGMENT

This suit is filed by the plaintiff seeking mandatory injunction against the defendants, - directing them to execute Joint Development Agreement in favour of the plaintiff, - in the alternative, directing the defendants to pay Rs.75,00,000/- to the plaintiff with interest at 12 per cent per annum.

2. The brief facts of the plaintiff's case are as under -

Defendant No.1 is the father of defendants 2 to 7. All the defendants have constituted Hindu Joint Family. First defendant had purchased land bearing Survey Nos.8 and 9 and new Survey No.6/3 measuring 1 acre

-7 guntas of Jodi Ambalipura village through sale deed dated 12.4.1950. Bangalore Development Authority had acquired 00-22 guntas in the said Survey number for road widening purpose and remaining 00-25 guntas is with the defendants. As defendants were intending to develop 18,000 square feet of the said land, they entered into Memorandum of Understanding with the plaintiff on 13.8.2007 - in which, they have agreed to Cont'd..

-4- O.S. No.1253/2012 make available the suit property which is described in the suit schedule for joint development and comply with all the terms and conditions of the Memorandum of Understanding. As there is some minor discrepancy in the R.T.C. of the said property, in Clause No.4 of the Memorandum of Understanding, plaintiff has agreed to correct the same at his own cost and expenses with the cooperation of the defendants. Further, as per Clauses 6 and 7 of the Memorandum of Understanding, plaintiff had agreed to take steps for conversion of the agricultural land into non-agricultural purpose. As per the Memorandum of Understanding, plaintiff has paid Rs.50,00,000/- to defendants as non-refundable security deposit and another Rs.25,00,000/- as refundable security deposit. Out of Rs.50,00,000/-, Rs.8,33,335/- each is paid to defendants 1 to 7 and out of Rs.25,00,000/-, Rs.4,16,670/- is paid to second defendant and Rs.4,16,666/- each to other defendants, and all the defendants have acknowledged receipt of the said amount. Further, defendants have agreed to execute Joint Development Agreement in the ratio of 50 : 50. But, subsequently, defendants have not come Cont'd..

-5- O.S. No.1253/2012 forward to cooperate for rectification of the R.R. entries and conversion of the land. Finally, on 5.1.2012, plaintiff got issued notice to all the defendants calling upon them to execute Joint Development Agreement and cooperate for rectification of the R.T.C. and conversion of the land. After receipt of the notice, defendants have replied to the notice - in which, some of them have admitted receipt of the amount and defendant No.2 has denied receipt of Rs.6,33,335/- and accepted receipt of Rs.4,16,666/- and he has contended that he is not prepared to accept any of the terms of the notice and he is disputed the transaction itself. In fact, as per the Memorandum of Understanding, it is the duty of the defendants to cooperate for rectification of the R.T.C., conversion of the land and to execute the Joint Development Agreement. In the absence of the conversion order, plaintiff cannot proceed with the construction. Therefore, plaintiff is constrained to file this suit seeking mandatory injunction and alternative relief for recovery of the amount paid by him.

Cont'd..

-6- O.S. No.1253/2012

3. After service of summons, defendants have appeared through their Counsel. Defendants 2 and 3 have filed separate written statements and defendants 1 and 4 to 7 have adopted the written statement of defendant No.3, and during pendency of the suit, defendant No.1 has died. Defendant

No.2 filed his written statement as under -

Suit of the plaintiff is not maintainable either in law or on facts and the same is liable to be dismissed in limine. Plaintiff has concocted a story to suit his own needs and hence, plaint is liable to be rejected. Plaintiff's claim is based on an unregistered Memorandum of Understanding and hence, the same cannot be enforced and the same is compulsorily registrable. Averments of Para 3 of the plaint that first defendant is the father and defendants 2 to 7 are the sons and they constituted a Hindu joint family, is not true and correct. Averment that first defendant had purchased Survey Nos.8 + 9, new Survey No.6/3 measuring 1 acre 07 guntas of Jodi Ambalipura village through sale deed dated 12.4.1950 and the Bangalore Cont'd..

