

## **Sri.K.R.Jayamma vs Sri.Somashekhar R on 31 July, 2015**

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

Dated this the 31st day of July 2015.

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

O.S.No.414/2007

C.C.H.8

Plaintiffs:

1. Sri.K.R.Jayamma,  
W/o K.H.Thayappa,  
Aged about 55 years,
2. Sri.K.H.Thayappa,  
D/o D.Hanumappa,  
Aged about 66 years,

Both are R/at No.315,  
11th main, 3rd stage,  
BEML layout,  
Rajarajeswari Nagar,  
Bangalore.

(By Sri.Prakash T Hebbar,  
Advocate)

: Vs :

Defendant/s:

Sri.Somashekhar R,  
S/o Patel Ramaiah,  
Aged about 42 years,

R/at No.141, Inchara  
Kothanur 12th KM

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OS.414 of 2007

Hennur road,  
Bangalore - 560 077.

(By Sri.PRS, Advocate)

Date of the institution of suit: 12.01.2007

Nature of the suit :	Specific performance
Date of the commencement of recording of the evidence :	25.03.2010
Date on which the judgment was pronounced :	31.07.2015
Total duration:	Year/s      Month/s      Day/s
	08              06      19

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

#### JUDGMENT

This is a suit filed by the plaintiff No.1 and 2 against defendant seeking the relief of specific performance of contract seeking direction to the defendant to execute regular registered sale deed and transfer of "B" schedule property by way of conveyance in respect of the Memorandum of Understanding entered into between plaintiffs and defendant dated 14.12.2003 3 OS.414 of 2007 and plaintiffs have also sought for mandatory injunction relief directing the defendant to form 25 ft., road in terms of Memorandum of Understanding and the sketch annexed herein to and plaintiffs have prayed for other consequential relief as prayed by them in the suit including the costs of the suit.

2. The subject matter of the suit is in respect of schedule "A to C" properties which are described in the plaint schedule reads as under:-

#### SCHEDULE A Schedule:

All that piece and parcel of land measuring 0-32 guntas in Sy.No. 200/3B situated at Kengeri village, Kengeri Hobli, Bangalore South Taluk, delineated in the rough sketch and marked with letters NEFGN and bounded as under:-

East by: Land belonging to Thayappa; West by: Portion of Sy.No.200/3, North by: 25 ft., road, South by: Private property C. Schedule:

Road measuring north-south 25 feet and runnign from east-west for the use of public, delineated in the rought sketch and marked with letters BCNGHIMLB 4 OS.414 of 2007 It is the case of the of the plaintiff that plaintiff No.1 and 2 are wife and husband respectively and defendant is the younger brother of 1st plaintiff and brother-in-law of 2nd plaintiff, wherein 1st plaintiff is the absolute owner of land Sy.No. 200/3B measuring 21 guntas and Sy.No.200/3B measuring 1 acre 10 guntas situated at Kengeri village, Kengeri Hobli, Bangalore South Taluk. There is no dispute

between the parties in respect of the lands held by them.

