

## N. Gangadhar vs M. Mallappa on 3 February, 2020

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 3rd day of February, 2020.

PRESENT:

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

ORIGINAL SUIT No.7729/2010

PLAINTIFF : N. Gangadhar,  
Aged about 60 years,  
S/o. Late Nanjappa,  
Residing at No.352/75,  
Natraj Complex,  
Ramamurthynagar Main  
Road, Ramamurthynagar,  
Bangalore - 560 016.  
(By Sri P.R.R., Advocate)

-VERSUS-

DEFENDANTS : 1. M. Mallappa,  
Aged about 69 years,  
S/o. Late Mallappa,  
No.524 'F', 8th Cross,  
7th Block, Jayanagar,  
Bangalore.  
2. Smt. S.V. Sarojamma,  
Aged about 60 years,  
W/o. M. Mallappa,  
No.524 'F', 8th Cross,  
7th Block, Jayanagar,  
Bangalore.  
3. M. Manjunath,  
Aged about 39 years,

Cont'd..

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O.S. No.7729/2010

S/o. Mallappa,  
No.524 'F', 8th Cross,  
7th Block, Jayanagar,  
Bangalore.  
4. Smt. Archana,

- Aged about 35 years,  
D/o. Mallappa,  
No.524 'F', 8th Cross,  
7th Block, Jayanagar,  
Bangalore.
5. M/s. Mallappa Hospital  
Private Limited, and  
Mallappa Convention  
Centre at K.R. Puram,  
Bangalore.
6. The Karnataka State  
Industrial Infrastructure  
and Development  
Corporation Limited,  
Khanija Bhavan, No.49, 4th  
Floor, East Wing, Race  
Course Road, Bangalore -  
560 001.  
(Defendant Nos.1 to 5 by  
Sri S.S., Advocate)  
(Defendant No.6 by Sri  
M.K.G., Advocate)

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Date of Institution of the Suit : 03-10-2010  
Nature of the Suit (Suit on : Specific performance.  
pronote, Suit for declaration  
and possession, Suit for injun-  
ction etc,)  
Date of the commencement : 09-03-2016  
of recording of the evidence  
Date on which the Judgment : 03-02-2020  
was pronounced  
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Year/s Month/s Day/s  
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Cont'd..

-3- O.S. No.7729/2010

Total duration : 9 years, - month/s, - day/s.  
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(MALLANAGOUDA)

VIII Additional City Civil and Sessions Judge,  
Bengaluru.

An&/-

#### JUDGMENT

This suit is filed by the plaintiff seeking specific performance of contract.

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

First defendant has purchased site No.563/B/13A measuring 80 feet x 130 feet of K.R. Puram, Bangalore from one Nagamma and her sons through sale deed dated 8.5.1987; site No.563/B/13B measuring 50 feet x 90 feet of K.R. Puram, Bangalore from the said Nagamma and her sons through sale deed dated 10.9.1999; site No.563/A/42B measuring 5 feet x 40 feet of K.R. Puram from one Rajashekara through sale deed dated 27.6.2001; site No.565/42 measuring 15 feet x 70 feet from one P. Siddappa through sale deed dated 24.1.2070; site No.565/42 measuring 15 feet x Cont'd..

-4- O.S. No.7729/2010 70 feet of K.R. Puram from one Subbanna through sale deed dated 12.3.1981, and site No.105/1 measuring 25 feet x 50 feet of K.R. Puram, Bangalore from one Smt. Janakamma through sale deed dated 5.9.1977. After purchasing those properties, defendants 1 and 2 have entered their names to the respective properties and they are in possession of the same. First defendant has constructed a commercial building consisting of shops measuring 1000 square feet in Site No.105/1 - which is described as 'Item No.I' of the schedule 'A' and leased the same in favour of Mahabaleshwara, Ejajpasha and Sanjeeva N. Further, for the purpose of construction of a hospital and convention centre in the properties purchased by them, defendants 1 and 2 gave property Nos.565/42, 563/B/13A, 563/B/13B and 563/A/42B to Mallappa Hospital Private Limited - the fifth defendant herein - to which, defendants 1 and 2 and their son and daughter who are defendants 3 and 4 are the Directors. In order to establish hospital and convention centre, fifth defendant, through first defendant, had approached Karnataka State Industrial Investment Development Corporation Limited ('KSIIDC' Cont'd..

-5- O.S. No.7729/2010 for short), Bangalore for financial assistance and after securing the loan, they created mortgage in favour of KSIIDC in respect of the said properties and, first and the second defendants have stood as sureties to the said loan. M/s. Mallappa Hospital Private Limited constructed a hospital in 6,500 square feet area on property No.565/42 - which is described as 'Item No.II' of 'A' schedule. Further, M/s. Mallappa Hospital Private Limited has constructed a convention centre having the built-up area of 30,000 square feet on property Nos.563/B/13A, 563/B/13B and 563/A/42B - which is described as 'Item No.III' of 'A' schedule. The said hospital and the convention centre are popularly known as 'Mallappa Hospital and Mallappa Convention Centre'. The said units were doing well for sometime, but now they stopped functioning.

