

Sri Kodanda vs Smt. Manjula Venkatesh on 23 March, 2022

KABC010272602018

Form
No.9
(Civil)
Title
Sheet
for
Judgment
in

PRESENT: SMT. PRASHANTHI G,
B.A.(Law) LL.B.,
XXVII Additional City Civil Judge.

Dated this the 23 rd day of March 2022.

PLAINTIFF: SRI KODANDA,
S/o Late Narasimhappa,
Aged about 77 years,
Residing at No.68, AECS Layout,
3rd Stage, Nagashettihalli,
BENGALURU-560 094.

[By Sri T.R. RAMAKRISHNA, Advocate]
/v e r s u s/

DEFENDANTS: 1. Smt. Manjula Venkatesh,
W/o Late N.Venkatesh,
Aged about 53 years.

2. Sri Vikram C.V.
S/o Late N.Venkatesh,
Aged about 33 years.

3. Sri Vivek C.V.
S/o Late N. Venkatesh,
Aged about 33 years.

All are R/at No.8,
Muneshwara Krupa,

2

CT0028_0.S._7176_2018_Judgment_.doc

Amarjyothi Layout,
Sanjaynagar,
BENGALURU-560 094.

[By Sri S. Rajeshekar, Advocate]

Date of institution of the suit	:	29/09/2018		
Nature of the suit	:	For recovery of money		
Date of commencement of recording of the evidence	:	3/12/2019		
Date on which the Judgment was pronounced.	:	23/3/2022		
	:	Year/s	Month/s	Day/s
Total duration		2	5	25

(Prashanthi. G)
XXVII ACCJ: B'LORE.

The plaintiff has filed this suit against the defendants for the relief of recovery of money directing the defendants to pay a sum of Rs.10,25,000/- [Rupees Ten lakhs & Twenty five thousand] to the plaintiff being the balance payment as per MOU dated 6/2/2018 with interest @ 18% per annum on the said amount of Rs.10,25,000/- from the date they become due till the date of realisation;

3 CT0028_0.S._7176_2018_Judgment_.doc

and directing the defendants to pay the cost of the suit.

2. The brief facts of the plaintiff's case are as follows:

The plaintiff is the senior citizen aged 77 years and suffering from several health problem. He is a handicapped and retired also. The defendants are the

investors to the flats are having the habit of financing the developers at the time of starting of the construction work. The defendants purchased the properties from the builders at the low rates and the same will be sold the huge rates wherein they get huge profits.

Plaintiff is the absolute owner of the property bearing site no.68 in the layout formed by the Aircraft Employees Co-operative Society Ltd., The same came to the possession of the plaintiff by virtue of the sale deed. The katha certificates, katha extracts and tax paid receipts clearly shows that the plaintiff is the owner of the suit schedule property.

4

CT0028_0.S._7176_2018_Judgment_.doc

Plaintiff approached one developer by name Satish Naidu who is the proprietor of S.V.Constructions and developers. In order to develop the property by constructing the residential units comprising of ground floor and upper floors consisting of residential units, stilt floor consisting of car parking slots. The developer agreed the same and develop the property by constructing the residential units comprising of the ground floor and upper floors consisting of residential unit, stilt floor consisting of car parking area also. Developer agreed to deliver 50% of the super built up area to be constructed on the

said property with 50% car parking slots in the stilt floor including the common areas, set back areas, terrace, garden space to the plaintiff along with 50% undivided share of the land rights in the said property.

It is agreed between the developer and plaintiff that, the ground floor flats constructed in the suit 'A' schedule property belongs to the plaintiff. The first floor flats constructed suit 'A' schedule property

5

CT0028_0.S._7176_2018_Judgment_.doc

belongs to developer. The second floor west side flat constructed in the suit 'A' schedule property belong to the plaintiff, and second floor east side constructed in the suit 'A' schedule property belongs to the developer.

A Joint Development Agreement was entered between the plaintiff and said builder on 29/8/2013 specifying the terms and conditions including the rate payable by the plaintiff to the builder and period of completion work. That agreement was registered also. It is agreed between the developer and plaintiff that, under the agreement, the developer ought to have completed the construction work in all respect fit for human habitation and shall complete the construction within the stipulated period of 15 months from the date of handing over of the said property to the developer from the plaintiff within the expiration of the term agreed between the parties.

In the same way, a general power of attorney was also executed by the plaintiff in favour of the said developer in order to develop the built up area together with the proportionate undivided share of 6 right, title and interest in the schedule property falling to the share of the developer.

On 1/9/2013, the plaintiff has handed over the said vacant site to the developer to start the construction work. As per the agreement, the developer ought to have completed the work on or before 30/11/2014 i.e., 15 month time is fixed. However, as agreed the developer did not complete the work within the time. On 31/12/2014, the developer had carried out the construction work only upto 70%.

On 12/11/2015, a letter was sent by the plaintiff informing the developer that he has carried out only 70% work and the balance work is yet to be completed and requested him to complete the balance work as soon as possible. Even after receiving that notice, the developer has not made any efforts to complete the balance work. The plaintiff also requested developer to complete the balance work and to pay the rents to the flats coming under his share from 1/12/2014 and to handover the original approval documents from the concerned department to his custody. But the

CT0028_0.S._7176_2018_Judgment_.doc

developer has not paid the rents nor came forward to complete the construction work inspite of the several requests.

The plaintiff has been requesting the developer to complete the balance work. However, developer has been postponing the same on one or other pretext. Since all the efforts of the plaintiff become in vain, the plaintiff constrained to issue a legal notice on 11/1/2016 calling upon the developer to complete the balance work and paid the rents to the plots comes under the share of the plaintiff from 1/12/2014 and to hand over the original documents to the plaintiff within the period of 30 days. Even after the notice, the developer did not complete the balance work nor paid the rents and hand over the original documents. There is no fault on the part of the plaintiff to complete the construction work. Non-completion of the work is highly illegal and therefore a suit in O.S.1612/2016 has been filed by the plaintiff against the developer seeking injunction not to alienate his share without sharing the plot.

8

CT0028_0.S._7176_2018_Judgment_.doc

When the things are like this, the plaintiff came to know the fact that, the developer has executed an agreement of sale in favour of the defendant under the registered Sale Agreement in respect of the plots

belongs to the share of the developer. The developer has executed agreement of sale in favour of the defendant under the registered agreement of sale dated 12/2/2014. The developer has no right to execute the agreement of sale in favour of the defendants and same has been informed by the plaintiff to the defendants. Without sharing the agreement between the plaintiff and the developer and without completion of the construction work, without handing over the possession of the share of the plaintiff, the agreement of sale executed by the developer to the defendants are not valid in the eye of the law.

