

## **Sri. Annamalai vs ) Smt. G.Sunanda on 19 August, 2015**

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

Dated this the 19th day of August 2015.

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

O.S.No.5144 of 2007  
C.C.H.8

Plaintiff: Sri. Annamalai  
S/O Sri.Machi,  
Since dead by L.Rs

1(a) Smt. Parvathamma  
W/O Annamalaiah,  
aged about 65 years,

1(b) Smt. Vimala  
D/O Annamalaiah,  
aged about 46 years,

1(c) Smt. Shyamala  
D/O Annamalaiah,  
aged about 40 years,

1(d) Sri.Palani Velu  
S/O Annamalaiah,  
aged about 37 years,

1(e) Smt.Nirmala  
D/O Annamalaiah,  
aged about 32 years,

1(f) Sri. Muttuvelu  
S/O Annamalaiah,

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OS. No.5144/2007

aged about 28 years,  
All are residing at No.383,  
1st Main 10th Cross,  
Mudalapalya Road,  
Panchasheela Nagara,  
Bangalore-72

(By Sri.H.P.L, Advocate)

: Vs :

Defendant/s: 1) Smt. G.Sunanda  
W/O late B.L.Nanjundaiah,  
aged about 54 years, R/at  
No.86/3, 7th Main,  
Prakash Nagar,  
Bangalore-21  
2) Smt.Ramya  
W/O Sri.Nanjegowda,  
aged about 28 years,  
R/at No.1562, 2nd Cross,  
Hulimavu, Banneghatta Road,  
Bangalore-76  
3) Sri. C.N.Prasanna Kumar  
S/O late B.L.Nanjundaiah,  
aged about 36 years,  
4) Sri. C.N.Vijay Bhaskar  
S/O late B.L.Nanjundaiah,  
aged about 34 years,  
5) Sri. C.N.Shashi Bushan  
S/O late B.L.Nanjundaiah,  
aged about 26 years,

Defendants No.3 to 5 are R/at  
No.86/3, 7th Main,  
Prakash Nagar,  
Bangalore-21

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OS. No.5144/2007

(By Sri. VSK, Advocate for D.1and  
D.2

Sri. N.S. advocate for D.3 to D.5)

Date of the institution of suit: 4.7.2007

Nature of the suit: Specific performance

Date of the commencement of recording of the evidence: 26.6.2012

Date on which the judgment was pronounced : 19.8.2015

Total Duration Year/s Month/s Day/s  
08 01 15

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

#### JUDGMENT

This is the suit filed by the deceased plaintiff against defendants, who are the L.Rs. of deceased B.L.Nanjundaiah seeking the relief of specific performance of contract in respect of suit schedule property based upon alleged sale agreement dated 16.7.1988 coupled with GPA and affidavit said to have been executed by deceased B.L.Nanjundaiah in favour of plaintiff on 5.9.1988 respectively and as such, plaintiff has prayed for specific performance relief in respect of suit schedule property and for permanent injunction relief against defendants 1 to 5 from interfering with peaceful possession and enjoyment of the suit schedule property and for other reliefs etc.,

2. The subject matter of the suit is one in respect of a residential site along with existed structure measuring 6 squares constructed on site No.383, wherein deceased plaintiff described the schedule property in the annexed schedule of the plaint reads as under:-

**SCHEDULE** All that piece and parcel of immovable property bearing site No.383, formed in Sy.No.52, Malagala Village, Yeswanthapura Hobli, Bangalore North Taluk, measuring east- west 40 feet and north-south 30 feet and bounded as follows:-

East by: Site No.384, West by: Site No.382, North by: Site No.375 and South by: Road The deceased plaintiff Sri.Annamalai son of Sri. Machi had filed this suit originally against defendant No.1 and 2, who are wife and daughter of deceased B.L.Nanjundaiah and subsequently plaintiff got impleaded three sons of late B.L.Nanjundaiah by filing interim application filed in I.A.No.3 under Order 1 Rule 10 of CPC on 28.8.2008 and accordingly, defendant No.3 to 5 are impleaded as per order on I.A.No.3. It is the case of the plaintiff that deceased B.L.Nanjundaiah was the owner of suit schedule property, wherein the suit schedule property was allotted in the name of father of deceased B.L.Nanjundaiah, who was freedom fighter and this schedule site has been allotted in the name of father of deceased B.L.Nanjundaiah in Commemoration of 25th Anniversary of Independent of India and as father of deceased B.L.Nanjundaiah was freedom fighter and accordingly, the schedule site was granted in the name of father of B.L.Nanjundaiah and after his demise, this site has been succeeded by B.L.Nanjundaiah, who was practicing advocate at Anekal and Bangalore and deceased B.L.Nanjundaiah for his legal necessity offered to sell the schedule property for sale and deceased plaintiff Sri.Annamalai and deceased B.L.Nanjundaiah son of R.Rajappa , wherein deceased B.L.Nanjundaiah after receiving advance amount of Rs.5,000/- from deceased plaintiff executed sale agreement agreeing to convey the schedule property in favour of deceased plaintiff after receiving balance sale consideration amount on 16.7.1988 and it is also case of the plaintiff that subsequently after lapse of few months, late B.L.Nanjundaiah

unable to execute registered sale deed in favour of deceased plaintiff due to ban of registration of revenue sites by the Government of Karnataka, at that time, B.L.Nanjundaiah had executed GPA dated 5.9.1988 in favour of deceased plaintiff and on the very day, deceased B.L.Nanjundaiah had executed an affidavit after receiving entire sale consideration amount from the deceased plaintiff and on 5.9.1988 itself deceased B.L.Nanjundaiah had handed over the vacant possession of the suit schedule property in favour of deceased plaintiff. It is the case of the plaintiff that by that time, the plaintiff had constructed 3 1/2 square ACC sheet shed on the said site and late B.L.Nanjundaiah had handed over xerox copy of hakkupathra and original tax paid receipts to the plaintiff on 5.9.1988. The plaintiff further alleged that after purchasing of site i.e., suit schedule property under an agreement of sale dated 16.7.1988 coupled with GPA and affidavit dated 5.9.1988 deceased plaintiff put in actual possession and as such, deceased plaintiff Sri.Annamalai along with his family members are residing in the schedule property and plaintiff after he put in possession, put up further construction of ACC sheet house measuring 25" X 15" in the schedule property. The original plaintiff died during pendency of the suit leaving behind his L.Rs 1(a) to (f), wherein deceased plaintiff died on 1.12.2009 and as such, the LRs of deceased plaintiff 1(a) to 1(f) have filed interim application No.4 to 6 on 29.5.2010 in order to implead them on record as they have got subsisting right, title and interest in the schedule property and LRs pray to grant permission proceed with the matter and accordingly, I.A.No.4 to 6 filed by the proposed L.Rs of deceased plaintiff came to be allowed and plaintiff No.1(a) to (f) are ordered to be brought on record and continue this suit against defendant No.1 to 5 and this order came to be passed on 3.8.2010 and accordingly, plaintiff No.1(a) to (f), who the LRs of deceased plaintiff have come on record and continued this suit against defendant No.1 to 5 and it is further alleged by the deceased plaintiff that he requested the deceased B.L.Nanjundaiah in order to execute registered sale deed by giving entire sale consideration amount paid by the deceased plaintiff Sri.Annamalai. But deceased B.L.Nanjundaiah did not come forward to execute sale deed in favour of plaintiff and it is further alleged by the plaintiff that at the time of handing over of possession, the husband of 1st defendant had handed over xerox copy of Hakku-pathra in respect of suit schedule property stating that original Hakku-pathra has been produced before the Asst., Commissioner, Bangalore Sub-

Division and plaintiffs have alleged that they are in possession of the suit schedule property under part performance of contract and as such, plaintiffs have pleaded their possession as recognized by law under Sec. 53(A) of T.P.Act and defendant No.1 to 5, who are the legal representatives of deceased B.L.Nanjundaiah, who died on 24.8.2002 and as such, defendant No.1 to 5 are the LRs of late B.L.Nanjundaiah, who have succeeded to the estate of the deceased and in view of execution of sale agreement dated 16.7.1988 and coupled with GPA and affidavit executed by late B.L.Nanjundaiah dated 5.9.1988 and plaintiffs also further averred and pleaded that their father late Sri.Annamalai was and is always ready and willing to perform his part of contract in order to obtain sale deed executed through late B.L.Nanjundaiah and after his demise, plaintiffs are also ready and willing to perform their part of contract, but deceased B.L.Nanjundaiah did not execute sale deed

and there was also ban/prohibition of registration of revenue sites by the Government of Karnataka during the period of execution of sale agreement/GPA and affidavit and subsequently B.L.Nanjundaiah died on 24.8.2002 leaving behind defendant No.1 to 5 and his legal heirs and plaintiffs relying upon cause of action as stated in para No.13 of the plaint averments and also relied upon the legal notice issued by the 1st defendant dated 29.7.2005 and for that notice, plaintiffs have submitted their legal notice on 12.8.2005 and hence, plaintiffs alleging cause of action to file this suit for specific performance of contract and for the relief of permanent injunction have filed this suit against defendant No.1 to 5 praying for grant of specific performance decree in respect of suit schedule property as against defendant No.1 to 5, who are the LR's of deceased B.L.Nanjundaiah.