Further, second defendant has purchased the property bearing No.314/110/423 of K.R. Puram, Bangalore from Smt. Sameera Asadullah through sale deed dated 15.11.1985 - which is 'B' schedule property and the first and the second defendants being owners of Cont'd..

-6- O.S. No.7729/2010 the plots and built-up portions, they have created charge in favour of the KSIIDC as security for repayment of the loan availed by Mallappa Hospital Private Limited. Subsequently, being not in a position to repay the loan borrowed by M/s. Mallappa Hospital, defendants 1 and 2 have decided to sell schedule 'A' and 'B' properties. Accordingly, they offered the schedule properties to the plaintiff and plaintiff has agreed to purchase the same for sale consideration of Rs.7.5 Crores and defendants have agreed for the same and accordingly, defendants have executed agreement for sale dated 3.1.2007.

At the time of negotiations and at the time of signing agreement for sale, plaintiff has paid Rs.1,66,70,000/- to the defendants. First and the second defendants had assured to clear the loan due to the KSIIDC and deliver vacant possession of the schedule properties to the plaintiffs within ten months from the date of agreement. Plaintiff being ready with the funds to complete the sale transaction had been pressing the defendants 1 and 2 to make out a clear Cont'd..

-7- O.S. No.7729/2010 title and sell the schedule property, but they did not take steps to discharge the loan due to the KSIIDC - in the result, KSIIDC had initiated proceedings under Section 29 of the Karnataka State Financial Corporations Act against defendants 1 and 2 and took possession of the suit properties. At that time, plaintiff, at the instance and whenever demanded, has paid through cheques and demand drafts to KSIIDC and paid cash on several dates to the first defendant. He has paid Rs.87,62,500/- through cheque dated 5.1.2007 to KSIIDS, Rs.50,00,000/-; through cheque dated 10.4.2007 to KSIIDC; another Rs.50,00,000/- through cheque dated 15.6.2007 to KSIIDC; Rs.41,36,164/- through cheque dated 13.7.2006 to KSIIDC; Rs.35,00,000/- through cheque dated 13.11.2007 to KSIIDC; Rs.3,30,000/- through demand draft to the account of the first defendant in State Bank of Mysore, Cunningham Road Branch, Bangalore; Rs.8,72,100/- through demand draft to the first defendant through State Bank of Mysore, Cunningham Road Branch, Bangalore; Rs.37,96,324/- through demand draft to the first defendant's account in State Cont'd..

-8- O.S. No.7729/2010 Bank of Mysore, Cunningham Road Branch, Bangalore; Rs.13,00,000/- in cash to the first defendant on 23-02- 2007. Thus, in all, plaintiff has so far paid Rs.4,93,67,088/- to the defendants as 'advance sale consideration' and is ready and willing to pay balance sale consideration and obtain sale of the suit properties. But, the defendants have not been cooperating with the plaintiff for completion of the sale transaction. In the meanwhile, defendants 1 and 2 have executed power of attorney in favour of the plaintiff to collect title documents from the KSIIDC. But, with mala fide intention, they revoked the power of attorney. Subsequently, defendants avoided completion of the sale transaction on the pretext that KSIIDC has initiated proceedings under the State Financial Corporations Act and challenged the proceedings initiated by the KSIIDC before the Hon'ble High Court in Writ Petition and the same is allowed. But, still first and the second defendants have not completed the sale on the pretext that Writ Appeal is pending. Thereafter, defendants 1 to 4 accepted that there is a dispute with regard to claim of KSIIDC and they sought extension of Cont'd..

-9- O.S. No.7729/2010 time to complete the sale transaction for securing Khata and pay taxes. Accordingly, they have made a Shara on the reverse side of the first page of the agreement for sale dated 3.1.2007 agreeing to extend the time. As per the agreement of sale, both parties are at liberty to enforce specific performance for agreement of sale. Now, already plaintiff has paid more than 50 per cent of the sale consideration amount. He has agreed to purchase the suit properties at the rates that were prevailing in the market in 2007. He has already invested huge amount for purchase of the suit properties. He has blocked the funds needed for completing the sale transaction. Now, if specific performance is not granted, plaintiff will suffer irreparable loss and injury. Further more, defendants 1 and 2 have utilized the amounts given by the plaintiff for advance sale consideration for clearing the loan due by them to the KSIIDC and other persons. They are obliged to complete the sale transaction in favour of the plaintiff. Plaintiff has made all the arrangements for payment of

balance consideration amount. But, because of the delay in completing the sale transaction, Cont'd..