Both the defendants and one Tirumalakumar along with the said developer has started harassing the plaintiff and his family members. On 13/3/2016, the defendants along with the Tirumalakumar and

9

CT0028_0.S._7176_2018_Judgment_.doc

said developer harassed the plaintiff to put his signature. Without any alternative, the plaintiff has put the signature on one letter. On 28/4/2016, the plaintiff lodged a complaint against both the defendant and one Tirumalakumar and the said developer. Thereafter, on 11/5/2016, the police authority has issued instructions to the defendant and Tirumalakumar and the said developer that not to

harass the plaintiff. Both the said developer defendant and Tirumalakumar demanded the plaintiff to pay a sum of Rs.3,00,000/- to the plaintiff subject to complete the construction work. As per the instructions of the police, the plaintiff has issued the two cheques drawn on Dena Bank, Nagashettihalli branch of Bengaluru and promised to honour the same after the completion of the work. However, the developer did not complete the work.

Meanwhile, it came to the knowledge of the plaintiff that, without sharing the plots between the plaintiffs, the said G.Satish Naidu without completion of the work, without handing over the documents,

10

CT0028_0.S._7176_2018_Judgment_.doc

executed the sale deed in respect of plot no.S2 in favour of one Santosh. After enquiry, plaintiff was surprised to note that, said Satish Naidu played fraud and created MOU dated 19/4/2017. By forging the signature of the plaintiff, MOU has been concocted by Satish Naidu. Even this fact was also within the knowledge of the defendant that the plaintiff was not executed MOU. So, in order to deprive the rights of the plaintiff, and deprive the legal right of the plaintiff over 50% share in the property in question, G.Satish Naidu get registered the sale deed on the basis of the forged MOU.

The defendants are aware that Satish Naidu

played fraud and forged the signature of the plaintiffs for wrongful gain and to snatch the property in question. A complaint was filed before Sanjaynagar Police who advised the plaintiff to wait, and further one more complaint has been filed by the plaintiff against the said developer which was registered as crime No. 324/2017 punishable under Section 120-B, 406 and 468, 471 and 420 of the IPC.

11

CT0028_0.S._7176_2018_Judgment_.doc

After the said development, the defendants approached the plaintiff in the month of July 2017 and requested to co-operate to get the sale deeds from the developer, and further the defendants also promised to the plaintiff to pay the claim amount which the developer has to be paid and agreed to complete the construction work and hand over the documents and transfer the katha in respect of the share of the plaintiff. On humanity consideration, the plaintiff has put his signatures on plain documents i.e., the MOU, sharing agreement and deed of declaration which are brought by the defendants.

After getting the said documents, the defendants get registered sale deeds dated 14/12/2017, 14/12/2017 and 1/1/2018 registered in the Sub Registrar of Gandhinagar from the developer in respect of the residential apartment bearing F1

situated in the first floor bearing S2 situated in second floor, and bearing T1 situated in the third floor. Eventhough the defendants are aware that the developers have executed the sale deeds in favour of

12

CT0028_0.S._7176_2018_Judgment_.doc

the defendants is not valid since the developer has no right, title and interest over his 50% of the share of the property and the same was informed by the plaintiff to the defendant. Without sharing agreement, without completing the construction work, and without handing over the possession of the share of the plaintiff, the sale deeds executed by the said developer are not valid in the eye of law and same is informed to the defendants. The defendants have approached and requested the plaintiffs to release his rights, interest over the suit 'B' schedule property by receiving the different value amount and claim amount of sum of Rs.30 lakhs from the defendant as against the claim amount of Rs.60 lakhs as per the details furnished at the time of executing MOU and the same has been agreed by the plaintiff. On 6/2/2018, the plaintiff has executed MOU in favour of the defendants. It is specifically agreed between the defendants and the plaintiff that -

a) That the ground floor flat named G1, the second floor flat no. S1 with undivided share 293

13

CT0028_0.S._7176_2018_Judgment_.doc

square feet and third floor flat no.T2 west side east facing with undivided share of 270 square feet constructed in suit 'A' schedule property is to be belongs to the plaintiff;

b) The first floor flat no.F1, the second floor flat no.S2 with undivided share of 293 square feet and 3rd floor flat no.T1 east side north facing with undivided share of 270 square feet constructed in the suit 'A' schedule property belongs to the defendant.

c) The defendants are undertaken to complete the balance work on behalf of the above said developer in the suit 'A' schedule property belongs to the plaintiff and they have agreed to pay the difference amount and claim amount of Rs.30 lakhs to the plaintiff within the period of 5 months.

d) The plaintiff has agreed and undertakes to file the memo of withdrawal of the suit in O.S.1612/2016 filed by the plaintiff before the City Civil Judge, Bengaluru which is filed against the developer.

14

CT0028_0.S._7176_2018_Judgment_.doc

It is submitted that, the original copy of the said MOU are in the hands of the defendants and xerox copy is given to the plaintiff.

As per the MOU dated 6/2/2018, the plaintiff has withdrawn the above suit in O.S.1612/2016 on

15/2/2018. The defendants have promised that they will get back the two cheques bearing No.489115 and 489116 drawn on Dena Bank which were issued to the developer on 11/5/2016 to honour the same after the completion of the work.

As per the MOU dated 6/2/2018, the plaintiff has received a sum of Rs.19,25,000/- only against the Rs.30 lakhs and the balance amount of Rs.10,75,000/- the defendant has not paid as per the agreement entered between the plaintiff and defendants. As per the MOU, after the completion of the work, the plaintiff has been requesting the defendants to pay the balance amount. However, the same was postponed by the defendants by one or the other reasons.

15

CT0028_O.S._7176_2018_Judgment_.doc

Instead of making the balance amount, the defendants started harassing the plaintiff mentally. Taking advantage of the cheques, the defendants colluded each other and instructed the builder to file the complaint against the plaintiff under Section 138 of the Negotiable Instrument Act. As per the instructions of the defendant, the developer filed complaint which is pending before XXII ACMM Court. With an intention to avoid the payment of balance amount of Rs.10,75,000/- and to further the amount from the plaintiff, the defendants have started

threatening and demanding the plaintiff to pay a sum of Rs.27,00,000/- stating that plaintiff should be paid the loan amount which was borrowed by one Santosh. Further, the defendants have threatened the plaintiff if the plaintiff will not paid the sum of Rs.27 lakhs to the defendants, they will not instruct the builder to withdraw the complaint in CC No.1602/2018 and further they will not handover the original documents to the plaintiff.