Land measuring 1 acre 23 guntas in Sy.No. 200/2 owned by the defendant and land held by 1st plaintiff in respect of Sy.No. 200/3A and Sy.No.200/3B are adjacent to each other and these facts are also not dispute. The defendant, who is the developer with an intention to undertaken development work, defendant had acquired 1acre 23 guntas of land in Sy.No. 200/2 of Kengeri village,. However while carrying on development work by the defendant due to inadvertence and mistake of identity of the land, wherein defendant had developed the land belongs to 1st plaintiff in Sy.No. 200/3B and also put up residential constructions in Sy.No. 200/3B and as there was confusion regarding the proper identity of the properties belonging to the defendant, wherein defendant has encroached upon plaintiffs land in Sy.No. 200/3B to an extent of 32 guntas of Kengeri village,, and this extent of 32 guntas is more particularly described in the plaint schedule and for short herein after this 32 guntas of land is called as schedule "A" property as described in the rough sketch with 5 OS.414 of 2007 letters NEFGN. Upon realising the mistake and due to the existing relationship between plaintiffs and defendant in order to rectify the wrong and to make good the injury that was caused to the plaintiffs, wherein the plaintiffs and defendant have reached to a consensus to rectify the above mistake and consequently after and exhaustive deliberations and discussion, the parties have arrived at a settlement entered one under Memorandum of Understanding , which came to be executed between plaintiffs and defendant incorporating various contractual obligations under which, defendant has agreed to purchase land measuring 32 guntas in Sy.No. 200/3B of Kengeri village,, which exclusively owned by 1st plaintiff for a sale consideration amount of Rs.38-00 lakhs and they entered into separate agreement of sale in consideration thereof, the defendant in turn has also agreed to transfer the land belongs to him in Sy.No.200/2 to the extent of 8 guntas in favour of 2nd plaintiff herein. Thus understanding arrived between plaintiffs and defendant in order to rectify the mistake as defendant under mistaken identity and due to inadvertence has developed the land belong to plaintiff No.1 and the land belongs to defendant in Sy.No.200/2, which agreed to be conveyed in favour of plaintiff No.2 of 8 guntas as described in the schedule "B" of the plaint and which is denoted by letters KLMJK in the suit sketch annexed to the plaint and defendant in the Memorandum of Understanding also agreed to form road in between the land Sy.No.200/2 and 6 OS.414 of 2007 Sy.No. 200/3B and 3A belongs to plaintiffs and the proposed road of 25 ft., width is shown in the rough sketch more particularly described in the plaint as schedule "C" and marked with letters "BCNGHIJMLB" . The defendant also agreed to bear the costs of formation of 25 ft width road in the Memorandum of Understanding entered into on 14.12.2003. The defendant agreed to these terms wherein the sale price to be paid by the defendant for sale consideration of 32 guntas of land to be sold by 1st plaintiff was fixed at Rs.38- 00 lakhs and 1st plaintiff has received the amount from defendant in part performance of the said agreement and on the date of execution of said agreement for sale in respect of schedule "A" property. The plaintiff always ready and willing to execute sale deed and transfer schedule "A" property in favour of defendant subject defendant simultaneously executing sale deed in respect of "B" schedule property in favour of 2nd plaintiff at the guideline value as recorded in the office of Sub Registrar on the date of execution of sale deed in favour of plaintiff No.2. Defendant however did not come forward to execute sale deed in favour of 2nd plaintiff in respect of suit schedule "B" property and consequently execution of sale deed and transfer of schedule "A" property in favour of defendant remained incomplete. The plaintiffs after realization of the last cheque dated 8.4.2004 bearing No. 606016 for

Rs.6-00 lakhs paid by the defendant to the plaintiffs, the plaintiffs have been ever always ready and willing to execute sale deed in 7 OS.414 of 2007 respect of schedule "A" property in favour of defendant and plaintiffs personally approached the defendant at his residence and asked him to execute sale deed by keep the sale deed ready. So that both the sale deeds could be executed and the properties could be transferred in compliance with the contractual obligation one entered under Memorandum of Understanding dated 14.12.2003 and agreement of sale on the very date, wherein plaintiff also demanded the defendant to form 25 ft., road as per the plan annexed to the Memorandum of Understanding in respect of "C" schedule property, but defendant did not come forward to comply the demand made by the plaintiffs and also defendant went on postponing to perform his part of contract. Though plaintiffs are ready and willing to perform their part of obligation and thereafter, plaintiffs caused legal notice on the defendant dated 21.6.2006 in order to compel the defendant atleast to comply with contractual obligation and though defendant by received the legal notice, but defendant did not come forward to execute registered sale deed in favour of plaintiff in respect of schedule "B" property by conveying 8 guntas of land and though defendant is the owner of schedule "B" property and even till today, he is legally competent to transfer the same in favour of 2nd plaintiff and plaintiffs also alleged that transfer of "A" schedule property and "B" schedule property shall have to take place simultaneously and there is no laches on the part of plaintiffs in instituting the suit and as such, plaintiffs have 8 OS.414 of 2007 pleaded that their suit filed for specific performance of contract is within time. However, the relief sought for in this suit is restricted to the specific performance of contract in respect of "B" schedule property and for mandatory injunction relief in respect of "C" schedule property . Hence, plaintiffs alleging cause of action one arose to file the suit in para No.12 of the plaint stating that cause of action arose on 21.6.2006 when plaintiffs issued legal notice to defendant and subsequent attempts on the part of defendant to create 3rd party interest in respect of schedule "A" property and also failure of the defendant to convey 8 guntas of land and to form road in respect of "C" schedule property and subsequently on 2.1.2007 when plaintiff cannot called upon the defendant to execute sale deed in respect of "B" schedule property in terms of Memorandum of Understanding and hence, plaintiff No.1 and 2 constrained to file the suit for specific performance of contract and for mandatory injunction relief.