- 10 - O.S. No.7729/2010 he is unnecessarily losing the returns on the amounts invested so far by way of advance sale consideration. Plaintiff met defendants 1 and 3 on the night of 29.10.2010 and in the morning of 30 th October, 2010 and requested them to complete the sale transaction, but they refused to complete the sale transaction. They have not only refused to receive the demand notice dated 29.10.2010, in fact in the morning of 30.10.2010 third defendant snatched the notice of defendant and office copy of the notice, tore it off and hence, the plaintiff do not have copy of the said notice also. Therefore, plaintiff requested for directing the defendants to execute the sale deed and in the alternative for refund of the advance sale consideration with interest.

3. After their appearance, defendants 1 to 5 have filed written statement as under -

Suit of the plaintiff is illegal, arbitrary, filed with mala fide intention, barred by limitation and the same is liable to be dismissed with exemplary costs. Plaintiff has not approached the Court with clean hands. He Cont'd..

- 11 - O.S. No.7729/2010 has suppressed the material facts and hence, he is not entitled for the reliefs claimed. Averments of paras 2 to 9 of the plaint are regarding title of the defendants over the suit properties and hence, the same are admitted. Averments of Para 10 of the plaint are false. Averments that first and second defendants, after having decided to construct hospital building and convention centre on the schedule properties, gave the same to the fifth defendant on lease; defendants 1 and 4 are the directors of defendant No.5, are all put to strict proof by the plaintiff. Averments of para 11 of the plaint that defendants 1 and 2 sought the help from KSIIDC and they mortgaged the suit properties, are all put to strict proof by the plaintiff. Averments that after obtaining loan, fifth defendant constructed hospital in 6,500 square feet area on property No.565/42 is false and misleading. Averments of Para 13 of the plaint that after obtaining loan, fifth defendant constructed a convention centre in 30,000 square feet and few properties of Item No.III of schedule 'a', are false and misleading. Averments of para 15 of the plaint are true and correct. Averments of para 16 of the plaint that Cont'd..

- 12 - O.S. No.7729/2010 first and second defendants have availed loan and created charge over the property with KSIIDC is put to strict proof by the plaintiff. Regarding averments of para 17 of the plaint are concerned, first defendant had obtained certain financial assistance from the plaintiff since many years and has been paying interest at 24 per cent per annum; plaintiff has obtained several blank cheques, blank on-demand letters, blank stamp papers signed by defendants 1 to 4. Apart from the said documents as a collateral security, plaintiff has obtained from the first defendant the original title deeds of other properties like industrial shed bearing Khata No.528/B/6/3 of K.R. Puram, house constructed by second defendant on property No.109, old House List No.422, old Khata No.312, new No.705 of Krishnarajapura measuring East-West : 40 feet and North-South : 70 feet and title deeds of the property bearing No.563/B/13B of K.R. Puram. First defendant had obtained financial assistance from the plaintiff. Taking advantage of the first defendant's financial distress and also friendship with him, stating that he would pull the first defendant out of distress, plaintiff Cont'd..

- 13 - O.S. No.7729/2010 had obtained original property documents and also signatures of the defendants on the blank stamp papers and sheets. Even in respect of second defendant's property situated at K.R. Puram, plaintiff has fabricated the General Power of Attorney in favour of V. Ramesh who is unknown to defendants and got sale deed executed from said V. Ramesh in the name of the plaintiff. Thereafter, he sold the said site and house to one Ramesh Babu for Rs.89,00,000/-. Further, plaintiff has created another General Power of Attorney in the name of Dhanyakumar and got executed a sale deed in the name of his son G. Nataraj in respect of an industrial shed and subsequently, said G. Nataraj has sold the said property to one Gangadas V. Patel and Mahesh G. Patel and others for Rs.1,50,00,000/-. Therefore, plaintiff made an amount of Rs.2.39 Crores to KSIIDC by using fabricated General Powers of Attorney and paid the said amount to KSIIDC and the first defendant has paid an amount of Rs.56,00,000/-.

Taking advantage of original property documents and blank stamp papers, plaintiff has created another Cont'd..

- 14 - O.S. No.7729/2010 General Power of Attorney in the name of K.M. Manikyaraj and got the sale deed executed in the name of his wife Somakka - which clearly shows that plaintiff has created the agreement of sale also to usurp the properties belonging to the defendants. Plaintiff has not paid any amounts as claimed by him in Para 18 of the plaint and he is put to strict proof of the same. To substantiate that plaintiff had means and he had intimated the same to the income tax authorities regarding payments made in favour of defendant No.1, plaintiff has not produced any evidence. At no point of time, defendants have assured the plaintiff that they would clear the loan amount due to the KSIIDC and deliver vacant possession of the suit schedule properties to the plaintiff. Averment that plaintiff is always ready and willing to perform his part of contract, is false. Averments of para No.21 of the plaint that plaintiff has already paid total Rs.4,93,67,088/- to defendants is false and frivolous. By utilizing the blank stamp papers wherein plaintiff had got signatures of the first and the second defendants, plaintiff has created documents like power of attorney in favour of strangers Cont'd..