16

CT0028_0.S._7176_2018_Judgment_.doc

As per the MOU dated 6/8/2018, the defendants are bound to make the balance payment of Rs.10,75,000/- to the plaintiff and bound to handover the original documents from the concerned departments to the custody of the plaintiff. Therefore, plaintiff issued a legal notice on 1/9/2018 calling upon the defendants to pay the balance amount which was served to the defendants.

Instead of making the balance payment, the defendant has issued the reply notice stating that they have agreed to pay the total sum of Rs.30 lakhs as per the MOU and the defendants have paid a sum of Rs.19,55,000/- and further they claims to refund a sum of Rs.19,55,000/- with interest. As per the agreement, the defendants have to agreed to pay a sum of Rs.3 lakhs to the plaintiff after the withdrawal

of the suit. Further, the defendants agreed to pay a sum of Rs.9,75,000/- to the plaintiff within six months.

After the withdrawal of the suit in O.S.1612/2016, the defendants have paid only Rs.2
17

CT0028_0.S._7176_2018_Judgment_.doc

lakhs to the plaintiff. As per the memorandum of understanding dated 6/2/2018, the defendants are bound to make the balance payment. Without any alternative, the present suit has been filed.

The cause of action for the suit arose on 6/2/2018 when the defendants have entered agreement and failed to pay the balance amount as agreed. The entire transaction is within the jurisdiction of this Court. Therefore, prays to decree the suit in the ends of the justice.

3. The summons is duly served to the defendants 1 to 3. Defendants 1 to 3 appeared through their advocate and filed written statement.

4. The main contentions of the defendants 1 to 3 in the written statement are as under:

These defendants denies each and every averments of the plaint and contended that there is no cause of action in order to file the suit. However, the defendants contended as follows:

The suit schedule property came to be purchased by the plaintiff under the registered sale deed dated

18

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20/8/1983. Afterwards, plaintiff entered into Joint Development Agreement dated 29/8/2013 which was registered for the purpose of putting up the residential apartment over the said property with S.V.Constructions and Developers, represented by its proprietor Mr.Satish Naidu. After the execution of the Joint Development Agreement, the plaintiff had executed a general power of attorney which came to be registered. After the execution of the Joint Development Agreement, the proprietor G.Satish Naidu offered to sell the apartment to be constructed in the said property. After knowing the intentions of the developer, these defendants have decided to purchase 3 flats proposed to be constructed in the aforesaid property. Accordingly, an agreement of sale dated 12/2/2014 has been entered between the developer and the second defendant with respect to flat No.S2 and also with regard to the F1 and T1, two separate Sale Agreements have been entered. All these agreements are registered before Sub Registrar, Gandhinagar.

19

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Instead of executing the sale deeds in favour of the defendants, the developer started to avoid the execution of the sale deed and postponed the same by

assigning one or the other reason. Subsequently on the repeated request made by the defendants, a Supplementary Agreement was also executed on 22/8/2016 after receiving the entire sale consideration in the respect of the 3 flats mentioned above and put the defendants in possession of the same.

As per the understanding between the plaintiff and developers, the flat bearing S1 on the eastern side was allotted to the share of the plaintiff. However, in order to knock off the property of the second defendant, the plaintiff has falsely claimed that flat No.S2 is allotted to his share. In addition to that, the plaintiff used to disturb and interfere with the peaceful possession and enjoyment of this defendant, and as such these defendants were forced to approach the developer requesting him to settle the issue with the plaintiff. The plaintiff forcibly rented the flats

20

CT0028_0.S._7176_2018_Judgment_.doc

fallen to his share though the works were not completed and started to rent out the parking slots which are allotted to the share of the defendants. Due to illegal interference by the plaintiff, the defendants were forced to request the plaintiff not to interfere their possession, for which the plaintiff has demanded Rs.50 lakhs in order to release his right, title and interest over the three flats. Accordingly, the

defendants have agreed to pay a sum of Rs.15 lakhs and a Memorandum of Understanding came to be entered between the plaintiff and defendant on 29/7/2017. The demand made by the plaintiff with regard to the existence of the right, title and interest over the said three flats is a bogus claim. However, the defendants were forced to pay a sum of Rs.5,00,000/- by way of RTGS to the account of the wife of the plaintiff. Thereafter, the defendants have agreed to pay the balance amount of Rs.9,25,000/- at the time of withdrawal of suit in O.S.1612/2016 and the balance amount of Rs.75,000/- was paid by way of

cash so as to enable the plaintiff to pay the fees to his

21

CT0028_0.S._7176_2018_Judgment_.doc

advocate. Subsequently, once again the plaintiff started to demand the additional amount and harass the defendant before withdrawing the suit. Under the above circumstances, the defendants are compelled to pay a additional sum of Rs.1,50,000/- on 7/11/2017.

Inspite of the receipt of the said amount, the plaintiff colluded with the developer with the intention to defeat the rights of the defendants and once again started to claim the rights over the three flats. As a result of this, the developer avoided the postpone the execution of the sale deed by assigning one or other letter in favour of the defendant admitting the

interference and promise of the plaintiff and his family members with regard to the possession of the defendants. Though the plaintiff has undertaken that he will not interfere with the possession of the defendants, he started interfering which was questioned by the developer. For the above said reason, the plaintiff filed a false complaint before the jurisdiction police on 28/4/2016. On 11/5/2016, the police summoned the plaintiff, developer, the above

22
CT0028_O.S._7176_2018_Judgment_.doc

named Tirumalakumar for investigation and plaintiff on that day entered into a compromise with the developer and addressed the letter to the concerned jurisdiction police so as to sort out the issues with the developer. At the time of the settlement, plaintiff issued two cheques to the developer so as to repay the refundable deposit paid by the developer to the plaintiff at the time of the execution of the Joint Development Agreement and it is not as contended by the plaintiff.

Since the plaintiff failed to pay the refundable security deposit, the developer stopped the completion of the construction work, later on that work has been completed by the defendants. The plaintiff started to claim that the defendants are not the owners of the property and they are the only agreement owners.