-7- O.S. No.1253/2012 Development Authority has acquired 00-22 guntas of the said land for road-widening and the remaining 00- 25 guntas is with the defendant, is true and correct. The other averments of Para 3 that defendants were intending to develop the suit property by entering into Joint Development Agreement and Memorandum of Understanding and accordingly, they have executed Memorandum of Understanding with the plaintiff on 13.8.2007 - under which they have agreed to make available the suit property for joint development and for other terms and conditions of the Memorandum of Understanding, are all false and denied. In fact, second defendant has not at all entered into Memorandum of Understanding with the plaintiff and hence, claim of the plaintiff is not enforceable against the second defendant. There is no any previty of contract between the plaintiff and defendant No.2. As defendant No.2 is not a party to the contract, claim against defendant No.2 is not maintainable and the plaint is liable to be rejected. Averments of Para 4 of the plaint that a there is minor discrepancy in the R.T.C., defendants have agreed to cooperate for rectification of the R.T.C. entries Cont'd..

-8- O.S. No.1253/2012 and conversion of the land, are false and denied. Averments of Para 5 of the plaint that as per Clauses 6 and 7 of the Memorandum of Understanding, defendants have agreed to cooperate for conversion of the land; they executed Memorandum of Understanding by receiving Rs.50,00,000/- and Rs.25,00,000/- towards non-refundable and refundable security deposit and Rs.8,33,335/- each was paid to defendants 1 to 7; Rs.4,16,670/- was paid to defendant No.2, and Rs.4,16,666/- was paid to other defendants; they acknowledged receipt of the said amount and executed the Memorandum of Understanding dated 13.8.2007 - are all false and denied. In fact, plaintiff had approached the second defendant in August, 2007 offering to develop the the suit property by constructing commercial complex; he had agreed to get conversion order and rectification of the R.T.C. within three months and enter into Joint Development Agreement within 15 days of the conversion order; as per the said understanding, he had paid Rs.4,16,666/- to the second defendant towards non-refundable security deposit; it was agreed that if plaintiff fails to rectify the Cont'd..

-9- O.S. No.1253/2012 mistake in the R.T.C. and secure conversion order, the security deposit amount would stand forfeited as damages. At that time, only second defendant had executed receipt for Rs.4,16,666/-; except the said receipt, second defendant has not executed any other document; subsequently, in spite of repeated requests, plaintiff did not take steps for rectification of the R.T.C. and securing conversion order within the agreed time.

Averments of Para 6 of the plaint that defendants have agreed to execute Joint Development Agreement of 50 : 50 ratio, they have not come forward to cooperate for rectification of the R.T.C. and getting conversion order, are all denied. In fact, terms of the Joint Development Agreement were not at all finalised. Plaintiff had to first fulfill his part of contract. In fact, is the plaintiff who caused loss to the second defendant by making false promise - though he had no sufficient funds to undertake construction and he had no knowledge of the construction field. Averment that on 5.1.2012, plaintiff got issued notice and defendants have replied the same, is a matter of record. Notice Cont'd..

-10- O.S. No.1253/2012 issued by the plaintiff has been replied by the second defendant. Suit of the plaintiff is barred by limitation. Only to create cause of action, plaintiff got issued notice. Plaintiff has not performed his part of contract. He issued notice after a gap of 5 years and hence, same is not valid. Plaintiff is not entitled for any reliefs. In fact, due to failure of the plaintiff in getting conversion order and rectification of the R.T.C., second defendant has suffered a lot to the tune of Crores of rupees and till now, suit property is lying vacant. Therefore, the agreement has become in fructuous and the same cannot be enforced. There is no cause of action to file the suit. Plaintiff is not entitled for any reliefs.

4. Defendant No.3 filed written statement as under

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It is true that first defendant is father of defendants 2 to 8. But, it is false to say that defendants have constituted Hindu joint family. It may be true that first defendant had purchased the property bearing Survey Nos.8 and 9, new Survey No.6/3 of Jodi Ambalipura village through sale deed dated 12.4.1950;

Cont'd..