3. In response to the suit summons issued to defendant No.1 and 2, wherein defendant No.1 and 2 have appeared through counsel and filed their joint written statement filed in this case on 3.10.2007, wherein defendant No.1 and 2 contended that they are wife and daughter of late B.L.Nanjundaiah, but he had left behind three sons, all are majors and defendants further admits that late B.L.Nanjundaiah was the absolute owner of suit schedule property i.e. site No.383 formed in Sy.No. 52 of Malgala village, Yeswanthapura Hobli, Bangalore North Taluk measuring east-west 40 feet and north-south 30 feet and defendants have further stated that during his life time, he had constructed six square ACC sheet house over the schedule property and all the revenue documents were standing in the name of B.L.Nanjundaiah and he was paying the tax to the concerned village panchayath. Late B.L.Nanjundaiah was practicing as an advocate and his father was freedom fighter and he got valuable property in Prakash Nagar, Bangalore and deriving rent income from the properties held at Prakash Nagar and also profession was sound practice and he was having sufficient income from rent and also from advocate profession, wherein B.L.Nanjundaiah had leaving behind his wife and 4 children as his legal heirs and also left other properties including the suit schedule property and as such, deceased B.L.Nanjundaiah was not having any intention to sell the schedule property as he did not have any debt and financial problem as alleged in para No.2 of the plaint and as such, defendants No.1 and 2 have denied the execution of sale agreement in favour of deceased plaintiff on 16.7.1988 agreeing to sell the schedule property for sale consideration amount of Rs.32,000/- and they further denied receipt of advance amount of Rs.5,000/- on 16.7.1988 and also they further denied execution of alleged GPA/affidavit by deceased B.L.Nanjundaiah in favour of deceased plaintiff on 5.9.1988 and parting of possession of schedule property in favour of deceased plaintiff under part performance of contract as per sale agreement/GPA and affidavit and as such, defendants have denied the alleged possession of deceased plaintiff under Sec. 53 of T.P.Act. On the contrary, it is alleged by the defendants that deceased plaintiff was tenant in respect of schedule premises under defendant No.1 and defendant No.1 caused legal notice dated 29.7.2005 in respect of arrears of rent and also to quit and handed over the possession of schedule property in favour of deceased plaintiff, wherein deceased plaintiff replied the said notice on 12.8.2005 and had set up his claim of agreement holder executed by late B.L.Nanjundaiah under alleged agreement of sale and as such, deceased plaintiff had denied the alleged tenancy in respect of schedule property on a monthly rent of Rs.500/- under defendant No.1 and subsequently rent was enhanced from Rs.500/- to Rs.750/- and as such, deceased plaintiff denied the contents of notice issued by 1st defendant dated 29.7.2005 and on the contrary, deceased plaintiff in his reply notice set up his specific defence that he is agreement holder and also under GPA and affidavit deceased B.L.Nanjundaiah had executed GPA in order to manage the property

and he came in possession under part performance of contract and hence, deceased plaintiff replied the notice denying the allegations of 1st defendant alleged tenancy and also alleged arrears of rent in respect of schedule property and thereafter, 1st defendant filed HRC proceedings in HRC No.41/2007 and the said HRC petition pending for adjudication. Defendants further contended that suit schedule property allotted to the husband of defendant No.1 on 12.6.1974 by the Government of Mysore on the occasion of Commemoration of 25th Anniversary of Independence day celebration, because of B.L.Nanjundaiah was freedom fighter and issued with Hakku-pathra and possession certificate by allotting site No.383 with a condition of non alienation clause for a period of 25 years and as such, alleged sale agreement if executed is void agreement and schedule property cannot be conveyed in view of non alienation clause and as such, defendants have contended that deceased plaintiff had created the alleged sale agreement and also created alleged GPA and affidavit, which are concocted documents and on the contrary, after death of B.L.Nanjundaiah, his legal heirs have become absolute owners of schedule property and deceased B.L.Nanjundaiah did not inform the defendants No.1 to 5, he never executed an agreement or "Will" etc., because he was practicing advocate and also he was good income, wherein he had constructed 6 square building over the schedule property and obtained electricity connection, which was standing in the name of husband of 1st defendant and as such, defendants have denied the possession of the deceased plaintiff and his family members in the capacity of agreement holder and on the contrary, 1st defendant contended that plaintiffs possession is that of tenant under defendants since 16.7.1988 and plaintiffs never spent any amount for construction of a shed over the property and plaintiffs never issued any notice demanding to execute sale deed either to husband of 1st defendant nor to these defendants in respect of sale agreement at any point of time, whereas deceased plaintiff only after issuance of notice by 1st defendant on 29.7.2005 has issued a false reply on 12.8.2005 and as such, defendants contended that the alleged document relied by the plaintiffs like agreement of sale dated 16.7.1988 and GPA and affidavit dated 5.9.1988 respectively are connected and created documents and plaintiff has filed this suit only after dismissal of HRC proceedings for seeking enforcement of agreement of sale and plaintiffs have not issued any notice either to deceased B.L.Nanjundaiah or to defendants. Hence, defendants contended that suit of the plaintiff is also bad for non joinder and mis-joinder of parties and also suit is not maintainable, wherein the HRC petition filed by 1st defendant in HRC No.41/2007 is pending for adjudication and as such, plaintiffs have no cause of action to file the suit for specific performance and on the contrary, defendants No.1 and 2 contended that the schedule property during the year 1988 was valued more than Rs.15,00,000/- and none were sold the same for through away price of Rs.32,500/- and as such, defendants have also contended that court fee paid on the suit was insufficient, wherein the present market value of the suit property is more than Rs.15,00,000/-. Hence, defendant No.1 and 2 denied the plaintiff allegations in toto and specifically denied the execution of alleged sale agreement dated 16.7.1988 and also denied the execution of GPA/affidavit by late B.L.Nanjundaiah dated 5.9.1988 and hence, defendants contended that the alleged agreement of sale is concocted and created document set up by the plaintiff and the said agreement is void and nonest in the eyes of law and as there is non alienation clause incorporated in the Hakku-pathra issued by Government of Mysore on 12.6.1974 restricting alienation of schedule property for a period of 25 years and as such, the alleged agreement of sale is void document cannot enforceable under law. Hence, with these written statement contentions, defendant No.1 and 2 have contested the suit.

4. Subsequently, defendant No.3 to 5 are impleaded on record by the plaintiffs, wherein defendant No.3. to 5 filed memo on 10.12.2011 filed in this case stating that they adopt the written statement filed by defendant No.1 and 2 on their behalf and accordingly, this memo filed by defendant No.3 to 5 dated 10.12.2011 is accepted on record.

5. Based upon these pleadings, the following issues are framed for trial of the suit :-

1. Whether the plaintiff prove that late B.L. Nanjundaiah has agreed to sell the schedule property for a sum of Rs.32,000/- for his legal necessity and to clear of the existing debts?