Further he contended that he has already filed a suit

in O.S.1612/2016 and pressurized these defendants to handover the possession of the property. Subsequently at the instance of the plaintiff and in collusion with the developer, the developer tried his

23

CT0028_O.S._7176_2018_Judgment_.doc

level best to create third party interest in flat no.S2 so as to defeat the valuable rights of the defendants.

As a first step of interference, one Mr.Santosh tried to interfere with the physical possession of the defendant. For which, a complaint was filed before the jurisdiction police. Subsequently a suit was filed in O.S.7801/2017 before this Court which is still pending for consideration. During the pendency of the suit, the developer, plaintiff and these defendants have decide their differences with regard to the allotment of the flats and as such a deed of declaration came to be executed on 1/11/2017. Pursuant to the execution of that document, the developer and plaintiff executed a registered sale deed with respect to the flats bearing No.F1 and T1 on 14/12/2017. Thereafter, a registered sale deed was executed in favour of the defendant no.2 by the developer and the plaintiff on 1/1/2018 in respect of the flat bearing No.S2.

Inspite of the executing the sale deeds, the plaintiff once again started to claim the rights over the

24

CT0028_0.S._7176_2018_Judgment_.doc

property contending that O.S.1612/2016 is still pending and he will not withdraw the suit unless these defendants pay another sum of Rs.15 lakhs over and above the Rs.15 lakhs which was agreed to be paid as per the Memorandum of Understanding dated 29/7/2017. Considering the day to day interference and usage of the filthy language by the plaintiff and to put an end to the differences, these defendants are agteede to pay a total sum of Rs.30 lakhs under compulsion and accordingly a Memorandum of Understanding dated 6/2/2018 came to be entered between them and not as contended by the plaintiff.

The defendants have paid a sum of Rs.7,25,000/- at the time of execution of the Memorandum of Understanding dated 29/7/2017. Further, a sum of Rs.12 lakhs was paid by the defendants in the following manner. Rs.10 lakhs was paid to the account of the wife of plaintiff through RTGS. The said payment was acknowledged by the plaintiff. Another sum of Rs.2 lakhs was transferred on 30/7/2018 to the account of Varalakshmi. It was also acknowledged

25

CT0028_0.S._7176_2018_Judgment_.doc

by the plaintiff. A sum of Rs.30,000/- was paid to the advocate for the plaintiff who drafted Memorandum of Understanding dated 6/2/2018 by way of cheque on 12/2/2018, to the name Sri T.R.Ramakrishna. This

clearly shows that these defendants have paid additional sum of Rs.19, 55,000/- to the plaintiff.

In spite of the fact that, the defendants are not liable to pay any amount, the plaintiff has ventured to harass these defendants by playing false and frivolous rights over the aforesaid flats.

These defendants are no way connected to the pending criminal case in C.C.No.11602/2018 between the plaintiff and the developer. Therefore, they cannot request the developer to withdraw the said complaint. Further, by forging the said document, it appears that the developer and third party by name Santosh in collusion with the plaintiff availed loan from Fullerton Finance Ltd., for which the plaintiff and others are liable and the defendants are no way connected with the same.

26

CT0028_0.S._7176_2018_Judgment_.doc

In view of the aforesaid facts and circumstances and in view of deed of declaration executed by plaintiff and sale deed executed 14/12/2017 and 1/1/2018, these defendants have become the absolute owners in the respect of the aforesaid properties. The plaintiffs have no manner of right, title over the same. These defendants are not liable to pay any amount to the plaintiff. The plaintiff has colluded with the developer and third party Santosh and trying to defeat the

valuable rights of the defendants in order to make unjust enrichment. Plaintiff has forcibly taken Rs.19,55,000/- for which he is entitled to refund the same with the interest at the rate of 18% per annum from the date of receipt of the amount. In spite of the above, the plaintiff has issued a notice on 1/9/2018 by making false and frivolous allegations against the defendants. In the light of the above circumstances, the suit is not maintainable and same is liable to be dismissed with costs.

27

CT0028_0.S._7176_2018_Judgment_.doc

There is absolutely no cause of action to initiate the suit. The cause of action pleaded by the plaintiff is imaginary.

Along with the written statement, the defendant also sought for the counterclaim in the above case.

The plaintiff has entered into a Joint Development Agreement, supplemental sharing agreement, deed of declaration and in spite of execution of the sale deeds in favour of these defendants in respect of flats bearing no. F1, S2 and T1 constructed on the property bearing site no.68 used to cause nuisance to these defendants and to harass them and forcibly received Rs.19,55,000/- on various dates as mentioned above. The plaintiff is not entitled to claim the said amount. In spite of having no manner of the right by taking the advantage of the

position, the plaintiff collected the amount which is liable to be refunded by the plaintiff. As per the Joint Development Agreement, deed of declaration and other documents, the plaintiff has no manner of rights in order to claim the ownership over the aforesaid

28
CT0028_0.S._7176_2018_Judgment_.doc

property. Therefore, the plaintiff is liable to refund the amount of Rs.19,55,000/- received by him by using the force, threat and coercion from these defendants at the rate of 18% per annum from the date of respective payments till realisation.

These defendants have paid the aforesaid amount due to force and illegal methods adopted by the plaintiff by pressuring these defendants.

The cause of action for the counterclaim arose on 29/7/2017, the date on which the Memorandum of Understanding came to be entered and these defendants have paid a sum of Rs.7,25,000/- to the plaintiff on 6/2/2018, the date on which the defendants have paid a sum of Rs.12 lakhs to the plaintiff and thereby not allowing these defendants to sell the flats purchased by him though he is not entitled to any amount in respect of that flats. In the light of the above facts, these defendants are not liable to pay any amount to the plaintiff. Accordingly, prayed to dismiss the suit with exemplary cost and to

allow the counterclaim in the ends of the justice.

29

CT0028_0.S._7176_2018_Judgment_.doc

5. After filing of the counterclaim the plaintiff has filed his rejoinder and contended that the averments stated in the counterclaim as well as para no.40 of the written statement is baseless and absolutely false.

The plaintiff submits that he entered into a Joint Development Agreement with SV Constructions and Developers in order to put up the constructions over the property belonging to them. Pursuant to the Joint Development Agreement the developer has put up only 70% of the construction and failed to complete the building. The plaintiff constrained to cause the notice to the developer and thereafter a suit in O.S.1612/2016 has been filed. During the pendency of the suit, the defendants entered into the agreement with the developer in order to purchase the developers share of the apartment negotiated for amicable settlement. Accordingly a Memorandum of Understanding dated 1/12/2017 was entered into between the plaintiff and developer identifying the flats falling to the share of the respective parties.