3. The defendant in response to suit summons issued by this court appeared and filed written statement, wherein defendant admits the ownership in respect of the land bearing Sy.No. 200/2 and also in respect of Sy.No.200/3B situated at Kengeri village, Kengeri Hobli, Bangalore South Taluk. The suit schedule property referred in schedule "A" is measuring 32 guntas in Sy.No.200/3B situated at Kengeri 9 OS.414 of 2007 village, and "B" schedule property measuring 8 guntas out of 1 acre 23 guntas in Sy.No. 200/2 situated at Kengeri village, and schedule "C" property is proposed road measuring north- south 25 ft., and running from east-west for the use of public referred in the rough sketch by letters BCNGHIJMLB. The defendant admits the relationship as pleaded by the plaintiffs and also defendant further admits regarding ownership of properties are concerned as pleaded in para No.3(2) by the plaintiff. Defendant further admits the averments made in para No.3(3), but defendant denied the further averments made in para No.3 (4 to 11) of the pleadings and defendant also denied cause of action as alleged by the plaintiffs and the same is imaginary and concocted and plaintiffs have not paid proper and correct court fee for the reasons that the plaintiffs have not paid proper and correct court fee and hence, suit deserves to be dismissed. Defendant also

taken plea of limitation contending that suit is hopelessly barred by limitation, wherein the alleged agreement is dated 14.12.2003 , but suit was filed in the year 2011 and suit filed by the plaintiffs is not within prescribed period of limitation and as such, suit is hopelessly barred by law of limitation and defendant contended that plaintiffs are trying to withstand on the alleged agreement of sale dated 14.12.2003 and even if that is accepted by this court, but the agreement having stipulated 9 months period to perform the part of contract by either party, the plaintiffs have never come forward substantially to fulfill their part of 10 OS.414 of 2007 contract and it is as such, the plaintiffs are not entitled for the relief of specific performance, which is discretionary relief and equitable relief and plaintiffs are seeking relief under the agreement of sale dated 14.12.2003 and under Memorandum of Understanding dated 14.12.2003 and plaintiffs are supposed to pay court fee independently on each of the reliefs prayed for and plaintiffs have not paid court fee on each independent relief sought for. Hence, suit is liable to be dismissed. Defendant admits that he was developer of land and he allowed to develop the land bearing Sy.No. 200/2 and a portion of Sy.No.200/3B in order to form residential layout and he has sold out sites after formation of residential sites, wherein respective purchasers have constructed houses thereon in the layout formed by him and these things happened as per the permissive consent of the plaintiffs and defendant and hence, plaintiffs were financially benefited to the tune of Rs.38-00 lakhs and individual site holders in Sy.No.200/2 and in a portion of Sy.No.200/3B have occupied their portion of residential houses comprising construction in both survey numbers. Hence, plaintiff do not have any right to be enforced on the basis of alleged agreement of sale and Memorandum of Understanding dated 14.12.2003. The defendant further contended that plaintiffs have not executed any document and no conveyance is made conveying the right, title and interest and possession of the said land bearing Sy.No. 200/3B in favour of defendant in respect of schedule 11 OS.414 of 2007 "A" property. The very conduct of the plaintiffs is crystal clear and manifest that plaintiffs are not doing equity, but they themselves stand as that of a person causing breach of trust and contract. The plaintiffs are not supposed to seek equitable relief of specific performance against the defendant herein and suit of the plaintiffs is devoid of merits and deserves to be dismissed and defendant further contended that the obligation is created to the plaintiffs to execute sale deed to convey property bearing Sy.No.200/3B measuring 32 guntas in favour of defendant, wherein plaintiffs have received entire sale consideration amount of Rs.38-00 lakhs and plaintiffs even as on today they have not come forward to execute sale deed in favour of defendant and failed to perform their part of contract obligations and they have not whispered their willingness to execute sale deed in respect of suit schedule "A" property. The defendant admits the issuance of legal notice dated 21.6.2006 and plaintiffs have asserted that believing in assurance given by defendant to them, as also on account of natural love and affection as a sister. The plaintiffs have received Rs.38-00 lakhs in installments and put the defendant in possession of 32 guntas of land in Sy.No.200/B and she expected the defendant to come forward to transfer 8 guntas of land in Sy.No.200/2 in favour of 2nd plaintiff and also get both the sale deeds executed on the same day simultaneously before Sub Registrar concerned. The plaintiffs have further asserted that inspite of lapse of more than 2 ½ years, 12 OS.414 of 2007 defendant has not shown any enthusiasm or interest in completing the transactions and on verification of the records by the plaintiffs after they took an inventory in the Sub Registrar office and they came to know that the defendant has sold away entire area in Sy.No.200/2 in bits of land to various individuals by converting that survey number into residential layout and there is no area of land in Sy.No. 200/2 to convey the same to plaintiffs and this fact is within the knowledge of