- 15 - O.S. No.7729/2010 has sold the properties of defendants to the tune of Rs.2.39,00,000/- and has paid the sale proceeds to loan account of Mallappa Hospitals. Averments of para 22 of the plaint are contrary to averments of para 21 of the plaint - which clearly shows that plaintiff obtained signatures of defendants on blank stamp papers and other papers and also cheques in the custody of the plaintiff and plaintiff has misused the same. Averments of para 23 are true. It is true that defendants 1 and 2 had filed Writ Petition, but the same was not for challenging the action of the KSIIDC, - it was for the different relief. Regarding averments of para 24 of the plaint that plaintiff has misused the signatures of the defendant on verification of the so-called acknowledgement. Suit of the plaintiff is barred by limitation. Averments that plaintiff has paid more than 50 per cent of the sale consideration; he has agreed to purchase the suit properties at the rates prevailing in the market in the year 2007; he has invested huge amount and blocked funds needed for completing the sale transaction; hence, if specific performance is not granted, he will suffer irreparable loss and injury, are Cont'd..

- 16 - O.S. No.7729/2010 all false and frivolous. Averments of paras 27 and 28 of the plaint are also false, - plaintiff is put to strict proof of the same. There is no material to show about readiness and willingness of the plaintiff. Averment of para 31 of the plaint that defendants have tore the notice, is false and denied. There is no cause of action to file the suit. Court fee paid is insufficient and suit of the plaintiff is liable to be dismissed.

4. Sixth defendant filed the 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. Sixth defendant has no comments about para 1 of the plaint. The property detailed in para 2 of the plaint is mortgaged by M. Mallappa i.e., first defendant in favour of sixth defendant for term loan availed by Mallappa Hospital Private Limited and the said properties are now in possession of sixth defendant. Properties mentioned in paras 3 and 4 of the plaint are not mortgaged to KSIIDC. Averments of para 8 of the plaint are not known to sixth defendant. Averments of para 9 of the Cont'd..

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plaint are known to sixth defendant and sixth

defendant has no comments about para 10 of the plaint. Averments of paras 11 and 12 of the plaint are true and correct. Averments of para 13 of the plaint are true. Property No.563/B/13A is mortgaged to sixth defendant. With regard to para 14 of the plaint is concerned, sixth defendant has now taken over the assets for committing default in payment of the amount due. Property mentioned in para 15 of the plaint has been offered as collateral security by S.V. Sorajamma. Averments of para 18 of the plaint are true and correct. Averments of paras 17 to 19 of the plaint are not known to sixth defendant. Fifth defendant has taken over assets of M/s. Mallappa Hospital and Convention Centre on 20.11.2004 and 8.2.2005. When Corporation has received offers for purchase of primary and collateral properties for Rs.472.50 lakhs, M. Mallappa himself has come forward to settle the dues under O.T.S. scheme and hence, O.T.S. proposal was cleared by the sub-committee of the Board of sixth defendant for Rs.478.50 lakhs and it was communicated to first defendant. As against the O.T.S. amount of Rs.478.50 Cont'd..

- 18 - O.S. No.7729/2010 lakhs, the said company has paid Rs.295.62 lakhs. Further, as per letter dated 22.7.2009, first defendant has cancelled the power of attorney executed by him in favour of the plaintiff. Other averments of paras 23 to 33 are not known to sixth defendant. There is no cause of action against the sixth defendant.

5. On the basis of the above facts, this Court framed the following -

ISSUES (1) Whether plaintiff proves D1 and 2 have agreed to sell 'A' and 'B' schedule property by executing an agreement of sale dated 03.01.2007?

(2) Whether plaintiff proves he has paid Rs. 1,66,70,000/- to the defendant No.1 and 2 as earnest money?

(3) Whether plaintiff proves again he has paid advance amount to D1 and 2 and totally he has paid Rs. 4,93,67,088/-?

Cont'd..

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(4) Whether plaintiff proves he was/is always ready to perform his part of contract?

(5) Whether plaintiff proves defendant No. 1 and 2 have executed GPA in his favour to collect documents?

(6) Whether defendants prove as

collateral security plaintiff has obtained original documents?

(7) Whether defendants prove agreement relied by plaintiff is concocted one?

(8) Whether suit is bad for misjoinder of parties?

(9) Whether plaintiff is entitled for the relief of specific performance of contract?