30

CT0028_0.S._7176_2018_Judgment_.doc

These defendants amicably settle the terms with the plaintiff and agreed to pay Rs.30 lakhs to the plaintiff being the compensation due to delay in completion of

the work. Much prior to the memorandum of understanding the defendants who took active part and responsibility to settle the dispute paid Rs.5,75,000/- on 29/7/2017 and after the Memorandum of Understanding understanding dated 1/1/2017 paid a further sum of Rs.1,50,000/-.

Believing the versions of the defendants, the plaintiff withdraw the suit against the developer. Once again, in continuation of the concluded contract, an Memorandum of Understanding dated 6/2/2018 has been entered between the defendants and the plaintiff under which the defendant agreed to pay a Rs.30 lakhs to the plaintiff. The defendants have paid only Rs.13 lakhs and further agreed to pay Rs.9,75,000/- after the completion of the sale transaction or by finance from the date of Memorandum of Understanding.

31

CT0028_0.S._7176_2018_Judgment_.doc

The defendants have sold two apartments that have been purchased by them flat no.F1 is yet to be sold, plaintiff requested the defendants to pay the balance of Rs.10,25,000/- in the terms of the Memorandum of Understanding as the five months period undertaken by them has already expired. The defendants went on postponing the issue and failed to pay the balance. The plaintiff was constrained to issue

a notice on 1/9/2018 calling upon the defendant to pay the balance amount. The defendants caused a frivolous reply and hence the plaintiff filed this suit.

The Memorandum of Understanding dated 6/2/2018 is lawful and binding on the defendants. The defendants have specifically undertaken to pay the same by paying certain amounts. A false counterclaim has been set up by the defendants to defeat the rights of the plaintiff on baseless and frivolous ground. There is absolutely no cause of action for the counterclaim. Accordingly, prayed to dismiss the counterclaim in the ends of the justice.

32

CT0028_0.S._7176_2018_Judgment_.doc

6. On the basis of the pleadings of the parties, the following issues are framed for consideration:

- (1) Whether the plaintiff proves that he is entitled for a sum of Rs.10,25,000/- with interest at the rate of 18% per annum from the defendants as per the memorandum of understanding dated 6/2/2018?
- (2) Whether the defendants prove that he is not liable to pay any amount to the plaintiff?
- (3) Whether defendants prove that the suit of the plaintiff is bad for want of cause of action?
- (4) Whether the defendants are entitled to the counterclaim as claimed in the suit?
- (5) Whether plaintiff is entitled for any reliefs as sought for?
- (6) What order or decree?

7. Plaintiff in order to prove his case, got examined himself as PW.1 and got marked Ex.P1 to Ex.P18 and closed his side of evidence. On behalf of

the defendants, second defendant is examined as

DW.1 and got marked Ex.D1 to Ex.D4 through PW.1

33

CT0028_0.S._7176_2018_Judgment_.doc

in the cross-examination. For the purpose of the

Court, Ex.C1 is marked.

8. Heard the arguments for plaintiff and perused entire records of the case.

9. My findings on the above issues are as under:

Issue No.1) In the negative;
Issue No.2) In the affirmative;
Issue No.3) In the affirmative;
Issue No.4) In the affirmative;
Issue No.5) In the negative;
Issue No.6) As per final order for the following:

10. ISSUE NO.1 AND 2: It is the case of the plaintiff that, in view of the memorandum of understanding entered between the parties dated 6/2/2018, the defendant is still liable to pay an amount to the tune of Rs.10,25,000/- to the plaintiff. In support of his case, he has produced Ex.C1 which is the Memorandum of Understanding entered between the parties with respect to the said amount.

34

CT0028_0.S._7176_2018_Judgment_.doc

11. The learned counsel for the plaintiff vehemently contended that the contents of the Memorandum of Understanding is admitted by the

defendants in the cross-examination. Therefore, no doubt the defendants are liable to pay the remaining balance amount of the suit claim as per the Ex.C1.

12. In support of the contentions of the plaintiff, he has narrated with regard to the cross-examination of the DW.1 with regard to the Ex.C1. In the cross-examination dated 11/2/2022, he has clearly admitted that, "Now I am looking the document styled as deed of Memorandum of Understanding entered between Kodanda and Manjula. After seeing the last page of that document, I cannot identify the signature of either myself Kodanda or Manjula. The same is marked as Ex.C1 for the purpose of the Court."

13. Though DW.1 did not identify his signature in Ex.C1 document and further stated that he cannot state the Memorandum of Understanding stated in his

35

CT0028_0.S._7176_2018_Judgment_.doc

written statement dated 6/2/2018 itself is Ex.C1, he admitted that, the payments stated in Ex.C1 are the payments which he has stated earlier. He further admitted that, as per Ex.C1 only, Rs.17,25,000/- are paid in favour of Kodanda, and further DW.1 clearly admitted that there is a recital in Ex.C1 that Rs.7,95,000/- is to be paid in favour of Kodanda by DW.1 himself.

14. Though from these admissions, the learned counsel for the plaintiff vehemently contended that the Memorandum of Understanding dated 6/2/2018 is proved, it is not completely proved by the party. The burden is on the plaintiff to prove the Ex.C1 and its execution voluntarily, without force, without compulsion and without any fraud, collusion and misrepresentation from the side of the defendants as on the date of execution of the document.

15. The learned counsel appearing for the defendant specifically contended that even in the written statement the defendants have specifically
36
CT0028_0.S._7176_2018_Judgment_.doc
taken the defence that whatever the payments made to the plaintiff is under the collusion, misrepresentation from the side of the plaintiff. So, Ex.C1 is not proved by the plaintiff. In support of his contentions, he has produced some of the documents to show that plaintiff managed to obtain the said amount from the defendants. Ex.D1 is the letter issued by the Kodanda to Manjula Venkatesh undertaking that he will not create any problem with regard to the rate, disposal of the flats in the aforesaid address. Further, he clearly admitted that, he will not misguide the buyers or the clients who came to the

flats in the above mentioned address. DW.1 clearly identified his signature in Ex.D1 which is marked as Ex.D1(a) from this Court. In the same way, Ex.D2 is the complaint filed against the developer G.Satish Naidu of S.V.Constructions and builders. This is the complaint filed by the plaintiff against the developer to the Inspector of Sanjaynagar police contending that the said developer has not completed the construction work even after the lapse of the time mentioned in

37

CT0028_0.S._7176_2018_Judgment_.doc

joint venture agreement. Ex.P17 is another complaint filed by Kodanda against Satish Naidu, Vikram,Vivek, Tirumalakumar who are the defendants in the above case with respect to the non-completion of the construction work. Ex.P18 is the acknowledgement issued by the police with respondent to Ex.P17.