2. If so, the plaintiff prove that the late Sri. B.L.Nanjundaiah by receiving advance sale consideration of Rs.5,000/- has executed an agreement of sale in his favour on 16-

7-1988?

3. Whether the plaintiff further prove that the said B.L.Nanjundaiah has executed a G.P.A. and the Affidavit on 5-9-1988 by receiving the entire balance sale consideration amount and put him in actual possession and enjoyment of the schedule property?

4. Whether the suit is bad for non-joinder and mis- joinder of the parties?

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

6. Whether the plaintiff is entitled the relief of Specific Performance of contract?

7. Whether the plaintiff is entitled the relief of Permanent Injunction as sought for?

8. What Order or Decree ?

6. In order to prove the above issues, the parties of the suit have adduced their respective oral and documentary evidence, wherein plaintiff No.1(d) is examined before court as P.W.1 and in the evidence of P.W.1, documents Ex.P.1 to P.17 are came to be marked and further plaintiffs have got examined P.W.2, who is the son of attesting witness namely Narasimha Murthy as P.W.2 and in the evidence of P.W.2, two documents produced by the witness namely his Adhar card and also death extract of his father late Narasimhaiah, which are marked as Ex.P.18 and P.19 and P.W.2 after confrontation of Ex.P.1, he identified the signature of late father Narasimhaiah on Ex.P.1 i.e., suit agreement of sale, signature of late Narasimhaiah is marked at Ex.P.1(b) and plaintiffs have closed their evidence and thereafter, defendant No.5, who has given rebuttal evidence as he is examined as D.W.1 by filing affidavit evidence under Order 18 Rule 4 of CPC and D.W.1 further examined on 11.11.2014 and in his evidence documents Ex.D.1 to D.5 are came to be marked and with this evidence defendants side evidence is closed and thereafter, the suit is posted for arguments.

7. Heard the arguments of both sides and posted the suit for judgment.

8. On appreciation of pleadings and oral and documentary evidence and arguments of learned counsel appearing for plaintiffs and heard the arguments of learned counsel appearing for defendant No.1 to 5 and posted this matter for judgment.

In support of his case, the learned counsel for plaintiff has relied upon the following decisions:-

1. 2010(3) SCC 1, Trimex International Fze Limited Dubai Vs. Vedanta Aluminium Limited, India.
2. AIR 2004 SC 3854, Mahadeva & others Vs. Tanabal.
3. AIR 1992 Kar 375, Munisettappa & others Vs. B.Krishnappa & another.
4. 2008(4) SCC 464, Balasaheb Dayandeo Naik (dead) through LRs & others Vs. Appasaheb Dattatraya Pawar
5. AIR 2007 SC 1256, P.S.Ranakrishna Reddy Vs. M.K.Bhagyalakshmi & another.
6. 2012(1) KCCR 428 (DB), Deepak Rajani Vs. K.B.Pampapathi since deceased by his LRs.
7. 2012(8) KCCR (SN) 317, Shanker Singh Vs. Narinder Singh & others
8. AIR 1970 SC 546, Nathulal Vs. Poolchand
9. 2005(4)KCCR 2751, Subbireddy Vs. K.N.Srinivasa Murthy
10. ILR 2010 Kar 765, Syed Zaheer & others Vs. C.V.Siddveerappa
11. A 2004 Kar 31, Mallapa Vs. Srinivasa Rao & others

9. On appreciation of the pleadings, on appreciation of oral and documentary evidence that of P.W.1 and 2 and that of D.W.1 and by perusal of Ex.P.1 to P.20 and Ex.D.1 to D.5 and considering the citations referred by the plaintiffs counsel and on appreciation of the respective rival arguments addressed by the counsel on record, I answer the above issues as follows:-

Issue No.1 to 3:	In affirmative
Issue No.4:	Does not survive for consideration as plaintiffs have impleaded defendant No.3 to 5, who are the sons of late B.L.Nanjundaiah as party /necessary defendants in this case.



Issue No.5: In affirmative in favour of plaintiffs

Issue No.6 & 7: In affirmative;  
Issue No.8: The suit filed by the deceased plaintiff Sri.Annamalai and subsequently prosecuted by his LRs deserves to be decreed with costs against defendants for the following reasons:-

#### REASONS

8. Issue No.1 to 3: These issues are interconnected to

each other and evidence placed on record by the parties is common in respect of these issues and considering the dispute involved in this case between the parties, wherein it just and necessary to discuss these issues by common discussion by appreciation of oral and documentary evidence. However separate findings are recorded on each issue after appreciation of the material placed on record by the respective parties.

9. It is admitted fact that late B.L.Nanjundaiah, the husband of 1st defendant and father of defendant No.2 to 5 was practising advocate at Bangalore and at Anekal and he was the absolute owner of the suit schedule property as it is residential site property bearing site No.383 formed in Sy.No.52 of Malagala village, Yeswanthapura Hobli, Bangalore North Taluk measuring east-west 40 ft., and north-south 30 ft., along with 3 ½ square constructed ACC sheet house and deceased plaintiff has given description of the schedule property in the annexed schedule of the plaint, wherein the deceased plaintiff Sri.Annamalai , who was resident of Magadi road, and he was working in Minerva Mills at Bangalore, wherein the deceased plaintiff agreed to purchase the schedule property as offered by deceased B.L.Nanjundaiah for his legal and family necessities and deceased plaintiff had entered into an agreement of sale with late B.L.Nanjundaiah in respect of suit schedule property, wherein deceased B.L.Nanjundaiah offered for sale and after sale negotiations held between B.L.Nanjundaiah and deceased plaintiff, wherein sale consideration amount was mutually agreed for Rs.32,500/- and an amount of Rs.5,000/- was paid by deceased plaintiff Sri.Annamalai to late B.L.Nanjundaiah and after receiving advance amount of Rs.5,000/- late B.L.Nanjundaiah executed an agreement of sale dated 16.7.1988 agreeing to convey the schedule property in favour of deceased plaintiff within a span of 3 months from the date of execution of sale agreement and in case of failure of execution of sale deed, late B.L.Nanjundaiah agreed to compensate the deceased plaintiff by refund of earnest amount and paying double of the amount of the advance as damages/compensation and also agreement of sale recited with forfeiture of earnest amount if purchaser fails to pay the balance sale consideration amount within stipulated period of 3 months and accordingly, with these terms, late B.L.Nanjundaiah had executed sale agreement in favour of deceased plaintiff and it is further case pleaded by the deceased plaintiff that as the schedule property is revenue site and it was granted in favour of father of late B.L.Nanjundaiah namely R.Rajappa as he was freedom fighter by the Mysore Government on the even of celebration

of 25th Anniversary of independent day and late B.L.Nanjundaiah had acquired title, possessory right over the schedule property and revenue records stands in the name of late B.L.Nanjundaiah in respect of site No.383. hence, B.L.Nanjundaiah had executed sale agreement and as it was revenue site, the Government has banned the registration of the revenue sites and sale deed could not be executed before the registering authority and hence, late B.L.Nanjundaiah had executed GPA dated 5.9.1988 coupled with affidavit in favour of deceased plaintiff and deceased plaintiff was put in possession of the schedule site and had received the entire sale consideration amount of Rs.32,500/- and hence, deceased plaintiff has relied upon sale agreement dated 16.7.1988 and GPA and affidavit dated 5.9.1988 respectively and 1st defendant had initiated HRC proceedings by issuance of legal notice regarding termination of alleged tenancy of deceased plaintiff by notice dated 29.7.2005 and plaintiff has replied the same by reply notice dated 12.8.2005 and hence, deceased plaintiff after issuance of legal notice by 1st defendant dated 29.7.2005 has filed this suit for specific performance of contract against LR's of deceased B.L.Nanjundaiah, who are wife and children of late B.L.Nanjundaiah in order to enforce the specific performance of contract in respect of sale agreement dated 16.7.1988 coupled with GPA and affidavit dated 5.9.1988 respectively.