plaintiffs of these years and they have not shown any interest in completing the transaction as agreed in the Memorandum of Understanding and defendant in respect of legal notice dated 21.6.2006, contended that the said notice contents reveals that plaintiffs have no option and to put an end to the arrangement made under Memorandum of Understanding dated 14.12.2003 is terminating the contract due to misconduct of the defendant and accordingly, plaintiffs have terminated the contract entered under Memorandum of Understanding in legal notice dated 21.6.2006 and directed and contended that the defendant is entitled to refund Rs.38- 00 lakhs and plaintiffs are entitled to take possession of land measuring 32 guntas in Sy.No.200/3B and directed the defendant to make immediate arrangement to surrender the possession of Sy.No.200/3B to the plaintiffs and receive back the sale consideration amount paid by him and this conduct of the plaintiffs also clear to infer that the plaintiffs are not doing equity and their conduct disentitles the plaintiffs to seek 13 OS.414 of 2007 the relief of specific performance and defendant further contended that plaintiffs have committed breach of contract in respect of schedule "A" property even though they have received entire sale consideration amount and they have allowed the 3rd parties to built up the construction in that area, wherein several residential buildings have come up and in view of that, defendant who has paid Rs.38-00 lakhs towards purchase price of the said land was made to suffer without having any portion of land in that Sy.No.200/3B. Hence, defendant denied the allegations made by the plaintiffs breach of contract terms entered under Memorandum of Understanding and defendant further contended that he is in possession of Sy.No. 200/2 in respect of portion, wherein he has left 25 ft., width road and length of 600 ft., for the purpose of road and portion of this extent is left by defendant towards southern portion of Sy.No. 200/2 and now the same is used as road, but plaintiffs have failed to prove whenever their obligation of executing a registered sale deed and conveying a land bearing Sy.No. 200/3B in respect of schedule "A" property. Hence, plaintiff as a matter of right are not supposed to file the suit against defendant though statutory or contractual right created in favour of plaintiffs cannot be enforceable against him for the reason that plaintiffs themselves have committed breach of contract and as such, the suit of the plaintiff is bad in law and liable to be dismissed.

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4. Based upon these pleadings of the parties, the following issues have been framed for trial in this case on 13.2.2008 :-

1. Whether the plaintiffs prove the memorandum of understanding was executed by the defendant on 14/12/2003 ?
2. If so, whether the plaintiffs prove that the defendant had agreed to buy the land measuring 0.32 guntas in S.No.200/3B for a sum of Rs.38 lakhs by entering into a separate agreement of sale?
3. Whether the plaintiffs also prove that the defendant has agreed to transfer the land measuring 0.08 guntas in S.No.200/2, owned by the defendant in favour of plaintiff No.2 ?

4. Whether the plaintiffs prove that they were and are always ready and willing to perform their part of the contract ?

5. Whether the plaintiffs prove that the defendant is bound to execute the sale deed in respect of schedule 'B' property ?

6. Whether the defendant is liable to form 25 feet road as per memorandum of understanding dated 14/12/2003 and the sketch annexed thereto ?

7. Whether the defendant proves that the alleged memorandum of understanding is a manipulated document as alleged by him ?

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8. Whether the suit is barred by law of limitation ?