16. As per the defendants, though they have paid the amount to the plaintiff, it is due to his torture and due to his force and not they are the voluntary payments made by the defendants.

17. Actually, there is no dispute with regard to the both the parties with regard to the ownership of the plaintiff over the suit schedule property and entering of the Joint Development Agreement with one Satish Naidu who is the developer of S.V.Constructions and developers. As per the Joint

Development Agreement, Satish Naidu has to complete the constructions within the stipulated period of 15 months from the date of handing over of the said property to the developer. However, even after

38
CT0028_0.S._7176_2018_Judgment_.doc

the completion of the 15 months, the construction was not completed, in the meanwhile there are some differences arose between the plaintiff and the developer Satish Naidu with regard to the Joint Development Agreement and completion of the work. A notice was sent by the plaintiff informing that, only 70% work has been done and the remaining work has to be complete as expeditiously as possible. However, even after the legal notice, the developer did not complete the construction work. A suit was filed in O.S.1612/2016 by the plaintiff against the developer. However, it came to the knowledge of the plaintiff that, the developer has executed some agreement of sale in favour of the defendant under the registered agreement of sale in respect of the flats belongs to the share of the developer.

18. It is pertinent to note here that, in para no.12 of the plaint averments, the plaintiff has categorically admitted that 'The plaintiff came to know that the developer has executed agreement

39

CT0028_0.S._7176_2018_Judgment_.doc

of sale in favour of the defendant under the registered Sale Agreement in respect of the flats belongs to the share of the developer.' So, whatever the flats which are sold in favour of the defendants are the flats belongs to the share of developer and not plaintiff. According to the plaintiff, the developer has no right to execute the agreement of sale in favour of the defendants since the developer has no right, title and interest over his 50% share of the property. Now the question is whether the developer has executed a agreement of sale in favour of the defendants with respect to the shares of the plaintiff or whether the agreement of sale was executed with respect to the flats which belongs to the share of the developer. In the plaint averments itself, plaintiff has categorically stated that the developer has executed agreement of sale in favour of the defendant under the registered agreement of sale in respect of the flats belongs to the share of the developer. So, as per the plaintiff itself, the developer has executed the agreement and executed sale deeds

40
CT0028_0.S._7176_2018_Judgment_.doc

with respect to his shares. This right is given to the developer as per the Joint Development Agreement itself.

19. This aspect is further clear in the Joint

Development Agreement produced by the plaintiff
which is marked as Ex.P9. In clause No.11.1 of Joint
Development Agreement, it is clearly mentioned as
follows:

"The owner / first party hereby give his
express consent that the developers/ second
party will be entitled to enter into
agreements with the prospective purchasers
to sell or lease, for up to 50% undivided
share in the land rents in the schedule
property of the developer / second party's
share and the developers / second party will
also be entitled to enter into construction
contracts with prospective purchasers of the
undivided share in the land and receive sale
price and cost of construction without
41 rendering any accounts to the owner / first
party.

CT0028_0.S._7176_2018_Judgment_.doc

20. The above clause is very clear that the
developer has the right to execute agreement as well
as sale deeds or lease deed with respect to his share.
When plaintiff himself admits that the developer has
executed agreement with respect to his share, why he
has to prevent the developer or to give trouble to the

defendants contending that he is also having the rights in properties sold in favour of the defendants.

No doubt, the plaintiff has not produced the sharing agreement and further contended that the completion work is not completed, however there is no clause in the Joint Development Agreement restrains the developer from executing Sale Agreements, sale deeds as well as the lease deed in favour of the third party.

In order to facilitate the act of Sale Agreement as well as sale deed, a general power of attorney was also executed in favour of the developer wherein clause 4

(c) and (d) clearly shows that the plaintiff himself

42

CT0028_0.S._7176_2018_Judgment_.doc

given the right to the developer "to transfer and convey by way of absolute sale the 50% undivided share of the rights along with the residential unit to be constructed in the schedule property falling under the share of M/s S.V.Constructions and Developers or any portion or share thereof and

execute necessary deals of the share or conveyance in favour of the intending purchasers / transferees and do everything necessary for completing the sale/ conveyance / transfer of the same including the execution of the sale deeds, presentation of the sale deeds and admitting the execution thereof as well as to sign and to execute all the forms, affidavits,

applications, statements, declarations, forms, returns.'

'To receive the consideration of the sale, transfer, conveyance as also advances, earnest money deposits, part payments and balance payments in regard to the sale, conveyance/

43

CT0028_0.S._7176_2018_Judgment_.doc

transfer of the rights with respect to 50% of the share along with the residential unit to be constructed in the schedule property falling under the share of M/s S.V.Constructions and Developers or portions/ shares therein and issue receipts and acknowledgements therefore.'

21. So, the plaintiff himself delegated the powers in favour of the developer to execute the documents in favour of the third party and a general power of attorney is also executed to that effect which includes the salable rights and also to receive consideration. Nowhere in the Joint Development Agreement, it is mentioned that, without the sharing agreement or without the completion of the construction work, the agreements cannot be executed in favour of the third party. So, as per the opinion of this Court, whatever the documents executed in favour of the defendants from the side of

the developer is as per the contents of the Joint
Development Agreement and power of attorney only.

44

CT0028_0.S._7176_2018_Judgment_.doc

22. When plaintiff himself admitted that the developer has executed documents and sold properties in favour of defendants with respect to his share only, the plaintiff has no right to object it nor has the right to give complaints to the defendants as well as others by harassing them. No doubt, only because of this harassment, Ex.C1 has been entered into between the parties. Though the defendants have made the payments under the Ex.C1 in favour of the plaintiff, it is clear that, whatever the payments made by them to the plaintiff is under the compulsion of the plaintiff. Because, as per the plaintiff's averments itself, the plaintiff has got no right over the property sold in favour of the defendants, because those properties are the shares of the developer.