10. The defendants 1 and 2 have contested the suit by filing written statement and defendant No.3 to 5 subsequently added as additional defendants and they adopted the written statement filed by defendant No.1 and 2. The defense set up by the defendants that they denied the alleged sale agreement dated 16.7.1988 and also denied execution of GPA/affidavit dated 5.9.1988 by deceased B.L.Nanjundaiah and defendants have denied the receipt of sale consideration amount of Rs.32,500/- by deceased B.L.Nanjundaiah during his life time and defendants have set up defense that the schedule property was revenue site allotted in the name of father-in-law of 1st defendant and there was non alienation clause for 25 years and late B.L.Nanjundaiah was practicing advocate deriving good income from advocacy profession and also he was having properties at Prakash Nagar, Bangalore receiving rental income and he is deriving Rs.20,000/- per month from practicing advocacy and as such, he was financially sound and he was not having any financial crisis to offer the schedule property for sale in favour of deceased plaintiff and as such, defendants specifically contended that deceased plaintiff had concocted and manipulated these documents styled as agreement of sale/ alleged GPA and affidavit alleged to have been executed by late B.L.Nanjundaiah and these documents are concocted by the deceased plaintiff and he has not filed any suit for specific performance during life time of B.L.Nanjundaiah and there is delay in filing this suit by deceased plaintiff for specific performance and there is no demand notice issued by deceased plaintiff to late B.L.Nanjundaiah during his life time and as such, the legal notice issued on 12.8.2005 much after lapse of many years from the alleged sale agreement dated 16.7.1988 and even if alleged agreement is taken into consideration, there was stipulation of 3 months and time was the essence of contract and as such, suit is barred by limitation. Hence, defendant No.1 to 5 have contested the suit on the basis of this specific defense and they denied the documents relied by the plaintiffs.

11. In order to prove Issue No.1 to 3 and 5, LR's 1(d) Plaintiff of deceased plaintiff has deposed through his affidavit evidence filed in lieu of examination-in-chief under Order 18 Rule 4 of CPC and on perusal of his affidavit evidence, wherein P.W.1 has reiterated the facts as pleaded in the plaint and P.W.1 deposed regarding execution of sale agreement and GPA and affidavit dated 5.9.1988 by

deceased B.L.Nanjundaiah in favour of his late father Sri.Annamalai in respect of suit schedule property and it is specifically deposed by P.W.1 that deceased B.L.Nanjundaiah had put his father in possession of the schedule site and at that time, he has handed over Xerox copy of Hakku-pathra stating that he has produced original Hakku-pathra before the Office of Asst., Commissioner, Bangalore Sub Division as directed by the said authority and further P.W.1 stated that late B.L.Nanjundaiah was also informed deceased plaintiff that he has further produced original Hakku-pathra before Asst., Commissioner, Bangalore Sub Division and for that he has given endorsement as acknowledged by the Asst., Commissioner office regarding production of original Hakku- pathra. Hence, P.W.1 deposed that there was sale agreement between his father and late B.L.Nanjundaiah on 16.7.1988 and also P.W.1 deposed in respect of execution of GPA and affidavit by late B.L.Nanjundaiah on 5.9.1988 as there was ban/prohibition for registration of revenue sites before the registration office of Government of Karnataka and P.W.1 denied the allegations of defendants that late Sri.Annamalai was tenant under B.L.Nanjundaiah and after his demise, the plaintiffs, who are the LR's of deceased plaintiff have continued the tenancy under defendants and as such, plaintiff has denied the statement of defense made in their written statement regarding alleged tenancy in respect of suit schedule premises since the year 1988 under late B.L.Nanjundaiah and P.W.1 also deposed that defendants had filed HRC proceedings in HRC No.41/2007 and after trial in that HRC proceedings, it was held that there was no relationship of land-lord and tenant and HRC court has dismissed the petition filed by the defendants in HRC No.41/2007. Hence, P.W.1 has denied the entire written statement contention raised by defendant No.1 to 5 in his affidavit evidence and P.W.1 got marked documents Ex.P.1 to P.17 in his oral evidence and the said documents are reads as under:-

Ex.P.1 is the agreement of sale dated 16.07.1988 executed by B.L.Nagundaiah in favour of his father Late.Annamalai, Ex.P.1(a) is the signature of B.L.Nangundaiah on the last page on Ex.P-1, Ex.P.1(b) is the signature of Narashimaiah is marked on Ex.P-1, Ex.P.2 and P.3 are G.P.A and affidavit executed by B.L.Nangundaiah on 05.09.1988 respectively, Ex.P-2(a) and Ex.P-3(a) are the signatures of B.L.Nangundaiah on the last page of Ex.P-2 & 3, Ex.P.4 to P.7 are the four tax paid receipts in respect of suit property, Ex.P.8 is the Demand Register extract in respect of suit property, Ex.P.9 is the Endorsement dated 29.09.2001 given by BBMP , Ex.P.10 is the Letter dated 15.05.1985 addressed to Assistant Commissioner by B.L.Nangundaiah, Ex.P.11 is the Death certificate of the father of P.W.1, Ex.P.12 and P.13 are the two Electricity bills, Ex.P.14 and 15 are two water bills, Ex.P.16 is the Notice dated 29.07.2005 sent by the 1st defendant to his father and Ex.P.17 is the reply Notice sent by his father .

And P.W.1 also identified the signatures on Ex.P.1 on last page of Ex.P.1. He admits the signature of B.L.Nanjundaiah as per Ex.P.1(a) and P.W.1 stated further that one Sri.Narasimhaiah, who has attested the suit agreement Ex.P.1 as an attesting witness and signature is at Ex.P.1(b) and P.W.1 also identified the signatures of GPA and affidavit of late B.L.Nanjundaiah marked as Ex.P.2(a) and P.3(a) respectively. Hence, P.W.1 relying upon his oral evidence coupled with documents Ex.P.1 to P.17 marked through his evidence, pray for passing of a decree for specific performance of contract as against defendant No.1 to 5 as there is no balance sale consideration amount to be paid by the

plaintiffs and P.W.1 also deposed that plaintiffs are always ready and willing to perform their part of contract. Hence, P.W.1 prays to decree the suit as prayed for.

12. The learned counsel for defendants cross examined P.W.1 on 6.8.2013, wherein P.W.1 admits that his father was originally from State of Tamilnadu and during his childhood he came to Bangalore and settled here as he was working in Minerva mill at Bangalore. P.W.1 denied that his father was mason by occupation and P.W.1 admits that he has produced the documents to show that his father was working in Minerva mill. P.W.1 stated that he has studied up to 8th Standard in English medium and his father died about three years ago and during the year 1990 he was student and his late father Sri.Annamalai was looking after their family. P.W.1 stated that he knew about late B.L.Nanjundaiah but P.W.1 do not know about the name of his father and late B.L. Nanjundaiah had acquired the suit schedule property, wherein P.W.1 further stated that his father was residing in Magadi road in the year 1986. P.W.1 denied that late B.L.Nanjundaiah had allowed his late father to reside in the suit schedule property by constructing the shed on rental basis, but P.W.1 stated that as he was minor, aged about 8 years in the year 1988 and as such, he has no idea regarding suit transaction and P.W.1 specifically denied that his father late Sri.Annamalai was residing in the suit property since the year 1988 as watchman. P.W.1 also denied that his father late Sri.Annamalai was paying paying rent at Rs.300 per month and subsequently it was enhanced to Rs.500 per month and P.W.1 denied that late B.L.Nanjundaiah acquired the schedule site through his father as he was a freedom fighter and P.W.1 further denied that late B.L.Nanjundaiah got electrical connection to the suit schedule property . P.W.1 admits that late B.L.Nanjundaiah was lawyer by profession and P.W.1 specifically denied that during the life time of B.L.Nanjundaiah, he was receiving rent and after his death, defendants have demanded to pay rent and they have paid two months rent and thereafter plaintiffs have remained in arrears of rent and accordingly, they have issued notice calling upon arrears of rent. P.W.1 admits regarding the receipt of legal notice caused by defendants marked at Ex.P16, but P.W.1 denied that deceased B.L.Nanjundaiah did not executed agreement of sale, GPA and affidavit etc., and P.W.1 denied that the signature appearing on Ex.P1 is not belongs to Late B.L.Nanjundaiah and P.W.1 stated that Ex.P1 was attested by four to five witnesses, but he cannot say the names of attesting witnesses who have signed Ex.P1 and P.W.1 denied that Ex.P2 is not recited with any witnesses and signature of late B.L.Nanjundaiah is forged and P.W.1 denied that the signatures of late B.L.Nanjundaiah appearing on Ex.P10 and that of signature on Ex.P2 are dissimilar and not tallying with each other and P.W.1 stated that he do not know the name of notary public before whom GPA was executed.