-11- O.S. No.1253/2012 Bangalore Development Authority has acquired 00-22 guntas for formation of road. But, it is incorrect to say that 00-25 guntas of the said land is remaining with the defendant. It is true that as per the Memorandum of Understanding dated 13.8.2007, defendants have agreed to permit the plaintiff to develop the property. Averments of Para 4 of the plaint that as per Clause 4 of the Memorandum of Understanding, there was minor discrepancy in the R.T.C. Plaintiff undertook to get it rectified. In fact, defendants have done all the required as desired by the plaintiff. They executed the required documents. Due to certainty of the discrepancy, 18 months' time was fixed for completion of the project. It is true that as per Clause 6 and 7 of the Memorandum of Understanding, it was agreed for conversion of the agricultural land to non-agricultural purpose - for which, defendants have handed over all the documents of title, revenue records, various signed forms and affidavits. It may be true that plaintiff had paid Rs.50,00,000/- and Rs.25,00,000/- as non-refundable security and refundable security deposits respectively. Memorandum of Understanding to that extent is Cont'd..

admitted to be true and correct.

Averment that

defendant had agreed to execute Joint Development Agreement in respect of the suit property, is true. But, the averments that defendants have not cooperated for getting the land converted and for rectification of the R.T.C., is false. It is true that plaintiff got issued notice dated 5.1.2012 and defendants have suitably replied to the same. With regard to averments of Para 7 of the plaint, defendants have cooperated with the plaintiff and they have done offering as desired by the plaintiff to get the land converted and to rectify the entries in the R.T.C. and therefore, now they cannot be blamed. Suit for mandatory injunction is not maintainable and the same is barred by limitation. Suit for alternative relief of recovery of Rs.75,00,000/- is also not maintainable. Plaintiff cannot claim refund of Rs.50,00,000/- - which was non-refundable security deposit. In fact, after execution of the Memorandum of Understanding, plaintiff did not try to start development of the property and till now, same is lying vacant. In spite of full cooperation extended by the defendants, plaintiff has not done anything to develop the property.

Cont'd..

-13- O.S. No.1253/2012 He was never ready and willing to perform his part of contract. Plaintiff has filed this suit as a strong arm tactics to recover the amount paid by the plaintiff under the Memorandum of Understanding which has become stale and the suit is barred by limitation. As the property lies on the outer ring road which is a commercial hub, if the plaintiff had developed the complex within the time prescribed, the defendants would have earned monthly rent of Rs.10,00,000/- and hence, now, since last four years, defendants have suffered monetary loss. Therefore, they have adjusted the amount paid by the plaintiff towards the loss sustained by them. Therefore, plaintiff is not entitled for recovery of Rs.75,00,000/-. Hence, suit of the plaintiff is liable to be dismissed.

5. On the basis of the above facts, the following Issues and Additional Issues have been framed -

#### ISSUES

1. Whether the plaintiff proves that executed Memorandum of Understanding dated 13.8.2007 with the plaintiff?

Cont'd..

-14- O.S. No.1253/2012

2. Whether the plaintiff proves that he is entitled to a decree for mandatory injunction directing the defendants to execute a Joint Development Agreement in favour of the plaintiff as per the terms and conditions mentioned in the Memorandum of Understanding dated 13.8.2007 in respect of the suit schedule property as pleaded for?
3. Whether the plaintiff alternatively proves that he is entitled to refund of Rs.75,00,000/- with interest at 12 per cent per annum with effect from 13.8.2007 as prayed for?
4. Whether the defendants prove that the suit is not maintainable?
5. To what order or decree?
6. In support of her case, plaintiff examined himself as P.W.1 and a witness as P.W.2 and got marked documents as per Exs.P.1 to P.11 on his behalf.

Cont'd..