(10) Whether plaintiff is entitled for refund of earnest money as prayed?

(11) What Decree or Order?

Cont'd..

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6. In support of his case, plaintiff himself

examined as P.W.1 besides examining a witness T.M. Nanjappa as P.W.2 and got marked documents at Exs.P.1 to P.36 on his behalf.

7. On the other hand, defendants have examined first defendant M. Mallappa as D.W.1 and got marked documents as per Exs.D.1 to D.23 on his behalf. Further, during cross-examination, Exs.C.1



to C.10 are marked as Court Documents for identification purpose only.

8. Heard arguments.

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

ISSUE No.1 - Affirmative;

ISSUE No.2 - Affirmative;

ISSUE No.3 - Affirmative;

ISSUE No.4 - Affirmative;

ISSUE No.5 - Affirmative;

ISSUE No.6 - Negative;

ISSUE No.7 - Negative;

ISSUE No.8 - Negative;

Cont'd..

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ISSUE No.9 - Affirmative;

ISSUE No.10- Does not survive for  
consideration;

ISSUE No.11- As per final order,

for the following -

#### REASONS

10. ISSUE NOS.1 TO 7 : 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 repetition of facts.

11. Plaintiff's Counsel has argued that since defendants have admitted their signatures on the agreement for sale marked at Ex.P.5 and they have contended that plaintiff has created an agreement for sale on the blank signed stamp papers and other papers signed by them as security to the loan borrowed by them, the burden lies on the defendants to plead and prove the same. But, the defendants have not properly pleaded the said averments nor have they produced any evidence

regarding obtaining signatures of defendants 1 to 4 by the plaintiff on the blank stamp papers and Cont'd..

- 22 - O.S. No.7729/2010 therefore, defendants 1 to 4 have not proved their said contention. Further, he has argued that plaintiff has produced evidence regarding payments made by him to the loan account of the KSIIDC and the same is admitted by defendants also - which is sufficient to show that as part of the sale consideration amount, plaintiff has paid an amount of Rs.4,93,67,088/-. Therefore, plaintiff has produced evidence regarding execution of the agreement of sale and payment of advance sale consideration amount as alleged in the plaint. In support of his said argument, he has relied on the following judgments -

(1) AIR 2008 SUPREME COURT 1568 [Silvey and others -versus- Arun Varghese and another] -

"Specific Relief Act (47 of 1963), S.16 - Suit for specific performance - Agreement to sell - Suit by purchaser - Agreement casting obligation on vendors to get property registered as Rubber Estate and get licence for planting rubber plants - Plaintiff always ready and willing to perform his part - Vendors-defendants, however, have failed to obtain registration Cont'd..

- 23 - O.S. No.7729/2010 and licence from Rubber Board - False plea also raised by defendants in written statement - Plaintiff entitled to decree for specific performance."

(2) (2011) 12 Supreme Court Cases 18 [Saradamani Kandappan -versus- S. Rajalakshmi and others] -

"L. Civil Procedure Code, 1908 - Or. 6 R.4

- Fraud - Burden of proof - Pleadings - Whenever a party wants to put forth contention of fraud, held, specific pleadings as to fraud are to be made and proved - Fraud/Forgery/Mala Fides."

(3) LAWS(KAR) 2014 3 26 HIGH COURT OF KARNATAKA [S. Rudrappa -versus- The Mysore Merchants Co-operative Society Limited].

(4) LAWS(SC) 1961 1 27 SUPREME COURT OF INDIA [International Contractors Limited - versus- Prashanta Kumar Sur (Deceased)]. (5) AIR 2006 SUPREME COURT 2172 [Mst.

Sugani -versus- Rameshwar Das and another] -

"(B) Specific Relief Act (47 of 1963), S. 16(c)

- Suit for specific performance of contract Cont'd..

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- Readiness and willingness - Averment -

Necessity - Specific words - Not necessary

- Principle behind such requirement is to show that plaintiff's conduct was blemishless - Pleadings manifest that plaintiff's conduct was blemishless - Reliefs should not be denied."

(6) AIR 1976 SUPREME COURT 163 [Afsar Shaik and another -versus- Soleman Bibi and others] -

"(A) Transfer of Property Act (4 of 1882), S. 126 - Revocation of Hibabil-Ewaz - Undue influence alleged - Proof - Essentials -

Mere showing that plaintiff relied upon defendant for advice not sufficient."

12. On the other hand, defendants' Counsel also submitted his argument and filed written arguments also - in which, he has contended that there is evidence to show that first defendant used to borrow money from the plaintiff and plaintiff used to obtain signatures on blank stamp papers while lending loan to first defendant and his family members - which clearly shows that plaintiff has created agreement for sale on the said blank stamp papers and hence, it appears that Cont'd..