13. The learned counsel for defendants again cross examined P.W.1 on 6.12.2013, wherein P.W.1 again denied that late B.L.Nanjundaiah has leased the schedule property in favour of late Sri.Annamalai and has executed lease agreement and P.W.1 was also denied that his father was paying rent at the rate of Rs.500/- per month and P.W.1 denied his knowledge that late B.L.Nanjundaiah had his office at Anekal and after his demise, the documents kept in the office and misplaced and P.W.1 denied regarding issuance of legal notice in the year 2005 as plaintiffs have stopped paying rent as per notice dated 29.7.2005. However, P.W.1 admits receipt of legal notice dated 29.7.2005 and P.W.1 admits that the schedule site was granted in the name of late B.L.Nanjundaiah as his father was freedom fighter and P.W.1 admits that Ex.P.8 is demand register extract, it is in the name of late B.L.Nanjundaiah and Ex.P.4 to P.7 are tax paid receipts in the name

of late B.L.Nanjundaiah and Ex.P.9 is the notice issued by Assistant Revenue Officer BBMP document, and P.W.1 denied that Ex.P.4 to P.9 are handed over by 1st defendant with a request to pay tax to the corporation and P.W.1 denied that Ex.P.12 to P.14 are created documents by the plaintiffs and P.W.1 specifically denied that they have created Ex.P.1 to P.3 and P.10 by forging the signature of late B.L.Nanjundaiah and P.W.1 also denied that as per the terms of Ex.P.1, they have to pay balance amount within 3 months, but plaintiffs have not complied the terms of Ex.P.1 and also not issued any legal notice and P.W.1 denied that defendants, who are the LR's of deceased B.L.Nanjundaiah are having right, title and interest in respect of suit schedule property and P.W.1 denied his knowledge that schedule property if sold in open market, it can fetch sale price of Rs.20 to 30 lakhs and P.W.1 denied that late B.L.Nanjundaiah has not executed Ex.P.3 and he admits that on page No.1 of Ex.P.1, there is no signature of late B.L.Nanjundaiah and P.W.1 denied that Ex.P.1(a) is not the signature of late B.L.Nanjundaiah and P.W.1 also stated that he do not know whether Ex.P.1 recitals reveals regarding handing over of possession of schedule property. P.W.1 admits that his father had not given any notice in writing to deceased B.L.Nanjundaiah or to his LR's, but P.W.1 voluntarily stated that his father had requested the defendants to execute sale deed and P.W.1 specifically denied that he is deposing false evidence on the created documents relied in this case and P.W.1 also specifically denied that the schedule site is only property held by deceased and P.W.1 also denied that after demise of original plaintiff, they have continued in respect of schedule property as tenants and P.W.1 also further denied that the defendants are paying tax to the schedule property to corporation authorities and P.W.1 admits that the surrounding properties in respect of schedule property, there were already buildings have come up in that area and P.W.1 denied that they have paid insufficient court fee though schedule property valued worth lakhs of rupees .

14. The plaintiffs have examined P.W.2, who is stated to be son of attesting witness deceased Sri. Narasimhaiah , who allegedly signed on Ex.P.1 and P.W.2 appeared before the court and filed his affidavit evidence and deposed by way of this affidavit stating that his father by name Sri. Narasimhaiah , who died on 31.8.2008 and P.W.2 has produced death extract of his father and also witness P.W.2 has produced his Adhar card, which are marked at Ex.P.18 and P.19 and witness confronted with Ex.P.1, wherein he identified the signature of his father on Ex.P.1 marked at Ex.P.1(b) and counsel for plaintiff has produced notarized copy of Adharcard, notarized copy of death extract, notarized copy of election I.D and notarized copy of sale deed dated 10.11.2006 along with memo filed on 22.4.2014 and notarized copy of sale deed is produced by the plaintiff for comparison of signature of deceased attesting witness namely Sri. Narasimhaiah on this sale deed, wherein deceased Sri. Narasimhaiah has signed the sale deed dated 10.11.2006 executed in favour of P.W.2 by one Munishamappa. Hence, P.W.2 relying upon Ex.P.18 and P.19, he identified the signature of his late father on Ex.P.1.

15. The counsel appearing for defendants cross examined P.W.2, wherein he stated that his father was doing the work of broker and his father was signing the document in Kannada language and his father had signed on Ex.P.1 in his presence as he his father had told him about the sale agreement Ex.P.1 which was executed for Rs.32,000/- and P.W.2 admits that he did not read over the recitals of Ex.P.1 and P.W.1 admits that he has not produced any documents in this suit to show that signature of his late father and P.W.2 admits that in case of sale of immovable properties registered

documents are to be executed and P.W.2 stated that his father has signed the agreement of sale in the year 1988, but he do not remember specific date and month of his father signed this agreement and P.W.2 stated that he saw the agreement Ex.P.1 as it was brought to his house in the year 1988 by deceased plaintiff and P.W.2 denied the suggestion that his father had not put his signature on Ex.P.1 and he is deposing falsely and P.W.2 also denied the suggestion that he is deposing falsely just to favour to plaintiffs. Hence, by perusal of entire cross-examination of these witnesses, defendants have not elicited any worth admission in order to discard the evidence of P.W.2.

16. Defendant No.5, who is son of late B.L.Nanjundaiah has given rebuttal evidence in this case as this witness has filed his examination-in-chief filed by way of affidavit evidence under Order 18 Rule 4 of CPC and on perusal of the evidence of D.W.1, wherein he denied the case of the plaintiffs and also denied the alleged documents denied by the plaintiff as per Ex.P.1 to P.3 and Ex.P.10 and also denied the plaintiffs possession as the agreement holder since 1988 and on the contrary, D.W.1 stated that deceased plaintiff Sri.Annamalai was a tenant under his father late B.L.Nanjundaiah and after demise of original plaintiff, plaintiffs are being continued their tenancy rights under defendant No.1 to 5 and as such, D.W.1 denied the case of the plaintiffs and D.W.1 also deposed that HRC No.41/2007 came to be dismissed due to misplace of rental agreement and rent receipts as defendants have lost these documents as his father was having his office at Anekal and after his demise, the lease deed/.rental agreement and rent receipts which could not be traced by the defendants and accordingly, HRC No.41/2007 came to be dismissed for non production of rent agreement and hence, D.W.1 has given rebuttal evidence by way of chief examination in the form of affidavit and he got marked Ex.D.1 to D.5 through his evidence and the said documents Ex.D.1 to D.5 are as under:-

Ex.D.1 is the certified copy of legal notice dated 29.7.2005, Ex.D.2 is certified copy of photograph showing the suit schedule house , Ex.D.2(a) are the certified copy of negatives and Ex.D.3 is the certified copy of electricity demand bill, Ex.D.4 is certified copy of Nil encumbrance certificate dated 20.7.2005 and Ex.D.5 is the certified copy of death extract of late B.L.Nanjundaiah.

and D.W.1 relying upon his evidence and Ex.D.1 to D.5 he pray for dismissal of the suit filed by the plaintiff.