-15- O.S. No.1253/2012

7. On the other hand, one Thirumala Babu son of B.N. Ramaiah Reddy and the Special Power of Attorney holder of defendant No.2 examined himself as D.W.1 and defendant No.3 got himself examined as D.W.2, and defendants have got marked one document as per Ex.D.1 on their behalf.

8. Heard arguments.

9. My findings on the above Issues are as under -

ISSUE No.1 - Affirmative;

ISSUE No.2 - Negative;

ISSUE No.3 - Negative;

ISSUE No.4 - Affirmative;

ISSUE No.5 - As per final order, for the following -

REASONS

10. ISSUE No.1 : It is the case of the plaintiff that defendants 1 to 7 are the members of the joint family; defendants 2 to 7 are the sons of defendant No.1; being Kartha of the family, defendant No.1 had purchased Cont'd..

-16- O.S. No.1253/2012 land bearing old Survey Nos.8 + 9, new Survey No.6/3 measuring 1 acre 07 guntas of Jodi Ambalipura village through sale deed dated 12.4.1950; subsequently, 00- 22 guntas of land in the said Survey number was acquired by the Bangalore Development Authority for road-widening purpose and the remaining 00-25 guntas was retained by the defendants; plaintiff and defendants have entered into Memorandum of Understanding under which plaintiff has agreed to develop the property in an area measuring 18,000 square feet belonging to the defendants; as per the said Memorandum of Understanding, defendants have agreed to make available the property for joint development. As per Clause 5, at the time of Memorandum of Understanding, plaintiff has paid Rs.50,00,000/- towards non-refundable security deposit and Rs.25,00,000/- towards refundable security deposit to defendants 1 to 7 and they all have acknowledged the same.

11. Defendants 1 and 3 go 7 have admitted about execution of the Memorandum of Understanding and Cont'd..

-17- O.S. No.1253/2012 also receipt of Rs.50,00,000/- and Rs.25,00,000/- towards non-refundable and refundable security deposits respectively. But, defendant No.2, though admitted about receipt of Rs.4,16,670/- as his share in the non-refundable security deposit, he has denied execution of Memorandum of Understanding and receipt of his share in the refundable security deposit. With regard to proof of execution of Memorandum of Understanding by defendant No.2 is concerned, P.Ws.1 and 2 have deposed in detail and in the cross- examination of P.W.1, he has denied about non- payment of any other amount except the non- refundable security deposit. P.W.2 is one of the attesting witness to the Memorandum of Understanding. In the cross-examination, he has deposed that in his presence only, second defendant has put his signature on the Memorandum of Understanding. Though in the written statement of defendant No.2 he has denied receipt of his share in refundable security deposit, in the cross-examination of P.W.2, there is no suggestion made by the defendants' Counsel about non-payment of the said amount.

Cont'd..

-18- O.S. No.1253/2012 Further more, as rightly argued by the plaintiff's Counsel, plaintiff has got marked a document marked as per Ex.P.9 - which is the agreement between the defendants and M/s. Akme Projects Limited in respect of the other portion of the property and defendant No.2 has admitted the said agreement and signature of defendant No.2 on the said agreement. By looking to the signature of defendant No.2 on Ex.P.8 and admitted signature of defendant No.2 on Ex.P.9, it clearly appears that both the signatures are pertaining to one and the same person. Therefore, it appears that plaintiff's contention that defendants 1 to 7 have executed the Memorandum of Understanding dated 13.8.2007 as per Ex.P.8 by receiving non-refundable security deposit of Rs.50,00,000/- and refundable security deposit of Rs.25,00,000/- appears to be true and correct. Therefore, Issue No.1 is answered in affirmative.

12. ISSUE NOs.2 AND 3 : Since all these Issues are inter-related with each other, they are being taken up together for discussion at a stretch in order to avoid repetitive discussion of facts.

Cont'd..