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suit filed by the plaintiff is liable to be dismissed. In

support of his said argument, he has relied upon the following citations -

(1) AIR 1964 SUPREME COURT 1789 [Silla Chandra Sekharam -versus-

Ramachandra Sahu];

(2) (2014) 2 Supreme Court Cases 269 [Union of India (UoI) and others -versus- Vasavi Co-operative Housing Society Limited and others] -

"Contonment Land Administration Rules, 1937 - Rule 3 - Constitution of India, 1950

- Article 163 - Urban Land (Ceiling and Regulation) Act, 1976 - Section 3, 19 - Title suit - In a suit for declaration of title, burden always lies on plaintiff to make out and establish a clear case for granting such a declaration - Weakness of case set up by defendants would not be aground to grant relief to plaintiff - Plaintiff could succeed only on strength of its own title and that could be done only by adducing sufficient evidence to discharge onus on it, irrespective of question whether defendants have proved their case or not - Revenue records does not confer title -

Cont'd..

- 26 - O.S. No.7729/2010 Even if entries in Record of Rights carry evidentiary value, that itself would not confer any title on plaintiff on suit land."

(3) 2016 (3) KCCR 2372 [Punny Akat Philip Raju, since dead, by his legal representatives -versus- Dinesh Reddy]; (4) 2018 (2) Kar. L.R. 801 (SC) [Jagjit Singh (Dead) through legal representatives - versus- Amarjit Singh] -

"Specific Relief Act, 1963 - Section 16(c) - Specific performance of contract - Required to plead and prove - It is settled law that a plaintiff who seeks specific performance of contract is required to plead and prove that he was always ready and willing to perform his part of the contract Section 16(c) of the Specific Relief Act mandates that the plaintiff should plead and prove his readiness and willingness as a condition precedent for obtaining relief of grant of specific performance."

13. On perusal of the evidence of both the parties to the suit and arguments of their Counsel, it appears to me that as rightly pointed out by the learned Counsel Cont'd..

- 27 - O.S. No.7729/2010 for the plaintiff, when defendants 1 to 4 have admitted their signatures appearing on the agreement marked at Ex.P.5 and contended that plaintiff obtained their signatures at the time of lending loan to first defendant on the blank stamp papers and created agreement for sale and other documents, the burden lies on the defendants 1 to 5 to prove the said contention of fraud played by the plaintiff. However, defendants themselves have admitted about payment of certain money by the plaintiff to the loan account of the first defendant with the sixth defendant - KSIIDC. In addition to payment of the said amount by the plaintiff to the loan account of the first defendant, during cross-examination, D.W.1 himself at page 9 of his cross-examination, has stated that plaintiff himself has sold his factory and another house, but he does not know when he has sold it and now, the purchasers of the factory and the house are in possession of the said properties - which goes to show that D.W.1 has admitted above sale of other properties and the possession of the said properties are also transferred to the purchasers. But, by looking to the written statement and chief-examination of D.W.1, it Cont'd..

- 28 - O.S. No.7729/2010 appears that defendants have contended that by misusing some papers on which the plaintiff obtained their signatures as security to the loan, plaintiff himself created the powers of attorney in respect of those other properties, created sale deeds and transferred the said properties - which is contrary to the evidence of D.W.1. Further more, though defendants have contended that plaintiff has created the powers of attorney and sold other properties belonging to defendants 1 and 2, admittedly defendants 1 and 2 have never questioned the said sale transactions and admittedly, the purchasers of the said properties are in possession of the said properties - which shows that the defendants' contention about creation of powers of attorney by the plaintiff and selling the other properties belonging to defendants 1 and 2 without the knowledge of defendants 1 and 2, is false one. Further more, mere by looking to Ex.P.5, it appears that defendants 1 to 4 have put their signatures on the said document. At the same time, defendants have contended that while

defendants 1 and 2 have borrowed the loan, plaintiff has obtained their signatures on the blank stamp papers. But, there Cont'd..

- 29 - O.S. No.7729/2010 is no evidence as to why defendants 3 and 4 who have not at all borrowed any loan from the plaintiff have put their signatures on the alleged blank stamp papers. Therefore, by looking from any angle, it appears that though defendants have taken a plea of fraud and misrepresentation, they have not at all produced any believable evidence regarding their said pleadings.

14. Regarding readiness and willingness of the plaintiff to perform his part of contract is concerned, the agreement is for Rs.7,50,00,000/-. As admitted by D.W.1, the plaintiff used to pay so much of money to his loan account, defendants 1 and 2 used to borrow money from the plaintiff in Crores. Hence, that itself is sufficient to show that plaintiff has got capability of paying remaining balance amount of sale consideration. Further, as held by the Hon'ble Supreme Court of India in the judgment relied upon by the learned Counsel for the plaintiff reported in AIR 2006 SUPREME COURT 2172 [Mst. Sugani -versus- Rameshwar Das and another], when non-completion of the contract was not because of the fault of the plaintiff, there is no necessity of Cont'd..