17. The learned counsel appearing for the plaintiff cross examined D.W.1 on 10.12.2014, wherein D.W.1 admits that he has studied up to PUC and his brother defendant No.3 doing private job as he has studied up to 8th standard and defendant No.4 is also doing private job and his education is up to III standard. 2nd defendant is house wife and D.W.1 stated that his date of birth is on 20/11/1975 and D.W.1 admits that schedule site was allotted to his deceased father as it was allotted in the name of his father and it was his self acquired property. Defendant No.1 who is his mother, she is house wife and D.W.1 admits that 1st defendant had filed HRC proceedings against deceased plaintiff Sri.Annamalai and defendant No.1 had issued legal notice to deceased plaintiff prior to filing of HRC proceedings and D.W.1 admits that he read over the contents of legal notice issued by his mother defendant No.1 and noted the contents of legal notice and D.W.1 admits that deceased plaintiff had issued legal notice to the notice caused by 1st defendant and D.W.1 admits that HRC petition filed by

his mother and his sister as petitioner No.1 and 2 and in that HRC petition D.W.1 and his brothers have been impleaded as co-petitioners and D.W.1 admits that he has deposed in HRC No.41/2007 on behalf of petitioners and D.W.1 admits that HRC No.41/2007 filed by the petitioners (defendant No.1 to 5 herein) has been dismissed and D.W.1 further stated that the HRC proceedings was dismissed holding that there was no rent agreement produced by the petitioners between petitioners and deceased plaintiff Sri.Annamalai. However D.W.1 denied the suggestion that HRC No.41/2007 was dismissed by the court of small causes on the ground of non-existence of jural relationship of landlord and tenant and D.W.1 admit that his late father B.L.Nanjundaiah was a lawyer by profession as he was practicing in his residence and also he was practicing at Anekal in Bangalore district and his father was residing in house No.86/3 of Rajajinagar, Bangalore and he was practicing in that house.

18. The counsel for the plaintiffs further cross examined to D.W.1 on 13/1/2015, wherein D.W.1 admits that his father was practicing as an advocate and under him there are junior advocates were practicing and he cannot say the names of junior advocates who were working under his late father's chamber and D.W.1 admits that property No.86/3 of Rajajinagar belongs to them as it is ancestral property and D.W.1 denied his knowledge about his late father was having a bank account in any of the banks at Bangalore city and D.W.1 do not know whether his father had a bank account with any other banks and D.W.1 admits that he enquired with his mother about any bank account held by his father and D.W.1 admits that he has not produced any document to prove his contention that his father receiving Rs.20,000/- per month from his lawyer's profession and no documents are produced to show that late father was receiving rental income and D.W.1 admits that suit site was allotted by Government in the name of his deceased father and D.W.1 further stated that the documents issued by the Government in respect of suit site were lost when his father was seriously ill and he came to know about lost or missing of documents in the year 2005 and thereafter they have issued notice to the deceased plaintiff in order to file HRC petition and D.W.1 stated that neither himself nor his mother not filed any complaint regarding missing / lost of original documents of schedule property before the concerned Police Station and D.W.1 admits that his late father had produced the original documents in respect of suit site before the Asst., Commissioner, Bangalore South Taluk, for verification in the month May 1998 and D.W.1 denied the suggestion that his late father had agreed to sell the schedule site in favour of deceased plaintiff for sale consideration amount of Rs.32,000/- and D.W.1 denied and the receipt of earnest amount of Rs.5,000/- from the deceased plaintiff and D.W.1 denied execution of GPA / affidavit by his father on 5/9/1988 in favour of deceased plaintiff and D.W.1 denied that his late father had put in possession of deceased plaintiff in the schedule property since 5/9/1988 and D.W.1 voluntarily stated that deceased plaintiff Sri.Annamalai was a tenant occupying the schedule property since 1974. D.W.1 further denied the execution of GPA dated 5.9.1988 and D.W.1 further denied that his father late B.L.Nanjundaiah had postponed the execution of sale deed in one or the other pretext though he had produced original documents before the Asst., Commissioner office at Bangalore and assuring of after obtaining the original documents returned from the Asst., Commissioner office and he promised to execute the sale deed. D.W.1 is confronted with Ex.P10 and asked him to identify the signatures of his late father on Ex.P10, wherein D.W.1 denied to identify the said signatures appearing on Ex.P10 and D.W.1 stated that he has to verify whether there are any documents available in his house containing the signatures of his father and witness again confronted with

Ex.P1 and P3 wherein D.W.1 denied to identify the signatures of his late father on Ex.P1 and P3 and D.W.1 denied that the signatures of his father and to his father's name as compared to Ex.P1(a) and that of signatures appearing on Ex.P10 are similar and D.W.1 denied that his father was used to sign as per Ex.P1(a) and below his signature, he used to write his initials along with his name and D.W.1 denied that his father had received entire sale consideration amount as per Ex.P1 dated 16.7.1988 and D.W.1 further denied that deceased plaintiff frequently approaching his father making request to execute sale deed. On the contrary D.W.1 stated that deceased plaintiff approaching his father for payment of rent and D.W.1 admits that he has no documents in the form of rent receipts to show that deceased plaintiff Sri.Annamalai was occupying the premises as tenant and D.W.1 denied the suggestion that deceased plaintiff as an agreement holder approaching his father and requesting him for execution of sale deed and D.W.1 confronted with certified copy of judgment in HRC No.41/2007 dated 29/11/2010 wherein witness admitted the dismissal of this HRC petition and also admitted this document, it is marked at Ex.P.20 and D.W.1 admits that they have not preferred any revision petition against dismissal of HRC No.41/2007 and D.W.1 stated that deceased plaintiff Sri.Annamalai occupied the schedule property around in the year 1986 and his father was collecting rent from deceased plaintiff Sri.Annamalai till his death in the year 2002 and D.W.1 admits that they have issued notice on 29/7/2005, when deceased plaintiff stopped paying rents and D.W.1 denied that deceased plaintiff was not a tenant and he was in possession of schedule property as an agreement holder under his father and D.W.1 denied that deceased plaintiff never paid any rent to his father and he was not a tenant and D.W.1 also denied that he is deposing falsely and after demise of his father deceased plaintiff approached the 1st defendant and paid three months rent and D.W.1 stated that the deceased plaintiff approached his mother in the month of August / September 2002 to pay the rents and D.W.1 denied that he is deposing falsely that the deceased plaintiff had paid three months rent to defendant No.1 only with an object to create an evidence to file eviction petition and D.W.1 denied the suggestion that value of the schedule property during 1988 was prevailing at Rs.32,000/- and D.W.1 also denied that deceased plaintiff had agreed to purchase the schedule property for appropriate market value prevailing at that time and D.W.1 denied that plaintiff approached the defendant and requested them to execute sale deed and D.W.1 admits that deceased plaintiff had replied the notice issued on 29/7/2005 and D.W.1 stated that his father had not executed any alleged agreement of sale and hence defendant No.1 to 5 are not liable to execute any sale deed in favour of plaintiffs and he further admits that defendants have not filed any separate suit for seeking possession from the plaintiffs and also for cancellation of Ex.P.1 to 3 and D.W.1 denied that documents relied by the plaintiffs are genuine documents and D.W.1 further denied that his father had received entire sale consideration amount from the plaintiffs and as such defendants are legally bound to execute sale deed in favour of plaintiffs.

19. After appreciation of the evidence of P.W.1 and 2 and that of D.W.1 wherein it is admitted fact that deceased plaintiff Sri.Annamalai died on 1/12/2009 and plaintiffs LR's 1(a) to 1(d) have prosecuted further this suit against defendant No.1 to 5 and late B.L.Nanjundaiah died on 28/4/2002 leaving behind his LR's defendant No.1 to 5 herein. The counsel for the plaintiffs submitted his arguments relying upon Ex.P.1 to 20 and particularly he relied upon Ex.P1 to P3 with Ex.P10 and urged the court to compare the signature of deceased B.L.Nanjundaiah by comparison of signatures appearing on Ex.P1 to P3 with that of Ex.P10, which is the only admitted signatures of deceased B.L.Nanjundaiah available on record and defendants have not produced any other