9. Whether the court fee paid is improper ?

10. Whether the plaintiffs are entitled for the relief of specific performance of the contract ?

11. What order or decree?

5. In order to prove their respective cases, parties to the suit have adduced their respective oral and documentary evidence , wherein plaintiff No.1 is examined as P.W.1 and got marked Ex.P.1 and P.2 and closed her side and plaintiff No.2 is examined as P.W.2 and in his evidence documents Ex.P.3 to P.9 are came to be marked and further Ex.P.10 to 11 are marked in the cross-examination of D.W.1 as plaintiffs documents. With this evidence, plaintiff side evidence is closed. Thereafter, the defendant has given his rebuttal evidence in the above case as he is examined as D.W.1 by filing affidavit evidence and D.W.1 got marked documents as per Ex.D.1 to D.5 in his oral evidence and with this evidence, defendant closes his side and thereafter, the suit is posted for arguments.

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

16 OS.414 of 2007 The counsel for the plaintiff has relied upon the following decision:

1. ILR 2010 KAR 765 (Syed Zaheer and others v/s C.V. Siddveerappa)

2. 2012(3) KCCR 2146 (Sri Somanagouda and another v/s Sri Shamshiddin)

3. AIR 2010 RAJASTHAN 63 (Sumat Prakash Jain v/s Smt. Laxmi)

4. AIR 2004 SUPREME COURT 4472 (P. D'souza v/s Shondrilo Naidu) The counsel for the defendant has relied upon the following decision:

1. AIR 1965 SUPREME COURT 1405 (V 52 C 228) (Mademsetty Satyanarayana v/s G.Yelloji Rao and others)

2. AIR 1968 SUPREME COURT 1355 (V 55 C 262) (Prem Raj v/s The D.L.F. Housing and Construction Private Ltd and another.)

3. AIR 1971 SUPREME COURT 1238 (V 58 C 250) (Ramesh Chandra Chandiok and another v/s Chuni Lal Sabharwal (dead) by his legal representatives and others.)

4. AIR 1978 SUPREME COURT 484 (M/s. Ganesh Trading Co., v/s Moji Ram,)

5. AIR 2011 SUPREME COURT 3351 17 OS.414 of 2007 (M/s. Citadel Fine Pharmaceuticals v/s M/s.

Ramaniyam Real Estates Pvt Ltd & Anr.) with (M/s. Ramaniyam Real Estates Pvt Ltd & Anr.

v/s M/s. Citadel Fine Pharmaceuticals & Anr.)

6. (2013) 10 Supreme Court Cases 114 (A.S .

Motors Private Limited v/s Union of India and others)

7. (2013) 1 Supreme Court Cases 345 ( Satish Batra v/s Sudhir Rawal)

8. AIR 2014 SUPREME COURT 1356 (Maya Devi v/s Lalta Prasad)

9. AIR 1991 PATNA 192 (Rabindra Nath Sahu v/s Mrs. Maya Devi and another)

7. On the basis of pleadings, on appreciation of the evidence of P.W.1 and 2 and that of D.W.1 and on appreciation of documentary evidence produced by the plaintiff as per Ex.P.1 to P11 and Ex.P.11(d) and Ex.D.1 to D.5 relied by the defendant and after considering the arguments contention submitted by both sides and also perused the respective citations placed in support of their arguments and on appreciation of oral and documentary evidence, I answer the above issues are as follows:-

Issue No.1 to 3: In affirmative

Issue No.4: In negative

Issue No.5: In negative

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Issue No.6: Does not arise for consideration  
in view of contention of  
defendant as stated in his



written statement regarding  
formation of road in  
Sy.No.200/2 of 25 ft., X 600 ft.,  
for the use of public after  
formation of this road.

Issue No.7: In negative against defendant  
Issue No.8: In affirmative;  
Issue No.9: In negative;  
Issue No.10: In negative  
Issue No.11: The suit filed by the plaintiff  
deserves to be dismissed  
without any order as to costs  
for the following reasons:-