-19- O.S. No.1253/2012

13. Plaintiff filed the present suit seeking direction to the defendants to execute the Joint Development Agreement and in the alternative, to repay the amount of Rs.84,00,000/- - which includes amount paid by him and interest thereon till filing of the suit along with interest at 12 per cent per annum from the date of suit till payment of the entire amount. With regard to prayer for direction to the defendants to execute Joint Development Agreement is concerned, though in the cross-examination plaintiff requested for directing the defendants to execute the Joint Development Agreement, in the cross-examination, he has admitted that now in view of order of the Green Tribunal, it is not possible to construct the building as agreed - which goes to show that because of the order of the Green Tribunal, there is prevention for construction of the building in the suit schedule property. Therefore, even if defendants are directed to execute the Joint Development Agreement, it is not possible to construct the building in the suit property as agreed by the parties as per Ex.P.8 Memorandum of Understanding. Hence, the question of directing the defendants to Cont'd..

-20- O.S. No.1253/2012 execute the Joint Development Agreement, is not at all possible and hence, the plaintiff is not entitled for the relief of direction to the defendants to execute the Joint Development Agreement.

14. With regard to prayer for refund of the money paid by the plaintiff to the defendants is concerned, defendants' Counsel has argued that there is forfeiture clause in the Memorandum of Understanding marked at Ex.P.8; as the plaintiff himself has failed to perform his part of the contract within the time fixed for it due to delay caused by him only, it became not possible to construct the building in the suit schedule property and therefore, defendants have forfeited the amount paid by the plaintiff and the suit of the plaintiff is barred by limitation. In support of his said argument, he has relied upon the following judgments -

(1) (2013) 1 Supreme Court Cases 345 [Satish Batra -versus- Sudhir Rawal] -

"B. Contract and Specific Relief - Stipulated damages, Penalty clauses and Earnest money deposits - Agreement for sale - Payment of earnest money deposits Cont'd..

-21- O.S. No.1253/2012

- Forfeiture of, for non-performance of contract - Justifiability of - Agreement to sell entered into between appellant seller and respondent purchaser for consideration of Rs.70,00,000 -

Respondent purchaser paid Rs.7,00,000 as earnest money deposit - Upon non-

performance of contract by buyer, appellant seller forfeited entire sum of Rs.7,00,000 paid as earnest money deposit - Respondent purchaser filed a suit for recovery of Rs.7,00,000/- but it was dismissed - In appeal, High Court observed that appellant seller was entitled to forfeit only nominal

amount out of Rs.7,00,000 but not entire Rs.7,00,000 - Unsustainability of - Held, Rs.7,00,000 was paid by respondent purchaser as earnest money deposit - It was paid as guarantee that contract would be performed - As per terms of contract, it was permissible to forfeit entire earnest money deposit - There were no other clauses militating against forfeiture clause

- Appellant seller was justified in forfeiting entire sum of Rs.7,00,000 paid as earnest money deposit  
- Hence, High Court erred in reversing decree of trial court - Decree of trial court, restored -

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-22- O.S. No.1253/2012 Transfer of Property Act, 1882 - S. 55 - Contract Act, 1872, S.74.(Paras 15 to 17)"

(2) AIR 1999 KARNATAKA 231 KARNATAKA HIGH COURT [K. Premananda and another -versus- Syndicate Bank] -

"Limitation Act (36 of 1963), S.3, S.18 - Bar of limitation - Duty of Court - Suit for recovery of money - Plea that plaintiffs had acknowledged his liability to pay debt and thus suit was barred by limitation -

Not considered by Court - Order decreeing suit - Per se illegal - Court directed to decide question whether suit was barred by limitation."

(3) ILR 2014 KAR 233 [Smt. Padmini Raghavan

-versus- Mr. H.A. Sonnappa, since dead by his LRs and others] -

"B) SPECIFIC RELIEF ACT, 1963 -

CLAUSES (a) (b) & (c) OF SECTION 16 -

Readiness and Willingness - Plaintiff to plead and prove not only the terms of the agreement, but also his readiness and willingness".