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averment regarding readiness and willingness.

Therefore, here in this case, defendants have denied the agreement for sale itself and plaintiff himself has filed the suit seeking specific performance of contract, that itself shows that plaintiff is always ready and willing to perform his part of contract. Hence, Issue Nos.1 to 7 are answered as above.

15. ISSUE No.8 : Though sixth defendant has contended that suit is bad for misjoinder of parties, since admittedly defendants 1 and 2 have borrowed loan from defendant No.6 by mortgaging the properties, sixth defendant is impleaded as a 'party' to the suit. Further more, suit cannot be dismissed for mis-joinder of parties. Hence, Issue No.8 is answered in negative.

16. ISSUE NOS.9 AND 10 : Defendants' Counsel has argued that while deciding the suit for specific performance of contract, the Court has to look into the circumstances under which contract was entered and there is a possibility of compensating the plaintiff by return of money paid by the plaintiff as advance sale consideration amount, it is necessary to order for Cont'd..

- 31 - O.S. No.7729/2010 refund. In support of his said argument, he has relied upon the following citations -

(1) 2017 (1) Kar. L.R. 697 (SC) [Jayakantham and others -versus- Abaykumar] -

"(B) Specific Performance - The terms of the contract - the conduct of parties at the time of entering into the agreement and circumstances under which the contract was

entered into gave the plaintiff an unfair advantage over the defendants -

These circumstances make it inequitable to enforce specific performance - Appeal shall stand allowed."

(2) (2017) 5 Supreme Court Cases 178 [Jayakantham -versus- Abaykumar] -

"Agreement to Sell - The subject matter of the suit for specific performance is a property - A decree for the payment of compensation in lieu of specific performance would meet the ends of justice. As it has noted the father of the respondent paid an amount of rupees sixty thousand to the appellants in June 1999 of the total agreed consideration of Rs.1.60 lakhs, the appellants have voluntarily offered to pay an amount of rupees ten Cont'd..

- 32 - O.S. No.7729/2010 lakhs, as just compensation in lieu of specific performance - The ends of justice would be met by directing the appellants to pay to the respondent an amount of rupees fifteen lakhs in lieu of specific performance."

(3) (2019) 10 SCALE 720 [Venkatalakshmi - versus- K. Raju and others].

17. On perusal of the above citations relied upon by the defendants' Counsel, it appears that facts in the above cases and the facts in the present case are totally different. Here in this case, defendants have pleaded fraud and misrepresentation by the plaintiff and failed to prove the said contention. Further more, already plaintiff has paid more than 50 per cent of the sale consideration in the year 2007 itself. Therefore, here in the present case, it is not proper to order for refund of earnest money. Therefore, it is proper and necessary to direct the defendants 1 to 4 to execute sale deed by receiving balance consideration amount as claimed by the plaintiff. Hence, Issue Nos.9 and 10 are answered as above.

Cont'd..

- 33 - O.S. No.7729/2010

18. ISSUE No.11 : For my reasons and discussion on the above Points, I proceed to pass the following -

ORDER Suit of the plaintiff is decreed with cost.

Defendants 1 to 4 are directed to execute the sale deed in respect of the suit schedule properties in favour of the plaintiff by receiving balance sale consideration amount of Rs.2,56,32,912/- from the plaintiff, within two months from the date of this judgment.

Draw decree accordingly.

(Dictated to Judgment Writer, transcribed by him, revised by me and after corrections, pronounced in open Court on this the 3rd day of February, 2020.) (MALLANAGOUDA) VIII Additional City Civil and Sessions Judge, An&/- Bengaluru.

Cont'd..

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#### ANNEXURE

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

Examined on:

P.W.1	: N. Gangadhar	09-03-2016
P.W.2	: T.M. Nanjappa	23-04-2016

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

Ex.P.1	: Account extract.
Ex.P.2	: Receipt dated 23.2.2007 (subject to objection);
Ex.P.2(a)	: Signature of P.W.2.
Ex.P.3	: Bank challan.
Ex.P.4	: Power of attorney dated 4.1.2007;
Ex.P.4(a)	: Signature of P.W.2.
Ex.P.5	: Agreement dated 3.1.2007.
Ex.P.5(a)	: Signatures.
to P.5(g)	
Ex.P.5(h)	: Signature of P.W.2.
Ex.P.6	: Attested copy of pay-in-slip dated 17.10.2006.
Ex.P.7	: Letter dated 17.5.2016 along with 18 documents.
Ex.P.8	: Copy of affidavit.
Ex.P.9	: Copy of General Power of Attorney.
Ex.P.10	: Copy of letter dated 23.2.2007.
Ex.P.11	: Copy of letter dated 5.4.2007.
Ex.P.12	: Copy of letter dated 23.4.2007.
Ex.P.13	: Copy of letter dated 24.8.2007.
Ex.P.14	: Copy of letter dated 22.7.2009;
Ex.P.14(a)	: Signature.
Ex.P.15	: Copy of letter dated 16.12.2010.
Ex.P.16	: Copy of letter dated 24.12.2010.
Ex.P.17	: Copy of letter dated 3.1.2011.