#### REASONS

8. Issue No.1 to 5 and Issue No.7 and 8: The plaintiffs have filed this suit against defendant seeking the relief of specific performance of contract based upon Memorandum of Understanding executed between plaintiffs and defendant dated 14.12.2003 in respect of suit schedule "A to C"

properties. It is the case of the plaintiffs that on 14.12.2003, there was settlement and understanding arrived between the parties, wherein 1st plaintiff is the owner of Sy.No.200/3A and 3B of Kengeri village,, measuring 21 guntas and 1 acre 13 19 OS.414 of 2007 guntas , wherein 1st plaintiff is the sister of defendant and 2nd plaintiff is the husband of 1st plaintiff, wherein defendant is the builder doing construction works of developing the lands and formation of layouts and to sell the residential sites, wherein the defendant had purchased Sy.No.200/2 measuring 1 acre 23 guntas of Kengeri village, Kengeri Hobli, from 2nd plaintiff under registered sale deed dated 29.2.1995 and defendant had developed the land and formed layout by forming residential sites, wherein under mistaken notion of identification of lands, which are adjacent to each other in location and defendant under mistaken identification of lands and due to inadvertence had developed plaintiff's portion of land in Sy.No.200/3B and encroached upon 32 guntas in extent and hence, after noticing this mistake and due to relationship between the parties, they arrived at a settlement, wherein defendant agreed to purchase 32 guntas of 1st plaintiff's land for sale consideration amount of Rs.38-00 lakhs and defendant also agreed to convey 8 guntas of land in favour of 2nd plaintiff in Sy.No.200/2 and also defendant agreed for form road of 25 guntas width in his survey number so as to facilitate to have ingress and egress to reach the lands, which are adjacent to each other to Sy.No.200/2 and that of plaintiffs land Sy.No. 200/3A and 3B respectively and defendant failed to perform his part of contract in conveying 8 guntas of land to plaintiff No.2 and also to form road at his cost as agreed under Memorandum of Understanding and plaintiff relying upon 20 OS.414 of 2007 legal notice dated

21.6.2006 have filed this suit for specific performance of contract. The defendant appeared and filed written statement and denied the plaint allegations in toto except admitting execution of Memorandum of Understanding dated 14.12.2003 and defendant denied execution of sale agreement dated 14.12.2003 and defendant contended that plaintiffs have committed breach of terms of Memorandum of Understanding and there is delay on the part of plaintiffs in approaching by way of this suit for specific performance and Memorandum of Understanding not enforceable contract under law. Hence, the suit for specific performance is not maintainable and suit is barred by limitation. Hence, in view of this rival contention, the parties to the suit have adduced their respective oral and documentary evidence, wherein 1st plaintiff is examined herself as P.W.1 through her affidavit evidence filed in this case under Order 18 Rule 4 of CPC, wherein P.W.1 has given verbatim evidence in her affidavit filed herein by reproducing the plaint averments in the form of this affidavit and she deposed in respect of execution of Memorandum of Understanding between herself and plaintiff No.2 and that of defendant No.2 on 14.12.2003 in respect of schedule "A to C" properties and P.W.1 got marked Ex.P.1 and P.2 in her evidence, wherein Ex.P.2 is the original Memorandum of Understanding dated 14.12.2003, which is marked to subject to objections of counsel for defendant as Ex.P.1. P.W.1 identified the signature of defendant marked at 21 OS.414 of 2007 Ex.P.1(a) and signature of herself and 2nd plaintiff are marked at Ex.P.1(b) and (c) and she got marked office copy of legal notice as per Ex.P.2 dated 21.6.2006. Hence, P.W.1 relying upon her evidence and document Ex.P.1 and P.2 and prays to decree the suit.

9. The counsel for defendant cross examined P.W.1, wherein she admits that defendant is her younger brother, he is land developer by profession and she admits Sy.No.200/2 is measuring 1 acre 23 guntas, Sy.No.200/3B measuring 1 acre 10 guntas and Sy.No.200/2 belongs to her ownership and Sy.No. 200/3B also belongs to her ownership and P.W.1 admits that she has conveyed Sy.No.200/2, this land in favour of this defendant and P.W.1 unable to depose regarding which type of document, she has executed in conveying the land Sy.No.200/2 in favour of her brother defendant herein and P.W.1 admits that defendant had paid Rs.38-00 lakhs amount to her in respect of her land Sy.No.200/3B transaction and she admits that she has not executed any sale deed so far in favour of her brother and she admits that the said amount received by her from defendant is in respect of entire sale consideration amount towards Sy.No.200/3B and she admits that she has not executed any type of document in favour of her brother, but P.W.1 stated that she has executed sale agreement in favour of her brother and also further stated that she has executed sale deed and she admits that 22 OS.414 of 2007 Sy.No.200/3B has been converted by forming residential sites, but she do not know total how many sites have been formed in the said land and she do not capable to say how many sites have been constructed in the said land and she do not know how many sites have been sold in Sy.No.200/3B and P.W.1 admits that defendant has not constructed any house in Sy.No.200/2 for his own occupation and P.W.1 admits that respective purchasers of sites have constructed houses and P.W.1 stated that she herself nor her husband had given any permission for construction of houses and P.W.1 stated that she has not authorised the defendant to sell residential sites, which are formed in Sy.No.200/3B in respect of 32 guntas of land