23. Even in the cross-examination of the PW.1, he has deposed that on the basis of the general power of attorney executed by plaintiff in favour of Satish Naidu a registered sale deed is executed on 1/1/2018

45

CT0028_0.S._7176_2018_Judgment_.doc

with respect to S2 apartment in favour of the defendant no.2.

24. On perusal of all the sale deeds as well as

Sale Agreements produced by the plaintiff which are marked from Ex.P11 to Ex.P15 documents, it is clear that all these documents are executed after the execution of the Joint Development Agreement as well as after the execution of the general power of attorney. It is further clear in Ex.P16 which is the information or request letter issued by the plaintiff in favour of the defendant that the defendants have purchased 50% share of builders portion only. So, this also strengthens the case of the defendants that the plaintiff who is having no rights over the portions of the developer, has forced the defendants to execute Ex.C1 and to extract money from them.

25. As per the Indian Contract Act, all the agreements are contracts if they are made by the free consent of the parties competent to contract,
46
CT0028_0.S._7176_2018_Judgment_.doc
for a lawful consideration and with a lawful object and not hereby expressly declared to be void.

26. Section 10 of the Act is very clear in that regard. So, if at all an agreement is to be valid agreement or a contract is to be valid contract, then free consent of the parties is also necessary. It is further important to note here that, the word consent is defined under Section 13 of the Act. Two or more

persons are said to be in consent when they agree upon the same thing in the same sense. Further, the word free consent comes under Section 14 of the Indian Contract Act, wherein it is defined as follows:

"Consent is said to be free when it is not caused by -

- 1) Coercion as defined in Section 15 or;
- 2) Undue influence as defined in Section 16;

or

- 3) Fraud as defined in Section 17;

47

CT0028_0.S._7176_2018_Judgment_.doc

- 4) Misrepresentation as defined in Section 18; or

- 5) Mistake; subject to the provisions of Section 20, 21 and 22.

27. So, in order to contend that, there is valid agreement between the parties, the party has to prove that the agreement entered between the parties is out of the coercion, undue influence, fraud, misrepresentation and mistake and they should agree upon the same thing in the same sense.

28. If we come to the present case from the beginning of the case itself, the defendants are

contending that, they have made the payment under

Ex.C1 under the threat of, under the misrepresentation of the plaintiff. The threat as well as misrepresentation is clear since the plaintiff has already filed series of the complaints against the defendants and the developers. Further,

misrepresentation is established by the conduct of the

48

CT0028_0.S._7176_2018_Judgment_.doc

plaintiff though he specifically alleges that, the property sold in favour of the defendants are not allotted to his share, he specifically made believe the thing as true that he is the owner of those properties sold in favour of defendants.

29. Clause No.1 of Section 18 of the Indian Contract Act clearly says the word 'misrepresentation' means and includes -

"The positive assertion in a manner not warranted by the information of the person making it, of what which is not true, though he believes it to be true."

30. So, in the present case, the plaintiff though in his pleadings as well as in the request letters specifically contended that, the properties sold in favour of the defendants are the shares allotted in favour of the developer, he by his conduct, by his act,

by giving the complaints against the defendants made

them to believe as he has the rights over the

49

CT0028_0.S._7176_2018_Judgment_.doc

properties which are already sold in favour of the defendants. Therefore, applying Section 18 as well as Section 14 of the Indian Contract Act, it is clear that eventhough as per the Ex.C1 only, the part payments have been made in favour of the plaintiff, those payments were made only by the misrepresentation of the plaintiff and not with the free consent which is mandatory under the Indian Contract Act. Therefore, the defendants are not liable to pay any further amount to the plaintiff.

31. So, in this case, Ex.C1 although entered between the parties, it is entered between the parties on the basis of the misrepresentation, on the basis of the coercion and on the basis of fraud played by the plaintiff over the defendants. Though the part payment has been made by the defendants in favour of the plaintiff, which was admitted by DW.1 itself, it itself does not mean that Ex.C1 is proved.

32. As per the Contract, Act, a contract is to be valid only if it is entered between the parties without

50

CT0028_0.S._7176_2018_Judgment_.doc

force, with valid consent, without misrepresentation, fraud and coercion from the side of the party who has

executed that agreement along with the other side. As rightly contended by the defendant in this case also, the plaintiff who is having no rights over the sold properties threatened the defendants contending that, he is having the rights in the property sold in favour of the defendants, although it is the share allotted in favour of the developer. From the pleadings of the plaintiffs and from the request letter filed by the plaintiff in favour of the defendants, it is much clear that whatever the properties sold in favour of the defendants are the shares allotted in favour of the developer.

33. Merely because the part consideration has been passed in favour of the plaintiff, the plaintiff cannot contend that he is entitled to the amount of Rs.10,25,000/- from the defendants as per Ex.C1. Unless and until Ex.C1 is proved, the plaintiff is not entitled to the relief as claimed in the suit.

51

CT0028_0.S._7176_2018_Judgment_.doc

34. The learned counsel for the defendants vehemently contended that, original of the Memorandum of Understanding between the parties is not produced before the Court and further in order to admit Ex.C1 in the evidence, the provisions under Section 65 and 66 of the Indian Evidence Act are not complied by the plaintiff. No doubt, whenever a

document is not original or it is a copy of the document, then if at all the party who want to rely upon it as to act as per the provisions of Section 65 and 66 of Indian Evidence Act. However, even if the party comply such provisions, it does not mean that, that document is proved. The admissibility of a document in the evidence is entirely different from proving of a document from the side of the party. In the present situation, the Court is of the considered view that, on the basis of the admissions of DW.1, it cannot be held that Ex.C1 has been entered between the parties. DW.1 admitted only the part payment and not entire document. Further he clearly deposed that, all the payments are made to the plaintiff under the

52
CT0028_0.S._7176_2018_Judgment_.doc

compulsion only. Therefore, on perusal of the documents produced by the defendants such as police complaints, private complaints before different courts and further the pendency of another suit are clear enough to show that the plaintiff has used his force in order to obtain Ex.C1 from the defendants. The arguments canvassed by the advocate for the plaintiff that an handicapped plaintiff who is having only one eye cannot force or threaten the defendants in order to execute Ex.C1 cannot be taken into consideration here because the plaintiff himself admitted that the

property sold in favour of the defendants are the portion allotted in favour of the developer. Therefore, whatever the payments made in favour of the plaintiff under Ex.C1 is only by force of the plaintiff and therefore he is not entitled to the remaining sum of Rs.10,25,000/- with interest at the rate of 18% as per the Memorandum of Understanding dated 6/2/2018.