documents from their custody to show that the signatures of deceased B.L.Nanjundaiah which are admitted signatures of documents in this case and counsel for plaintiff further argued that section 73 of Evidence Act empowers this court for comparison of signatures of late B.L.Nanjundaiah on admitted and disputed documents by exercise of powers under section 73 of Evidence Act as defendant No.1 to 5 have denied the signatures of late B.L.Nanjundaiah on Ex.P. 1 to 3 and Ex.P.10 and counsel for plaintiff also contended that time of three months mentioned in Ex.P. 1 is not the essence of the contract wherein deceased B.L.Nanjundaiah did not executed sale deed in view of the bar / prohibition created for registration of revenue sites got executed GPA / affidavit and also handed over possession of schedule site in favour of deceased plaintiff. Hence counsel for plaintiff contended that in case of immovable property time was the essence of contract and as such there is no application of section 55 of Indian Contract Act to the facts of the case and counsel for plaintiff further submitted that in view of long years possession held by deceased plaintiff and after his demise, his LRs who have continued in respect of schedule premises under their own right and deceased B.L.Nanjundaiah did not taken any action for obtaining possession and defendant No.1 to 5 failed in evicting the plaintiffs in HRC No.41/2007 and the findings in HRC No.41/2007 have attained finality by dismissal of that HRC proceedings (Ex.P. 20) by the HRC court i.e., Court of Small Causes and no revision is preferred by defendants and as such there is no jural relationship of landlord and tenant between deceased plaintiff and late B.L.Nanjundaiah after their death between plaintiff and defendants. Hence the contention of defendants that plaintiffs are the tenants in occupation of the property is ruled out by dismissal of HRC No.41/2007. On perusal of the defense taken by defendants wherein at one stretch the defendants have contended that they have lost lease agreement / rent agreement while shifting office from Anekal to Bangalore after demise of B.L.Nanjundaiah. But at the same time defendants have stated that the documents were missing /lost in the year 2005 itself. Hence this inconsistent plea taken by the defendants itself is a proof that defendants have taken up a false contention as against plaintiffs.

20. The counsel appearing for the defendants contended that the documents Ex.P. 1 to 3 are unregistered documents and plaintiffs failed to prove readiness and willingness and in view of Hon'ble Apex Court decision, Ex.P2 and P3 are not registered documents and they are barred under Sec. 17 read with Sec. 49 of Registration Act and Ex.P2 and P3 are coupled with interest of immovable property, they require compulsory registration and plaintiffs have not produced any other documents except Ex.P1 to P3 and counsel for defendants further contended that neither deceased plaintiff nor his LRs have not complied the terms of Ex.P1 and in view of the clauses of Ex.P1 at the most plaintiffs LRs are entitled for damages of the double amount of advance amount paid by the deceased plaintiff and hence learned counsel for the defendants pray for dismissal of the suit.

21. After appreciation of oral and documentary evidence, wherein plaintiffs by adducing the evidence of P.W.1 and by producing Ex.P1 to 20 and by examining P.W.2 have proved Ex.P1, the agreement of sale executed by deceased B.L.Nanjundaiah in favour of deceased plaintiff. The contention raised by the defendants that deceased plaintiff Sri.Annamalai was tenant under deceased B.L.Nanjundaiah since the year 1974 and after demise of B.L.Nanjundaiah and after demise of Sri.Annamalai plaintiffs tenancy has been continued under defendants. But this specific defense taken by the defendants regarding tenancy of plaintiffs in respect of schedule premises is

not acceptable contention in view of Ex.P.20 documentary evidence produced by the plaintiff and the finding in Ex.P.20 have attained finality and as such defendant No.1 to 5 have not produced any scrap of paper to show that plaintiffs are occupying the premises after inserting tenancy rights through their deceased father Sri.Annamalai. But on the contrary the plaintiffs possession can be legally inferred in this case that deceased plaintiff Sri.Annamalai was put in possession of schedule property under part performance of contract under Sec. 53 (A) of T.P.Act by document Ex.P.2 and 3 i.e., GPA and affidavit executed by late B.L.Nanjundaiah and hence plaintiffs have proved their possession in respect of schedule property in their own rights recognized by law under Doctrine of part performance of contract under Sec. 53 of T.P.Act and plaintiffs have already proved Ex.P1 to P3, wherein it is a revenue site granted in the name of father of late B.L.Nanjundaiah as he was freedom fighter on 12/6/1974 and deceased B.L.Nanjundaiah was the absolute owner and it is self acquired property of late B.L.Nanjundaiah and he was also a practicing advocate and had the knowledge of consequences of execution of documents by him in favour of deceased plaintiff. Admittedly it is a fact that there was ban for registration of revenue site at relevant period when Ex.P. 1 to 3 were came to be executed and a legal inference could be drawn that late B.L.Nanjundaiah for that reason only had executed Ex.P.2 and 3 in favour of deceased plaintiff in order to avoid registration of revenue sites. However it is a fact gathered from Ex.P1 to P3 , wherein deceased B.L.Nanjundaiah had received sale consideration amount including advance amount of Rs.5,000/- and also he had received an amount of Rs.32,500/- as per Ex.P3. The defendants have not made any attempt to refer the documents Ex.P1 to 3 and Ex.P10 for obtaining expert opinion by comparison of signatures of deceased B.L.Nanjundaiah. But on the contrary plaintiffs have produced Ex.P1 to 3 and also Ex.P.10 which is acceptable document, wherein it is a fact that deceased B.L.Nanjundaiah had produced documents by producing original documents like Hakku Patra and other documents mentioned in Ex.P10 in view of the call made by learned Asst., Commissioner, Bangalore Sub-Division wherein late B.L.Nanjundaiah on 15/5/1985 had produced original title deeds in respect of suit site and obtained this acknowledgment from the learned Asst., Commissioner of his and from comparison of signature on Ex.P10 to that of signatures available on Ex.P.1 on page No.2 wherein these two handwritings appears to be similar in nature tiled and writing of initials and name in all particulars, these two signatures are tallying and Ex.P.10 is authenticated endorsement issued by the Public Office in favour of late B.L.Nanjundaiah. Hence by exercise of powers under Sec. 73 of Indian Evidence Act, i.e., only force open to this court to test the genuine of these documents by applying Sec. 73 of Evidence Act by comparison of signatures available in respect of admitted and disputed documents. Hence plaintiffs have proved their possession under Sec. 53 of T.P.Act and their possession for long years in respect of schedule property is amounting to settle position under the provisions of T.P.Act and defendants have not produced any lease deed / rental agreement or any scrap of rent receipt to show that deceased plaintiff was tenant under B.L.Nanjundaiah and as such the entire defense taken by defendants falls to the ground in view of Ex.P. 20 which has attained finality and as such plaintiffs have proved Ex.P1 to 3 and in view of payment of entire sale consideration amount under Ex.P2 and 3, wherein the original documents are already produced before the Asst., Commissioner office as per Ex.P.10 and as such the plaintiffs need not perform any part of contract obligation and once entire sale consideration amount is paid, it is for the deceased B.L.Nanjundaiah to execute sale deed during his life time, but he died on 28/4/2002 leaving behind his LRs D1 to D5 and defendants have issued legal notice on 29/7/2005 to deceased plaintiff and filed HRC proceedings in HRC No.41/2007 even after deceased plaintiff issued his legal notice as

per Ex.P. 17. Hence considering documents Ex.P1 to 20 and also plaintiffs possession in respect of schedule premises and in view of dismissal of HRC No.41/2007 wherein I hold that plaintiffs are in lawful possession of the schedule property as an agreement holder under Ex.P1 to 3 since 16/7/1988 and since 5/9/1988 under Doctrine of part performance of contract under Sec. 53 of T.P.Act and after perusal of citations relied by the counsel for plaintiffs wherein these citations referred in support of their arguments are applicable to the case on hand and as such plaintiffs have proved issue No.1 to 3 and issue No.5 against defendant No.1 to 5. Accordingly, issue No.1 to 3 and issue No.5 are answered in affirmative.

22. Issue No.4: The defendants have taken the plea of non-joinder and mis-joinder of parties, the plaintiffs have filed application in I.A.No.3 in order to implead the sons of late B.L.Nanjundaiah as additional defendant No.3 to 5 and I.A.No.3 filed by the plaintiffs came to be allowed and defendant No.3 to 5 are impleaded as necessary parties in this case and hence, this issue has become redundant for answering at this stage . Accordingly, Issue no.4 is held to be not surviving for consideration in view of adding of defendant No.3 to 5 as necessary and proper parties in this case.