"E) LIMITATION ACT, 1963 - ARTICLE 54

- Period of limitation to enforce specific performance - Effect of substituting or  
Cont'd..

-23- O.S. No.1253/2012 adding new plaintiff or defendant - HELD, Article 54 of the Act 1963 prescribes three years as the period within which a suit for specific performance can be filed. The period of three years is to be calculated from the date specified in the agreement for performance or in the absence of any such stipulation, within three years from the date the performance was refused."

(4) 2010 (3) KCCR 2093 KARNATAKA HIGH COURT [Sri H.D. Hanumanthappa -  
versus- Sri Mohammed Sab and others] -

"A. LIMITATION ACT, 1963 - Articles 56 to 58 - Limitation to challenge alienation made by Guardian - Held, suits relating to declaration fall within Part III of the Schedule to the Act, which was within it, Articles 56 to 58 - The period of limitation prescribed with regard to the suits relating to decrees and instruments is put under Part IV of the Schedule to the Act, which has within it, Articles 59 and 60. Article 60 is with regard to the setting aside a transfer of property made by the guardian of a ward and the period of limitation is 3 years, commencing from the time when the ward attains majority -

Cont'd..

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O.S. No.1253/2012

Suit filed almost after 40 years on

attaining majority is barred by limitation."

"B. LIMITATION ACT, 1963 - Section 3(1)

- Plea as to limitation - The defendants in their written statement have specifically contended that, the suit is barred by time. It has also been averred that, the claim of the plaintiff cannot be allowed in law as he slept over the matter for over 5 decades it was averred that, the plaintiff nor his predecessors have ever set their feet in the suit land, since the date of sale deed dated 19.6.1940."

(5) AIR 2000 SUPREME COURT 3597 [State of Kerala -versus- T.N. Chacko] -

"(A) Limitation Act (36 of 1963), Art.47, S.18 - Suit for recovery of consideration on frustration of contract - Limitation -

Suit for recovery of bid amount paid to Forest Deptt. filed beyond period of limitation - Defence of acknowledgement of liability by Forest Deptt., in reply to claim by plaintiff raised - Said claim by plaintiff was for remission of consideration viz., bid amount by 150% and not for recovery of consideration -

Hence, it does not amount to

Cont'd..

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O.S. No.1253/2012

acknowledgement - Suit not saved from being barred by limitation."

15. On the other hand, plaintiff's Counsel has argued that when defendants have admitted about execution of the Memorandum of Understanding and receipt of the security deposit from the plaintiff, and they themselves have committed default in complying with their part of contract as per the Memorandum of Understanding marked at Ex.P.8, defendants were expected to cooperate for some rectification in the R.T.C. and for getting the conversion order - for which, they have not at all cooperated and supported the plaintiff; defendants are not entitled to take the benefit of their own default and therefore, they are liable to repay the amount paid by the plaintiff along with interest thereon.

16. On perusal of the pleadings and evidence of both the parties to the suit and arguments of their Counsel, it appears that as rightly argued by the defendants' Counsel, in Clause 8 of the Memorandum of Understanding, there is a clause for forfeiture of the amount paid by the plaintiff in favour of the defendants.

Cont'd..

-26- O.S. No.1253/2012 In case of breach of contract by the plaintiff and to show that plaintiff is always ready and willing to perform his part of contract, plaintiff has to plead and prove the said fact, and as per Clauses IV to VI of the Memorandum of Understanding, the plaintiff is under the obligation to rectify the discrepancy appearing in the R.T.C. and obtain conversion order from the competent authority and the plaintiff has not produced any documentary evidence to show that he has made efforts to get the discrepancy appearing in the R.T.C. rectified and obtain the conversion order .

17. But, in his oral evidence, plaintiff has deposed that as the defendants have failed to cooperate for rectifying the entries in the R.T.C. and getting the conversion order, he was unable to develop the property and execute the Joint Development Agreement. By looking to Clause 8 of the Memorandum of Understanding marked at Ex.P.8, it appears that there is a clause for forfeiture of security deposit. Therefore, when the plaintiff has not produced any documentary evidence to show that he filed application before the Cont'd..