Thereby, I answer Issue No.1 in the negative and Issue No.2 in the affirmative.

53

CT0028_0.S._7176_2018_Judgment_.doc

35. ISSUE NO.3: In para no.24 of the written statement, the defendants have categorically contended that, the cause of action pleaded by the plaintiff is imaginary one which came to be pleaded only with an intention to file the present suit which is otherwise a false and frivolous suit.

36. As per the submissions of the plaintiff and on perusal of the entire averments of the plaint, it is clear that, the entire basis for filing of this suit is the alleged Memorandum of Understanding dated 6/2/2018. As discussed in Issue No.1 and 2, Ex.C1 though executed in between the parties, it is not executed with the free consent of the parties. The plaintiff though not entitled for any amount from the side of the defendants got executed Ex.C1 for the purpose of the suit only is clear from the above

discussions. Except Ex.C1, the plaintiff has got no rights to sue against the defendants. However, in the entire plaint averments clearly shows that only on the basis of the part payments made by the defendants,

54

CT0028_0.S._7176_2018_Judgment_.doc

he has filed this suit. More over, the developer one Mr.Satish is not added as a party for the effective adjudication. Therefore, the court is of the opinion that the plaintiff has no cause of action against the defendants in order to institute a suit against them. Accordingly, I answer Issue No.3 in the affirmative.

37. ISSUE NO.4: At the time of filing of the written statement itself, these defendants have also sought for the counterclaim. In the counterclaim itself, the defendants have categorically stated that they have paid the aforesaid amount due to the force and illegal methods adopted by the plaintiffs and by not allowing them to sell the flats. The entire cause of action for the counterclaim is the date of Memorandum of Understanding entered between the parties i.e, on 6/2/2018. No doubt, the plaintiff as well as the defendant both admitted that an amount of Rs.19,25,000/- has been paid in favour of the plaintiff on the basis of Memorandum of Understanding dated 6/2/2018. No doubt, from the

55

CT0028_0.S._7176_2018_Judgment_.doc

discussions in Issue No.1 and 2, it is clear that, though the plaintiff has no rights over the properties of the defendants, he attempted to extract money from the defendants. The misrepresentation, the force, the complaints filed by the plaintiff against the defendants made the defendant to execute the Ex.C1 and also made them to pay the part consideration in favour of the plaintiff. Therefore, this Court is of the opinion that whatever the amount paid in favour of the plaintiff under Ex.C1 is to be refunded in favour of the defendants with interest. No doubt, the suit is of the year 2018, the entire transactions between the plaintiff and the defendants as per Ex.C1 held on February 2018, therefore a nominal interest of 6% is to be imposed in favour of the plaintiff to the amount of Rs.19,25,000/- which was paid in favour of the plaintiff from the defendants. Therefore, I answer Issue No.4 in the affirmative.

38. ISSUE NO.5: From the discussions in Issue No.1 and 2, it is clear that the agreement entered between the parties is not with consensus ad idam. The parties are not on the same sense at the time of executing Ex.C1. The act of misrepresentation, the force, threat from the side of the plaintiff to obtain Ex.C1 is established in Issue No.1 and 2. Therefore,

the Court is of the opinion that he is not entitled to the any relief as stated in the suit. Accordingly, I answer Issue No.5 in the negative.

39. ISSUE NO.6: From my above discussions and reasoning, the suit of the plaintiff is liable to be dismissed. In the result, I pass the following:

The suit of the plaintiff is hereby dismissed.
Under the above circumstances, no order as to costs.
Draw a decree accordingly.

[Dictated to the Judgment Writer directly on computer, Script corrected, signed and then pronounced by me, in the Open Court on this the 23 rd day of March 2022.] [PRASHANTHI.G]
XXVII Additional City Civil Judge.

BANGALORE.

57 CToo28_O.S._7176_2018_Judgment_.doc

1. List of witnesses examined on behalf of the Plaintiff/s:

PW.1 Kodanda

2. List of witnesses examined on behalf of the Defendant/s:

DW.1 Vikram. C.V.

3. List of documents marked on behalf of the Plaintiff/s:

Ex.P1 Certified copy of the plaint in O.S.1612/2016.

Ex.P2 Certified copy of the order sheet in O.S.1612/2016.

Ex.P3 Office copy of the legal notice dated 1/9/2018.

Ex.P4 Postal receipts 3 in numbers. Ex.P5 to Postal acknowledgements. Ex.P7 Ex.P8 Reply issued by the defendant dated 6/9/2018.

Ex.P9 Certified copy of the Joint development agreement dated 29/8/2013.

Ex.P10 Certified copy of General Power of Attorney dated 29/8/2013. Ex.P11 Certified copy of the agreement of sale dated 12/2/2014.

Ex.P12 Certified copy of agreement of sale of flats dated 12/2/2014. Ex.P13 Certified copy of the agreement of sale of flats dated 12/2/2014. Ex.P14 Certified copy of a g r e e m e n t o f s a l e o f f l a t s d a t e d 1 4 / 1 2 / 2 0 1 7 . 5 8 CToo28_O.S._7176_2018_Judgment_.doc Ex.P15 Certified copy of agreement of sale of flats dated 14/12/2017.

Ex.P16 Postal receipts.

Ex.P17 Complaint

Ex.P18 Endorsement

4. List of the documents marked for the defendants:

Ex.D1 Document dated 13/3/2016

Ex.D1(a) Signature of Kodanda, Land owner

Ex.D2 Complaint given by Kodanda against G.Satish Naidu dated 4/12/2015.

Ex.D3 Document dated 11/5/2016.

Ex.D4 Absolute sale deed dated 1/1/2018.

5. List of the documents marked for the purpose of the court:

Ex.C1 Deed of memorandum of understanding entered between Kodanda and Manjula.

[PRASHANTHI.G] XXVII Additional City Civil Judge.

BANGALORE.

59 CToo28_O.S._7176_2018_Judgment_.doc 23/3/2022 P-TRR D1 to 3 - RS For Jugment..

...Judgment pronounced in the Open Court....

(Vide separate detailed judgment) The suit of the plaintiff is hereby dismissed.

Under the above circumstances, no order as to costs. Draw a decree accordingly.

[PRASHANTHI.G] XXVII Additional City Civil Judge.

BANGALORE.

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