23. The counsel appearing for the defendants raised the plea of limitation contending that plaintiffs have filed this suit for specific performance of contract after issuance of notice by defendant No.1 dated 29.7.2005 as per Ex.P.16 and whereas deceased plaintiff nor his LRs issued any demand notice to deceased B.L.Nanjundaiah or to his LRs calling upon the defendants to execute sale deed. Hence, there is no demand notice issued by deceased plaintiff nor his LRs and suit filed after lapse of long years from 1988 till 2007 i.e., on 4.7.2007 is barred by limitation and Ex.P.1 is not enforceable contract. Counsel for plaintiffs refuted this line of arguments contending that plaintiffs have replied the notice Ex.P.16 by their reply notice vide Ex.P.17 on 12.8.2005, wherein defendants for the first time in Ex.P.16 described the status of deceased plaintiff as tenant under B.L.Nanjundaiah and they have set up the plea of tenancy in Ex.P.16 and denied the suit agreement Ex.P.1 dated 16.7.1988 and hence, counsel for plaintiffs relying upon Ex.P.16 and P.17, wherein there is denial of Ex.P.1 to P.3 by defendants as per Ex.P.16, which gives cause of action for the plaintiffs to file the suit for specific performance of contract from the date of refusal to execute sale deed or denying the contract. After hearing the arguments of both sides, wherein the demand notice is not criteria in specific performance suit and also it is not mandatory to give any notice in writing prior to institution of the suit, but it is fact that the defendants have issued legal notice on 29.7.2005 denying the documents Ex.P.1 to P.3 and also called upon to pay arrears of rent from deceased plaintiff and also called upon to hand over vacant possession by producing original Hakku-pathra to defendants. Hence, defendants have denied the refused to execute sale deed as per Ex.P.16 dated 29.7.2005 and Ex.P.17 is the reply notice dated 12.8.2005 and cause of action as agreed to the defendants to file the suit for specific performance and it is fact that HRC No.41/2007 was ceased before Court of Small Causes as defendants have filed HRC eviction petition against deceased Sri.Annamalai (original plaintiff) and HRC proceedings were concluded by dismissal of HRC petition on 29.11.2010. Hence, from applying Article.54(ii) Limitation Act, but suit is held to be within the period of limitation and already plaintiffs are in possession under Sec.53(A) of T.P.Act and question of limitation is not applicable. Hence, the contention of defendants counsel raised in respect of plea of limitation is negatived and rejected.

24. Issue No.6 and 7: The plaintiffs, who are the LR's of deceased plaintiff have proved Ex.P.1 to P.3 and also entire sale consideration amount is paid under Ex.P.3 and there is no amount payable due towards balance sale consideration amount. The defendants have raised plea of valuation contending that schedule property worth about Rs.15 to 20 lakhs, but no documents are produced before the court. Hence, in the absence of any documents produced by the defendants for grant of relief of specific performance, the valuation of the property is not criteria. However, plaintiffs have proved their possession under Sec. 53(A) of T.P.Act right from 1974 as on today, wherein plaintiffs are in possession in their right, which has to be protected under law and plaintiffs have proved readiness and willingness under Sec. 16(c) of Specific Relief Act and as such, plaintiffs are entitled for relief of specific performance of contract after exercise of discretion vested under Sec. 20 of Specific Relief Act. Hence, plaintiffs are also entitled for the relief of permanent injunction as prayed for in the suit.

The defendant No.1 to 5 have not filed separate suit for seeking possession of the schedule property from the plaintiffs herein even after dismissal of HRC petition filed in HRC No.41/2007 on 29.11.2010 and even defendants have not challenged Ex.P.1 to P.3 before any competent civil court seeking for cancellation of the said documents and hence, the findings one given in HRC No.41/2007 has attained finality and as such, the plaintiffs have proved their possession in respect of suit schedule property under deceased B.L.Nanjundaiah right from the year 1988 as on today under part performance of contract and as such, the defendants contention raised in the written statement raising the plea of tenancy holds no water and the said defense taken up by the defendants as already been decided in HRC No.41/2007 and as such, defendants failed to prove that deceased plaintiff Sri.Annamalai was tenant under late B.L.Nanjundaiah and plaintiffs are also tenants under defendants Hence, this defense is totally fails as taken up by defendants in this suit. Accordingly, Issue No.6 and 7 are answered in affirmative.

25. Issue No.8: In view of my above findings on Issue No.1 to 7, and in view of specific findings on the plea of limitation though there is no separate issue framed in the above suit in respect of limitation and since it is a legal issue and question of law and the limitation plea is raised in the arguments. Hence, even though there is no separate issue framed regarding limitation, but it is considered at the time of rendering of judgment as limitation plea is legal issue and pure question of law and this court has already hold that after refusal of specific performance by the defendants, who are the LR's of deceased B.L.Nanjundaiah and they denied the status of plaintiffs possession under agreement of sale and defense set up contention of tenancy in respect of plaintiffs in the suit schedule property and hence, from the date of service of legal notice issued at Ex.P.16, real cause of action accrued to the plaintiffs to file the suit as per Art.54(2) of Limitation Act. Hence, the suit filed by the plaintiffs deserves to be decreed against LR's of deceased B.L.Nanjundaiah, who are defendant No.1 to 5 and defendant No.1 to 5 are liable to execute sale deed, wherein the conditions as imposed/restricted under hakku-pathra issued on 12.6.1974 have been completed by lapse of statutory period as on today and as such, defendants are liable to execute sale deed in favour of plaintiffs LR's in respect of suit schedule property and hence, suit of the plaintiffs deserves to be decreed against defendants without any order as to costs. Hence, I proceed to pass the following:-

OR D E R The suit filed by the plaintiffs for the relief of specific performance of contract is hereby decreed without any order as to costs.

It is directed to defendants No.1 to 5 to execute registered sale deed in favour of plaintiffs herein in respect of suit schedule property within a period of 2 months from the date of drawing up of decree in this case.

It is further ordered and decreed that in case, defendants fails to execute sale deed within a statutory period granted by this court, then plaintiffs shall have the right to execute this specific performance decree through process of court and to obtain sale deed executed through process of law.

It is further ordered and decreed that defendants No.1 to 5 are issued with permanent injunction not to interfere with the peaceful possession and enjoyment of the suit schedule property by the plaintiffs as their possession is lawful possession recognized under law under Sec. 53(A) of T.P.Act.

Draw decree accordingly.

{Dictated to the Judgment writer , transcribed by her, corrected and then pronounced by me in open court this 19th day of August 2015.} (S.V.KULKARNI) XI ADDL.CITY CIVIL JUDGE BANGALORE CITY.

ANNEXUERE List of witnesses examined for plaintiff:-

P.W.1	Sri. Palanivelu
P.W.2	Sri. Narasimhamurthy .N

List of documents exhibited for plaintiff:-

Ex.P1	Agreement of sale dated 16.07.1988 executed by B.L.Nagundaiah in favour of Late.Annamalai
Ex.P1(a)	Signature of B.L.Nangundaiah
Ex.P1(b)	Signature of Narashimaiah
Ex.P2, 3	GPA and affidavit executed by B.L.Nangundaiah on 05.09.1988
Ex.P4 to 7	Four tax paid receipts in respect of suit property
Ex.P8	Demand Registrar extract
Ex.P9	Endorsement dated 29.09.2001 given by BBMP
Ex.P10	Letter dated 15.05.1985 addressed to Assistant Commissioner by B.L.Nangundaiah

Ex.P11	Death certificate of the father
Ex.P12,13	Two Electricity bills
Ex.P14,15	Two water bills
Ex.P16	Notice dated 29.07.2005 sent by the 1st defendant

Ex.P17	Reply Notice
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List of witnesses examined for defendant:

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

Ex.D.1 Certified copy of legal notice dated 29.7.2005 Ex.D.2: Certified copy of photograph showing the suit schedule house D.2(a) Certified copy of negatives Ex.D.3: Certified copy of electricity demand bill Ex.D.4 Certified copy of Nil encumbrance certificate dated 20.7.2005 Ex.D.5: Certified copy of death extract of late B.L.Nanjundaiah.

XI ADDL.CITY CIVIL JUDGE, BANGALORE CITY