-27- O.S. No.1253/2012 competent authority for rectification of the discrepancy appearing in the R.T.C. and for getting conversion order, mere oral evidence of P.W.1 is not sufficient to show that plaintiff made efforts to perform his part of contract. Further more, though 18 months' period is fixed for construction of the building, plaintiff got issued notice to the defendants on 5.1.2012 only i.e., after about more than 4 years from the date of Memorandum of Understanding - which also supports the contention of the defendants that plaintiff has not made any efforts to perform his part of contract. Therefore, in view of Clause 8 of Ex.P.8 - Memorandum of Understanding, the defendants are entitled for forfeiture of non- refundable and refundable security deposit paid by the plaintiff.

18. Further more, as rightly argued by the defendants' Counsel, as the plaintiff has failed to file suit within three years from the date of Memorandum of Understanding, suit of the plaintiff is barred by limitation also. Accordingly, when plaintiff has failed to perform his part of contract, defendants are entitled for Cont'd..

-28- O.S. No.1253/2012 forfeiture of the amount paid as security deposit and suit of the plaintiff is barred by limitation. Accordingly, plaintiff is not entitled for alternative relief of refund of Rs.75,00,000/- paid by him with interest as claimed by him. Hence, Issue Nos.2 and 3 are answered as above.

19. ISSUE No.4 : As already discussed above, as the plaintiff has failed to perform his part of contract and suit of the plaintiff is barred by limitation, suit of the plaintiff is not maintainable and liable to be dismissed. Hence, Issue No.4 is answered in negative.

20. ISSUE No.5 : For my reasons and discussion on the above Issues, I proceed to pass the following -

ORDER Suit of the plaintiff is dismissed with cost.

(Dictated to Judgment Writer, transcribed by him, revised by me and after corrections, pronounced in open Court on this the 18th day of November, 2019.) (MALLANAGOUDA) VIII Additional City Civil and Sessions Judge, An&/- Bengaluru.

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O.S. No.1253/2012

#### ANNEXURE

#### 1. WITNESSES EXAMINED FOR THE PLAINTIFF:

Examined on:

P.W.1	: R. Gopal Reddy	27-01-2017
P.W.2	: Madhusudan	30-06-2018

#### 2. DOCUMENTS MARKED ON BEHALF OF PLAINTIFF:

Ex.P.1	: R.T.C. extract.
Ex.P.2	: Mutation register extract.
Ex.P.3	: Office copy of legal notice dated 5.1.2012.

Ex.P.4 to : Reply notices dated 12.1.2012, 17.1.2012, P.7 17.1.2012 and 19.10.2012.

Ex.P.8 : Memorandum of Understanding dated 13.8.2007;

Ex.P.8(a) : Signature of P.W.2.

Ex.P.9 : Certified copy of Joint Development Agreement dated 25.10.2004;

Ex.P.9(a) : Signature of defendant No.2. Ex.P.10 : Certified copy of statement of objection filed in A.A. No.155/2011.

Ex.P.11 : Certified copy of Application in A.A. No.155/2011.

3. WITNESSES EXAMINED FOR THE DEFENDANTS:

D.W.1	: Thirumala Babu	16-01-2019
D.W.2	: B.N. Vasudeva Reddy	26-06-2019

4.DOCUMENT MARKED ON BEHALF OF DEFENDANTS:

Ex.D.1 : Special Power of Attorney.

(MALLANAGOUDA) VIII Additional City Civil and Sessions Judge, An&/-  
Bengaluru.

Cont'd..

-30- O.S. No.1253/2012 Judgment pronounced in open Court vide separate judgment running into 29 pages kept in file. The operative portion of the judgment reads thus -

ORDER Suit of the plaintiff is dismissed with cost.

(MALLANAGOUDA) VIII Additional City Civil and Sessions Judge, An&/-  
Bengaluru.

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