Cont'd..

Ex.P.18 : Copy of letter dated 5.2.2011.  
Ex.P.19 : Copy of letter dated 26.2.2011.  
Ex.P.20 : Copy of letter dated 4.3.2011.  
Ex.P.21 : Copy of letter dated 8.3.2011.  
Ex.P.22 : Copy of letter dated 10.3.2011.  
Ex.P.23 : Copy of letter dated 3.2.2012.  
Ex.P.24 : Copy of letter dated 13.2.2012.  
Ex.P.25 : Copy of statement.  
Ex.P.26 : One letter.  
Ex.P.27 : Bank statement.  
Ex.P.28 : Entire file obtained from the KSIIDC under  
Right to Information Act;

Ex.P.28(a) : Copy of letter dated 14.3.2007.

Ex.P.29 : Certified copy of bank pass book. Ex.P.30 : Letter dated 23.2.2007.

Ex.P.31 : Office copy of the letter sent by S.B.M. to Mallappa.

Ex.P.32 : Office copy of the application of P.W.1 dated 17.1.2019.

Ex.P.33 : Certified copy of file in O.A. No.257/2010. Ex.P.34 : Copy of Writ Petition No.14705/2007.

Ex.P.35 : One letter written by Mallappa dated 5.11.2014.

Ex.P.36 : Copy of private complaint in P.C.R. No.21651/2011.

### 3. WITNESS EXAMINED FOR THE DEFENDANTS:

D.W.1 : M. Mallappa. 10-06-2016

### 4.DOCUMENTS MARKED ON BEHALF OF DEFENDANTS:

Ex.D.1 : Certified copy of sale deed dated 20.12.2002.

Ex.D.2 : Certified copy of sale deed dated 15.11.2007.

Cont'd..

Ex.D.3 : Certified copy of sale deed  
dated 17-05-2003.  
Ex.D.4 : Certified copy of sale deed  
dated 12-07-2006.  
Ex.D.5 : Statement of account.  
Ex.D.6 : Sunday Express newspaper



dated 19.7.2009;

Ex.D.6(a) : A relevant portion marked in Ex.D.6. Ex.D.7 : Kannada newspaper dated 19.7.2009; Ex.D.7(a) : A relevant portion marked in Ex.D.7. Exs.D.8 : Copies of Bank vouchers.

and D.9

Ex.D.10 : Debit voucher.

Ex.D.11 : Copy of cheque.

Ex.D.12 : One more bank voucher.

Ex.D.13 : Transfer debit.

Ex.D.14 : Certified copy of sale deed dated 8.9.1971;

Ex.D.14(a) : Typed copy of Ex.D.14. Ex.D.15 : Certified copy of sale deed dated 14.9.1977 Ex.D.15(a) : Typed copy of Ex.D.15. Ex.D.16 : Certified copy of sale deed dated 19.3.1981 Ex.D.16(a) : Typed copy of Ex.D.16. Ex.D.17 : Certified copy of sale deed dated 10.1.1999 Ex.D.18 : Letter dated 13.11.2007. Ex.D.19 : Receipt dated 13.11.2007.

Ex.D.20 : Copy of order passed in  
W.P. No.14705/2007.

Ex.D.21 : Copy of order passed in  
W.A. No.2337/2007.

Ex.D.22 : Certified copy of order sheet in  
P.C.R. No.21651/2011.

Ex.D.23 : Certified copy of complaint.

Cont'd..

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O.S. No.7729/2010

#### 4. COURT DOCUMENTS:

Ex.C.1 : Letter dated 12.3.2007.

Ex.C.2 : Copy of W.P. No.8276/2007.

Ex.C.3 : Copy of General Power of Attorney  
dated 8.10.2001.

Ex.C.4 : Copy of affidavit.

Ex.C.5 : Copy of General Power of Attorney  
dated 2.8.2001.

Ex.C.6 : Copy of affidavit.

Ex.C.7 : Copy of letter dated 14.3.2007.

Ex.C.8 : Copy of affidavit.

Ex.C.9 : Copy of letter dated 5.1.2011.

Ex.C.10 : Copy of ledger extract in respect of Mallappa Hospital Private Limited.

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

Cont'd..