and whereas P.W.1 deposed that the defendant constructed house property in the said land and he has sold the sites and constructed houses and P.W.1 stated that she has filed the suit against defendant, wherein defendant agreed to purchase 32 guntas of land in Sy.No.200/3B and he has agreed to convey 8 guntas of land in favour of 2nd plaintiff and for that relief, she has filed the suit and she denied her knowledge about the contents of Ex.P.1, which is in English script and P.W.1 stated that she understood the contents of Ex.P.1 after 2nd plaintiff made known contents to her and she denied that on 14.12.2003, she did not discussed about Ex.P.1 with anybody and she also admits in page No.1 of Ex.P.1, there are no signatures of anybody and P.W.1 also stated that attesting witnesses have signed Ex.P.1, wherein herself and 23 OS.414 of 2007 defendant had brought attesting witnesses, but P.W.1 unable to depose the name of attesting witnesses, who have signed as attesting witnesses and she denied her knowledge about the scribe, who has drafted Ex.P.1 and she can identify the signature of herself, her husband on Ex.P.1 and P.W.1 admits that the another signature on Ex.P.1 is not made in her presence and she admits that after lapse of one year of execution of Ex.P.1, she requested the defendant to execute sale deed and P.W.1 further stated that she did not met her brother within one year personally and she stated that her husband had met the defendant and requested him to execute sale deed and defendant was not ready to act in pursuance of Ex.P.1 and to execute sale deed and she admits that even she came to know that the defendant refused to execute sale deed, she did not proceeded to take any legal action and witness stated that defendant is her brother. Hence, she has not initiated any legal action and P.W.1 denied that she has received entire sale consideration amount from defendant and without execution of sale deed to him. She has created Ex.P.1 and she further denied that defendant never agreed for execution of Ex.P.1 and P.W.1 admits that if defendant surrendered the possession of land measuring 32 guntas , she is ready to refund any amount of Rs.38-00 lakhs received by her and she denied that she has not given up any land in Sy.No.200/3B and she denied that the signatures appearing in Ex.P.1 said to be belonging to defendant are not his signatures 24 OS.414 of 2007 and she admits that she has not taken any action in respect of the house constructed in remaining portion of Sy.No.200/3B and she denied that she has sold the sites, which are formed in Sy.No.200/3B and she has withhold the said documents to be produced in this case and she admits that Sy.No. 200/2 is in the name of defendant. She admits that the son of Sri.Hanumappa by name Thayappa is her husband and 2nd plaintiff has sold 1 acre 23 guntas of land on 21.1.1995 in favour of defendant in Sy.No.200/2 and she admits that herself nor her children have no objections for the sale deed and she admits that the defendant had formed layout in Sy.No.200/2 and developed this land and P.W.1 further admits that 8 guntas of land, which was to be conveyed by defendant is corner site and in that place commercial buildings are suited for construction and P.W.1 admits regarding valuation of 8 guntas of land as she do not know about the valuation. However, she admits that as on the date of filing the suit, per square feet the cost of the land at Rs.1000/- in Sy.No.200/2 and now she denied the valuation of the said land suggested to her at the rate of Rs.2,500/- per square feet and she denied that she has falsely created document at the instigation of her husband and deposing false evidence in this case.

11. P.W.2 is the 2nd plaintiff in this case and he is the husband of 1st plaintiff, who has deposed his evidence through affidavit evidence filed under Order 18 Rule 4 of CPC and on 25 OS.414 of 2007 perusal of his chief examination deposition, wherein P.W.2 also deposed some evidence as that of 1st plaintiff by reiterating the facts as stated in the pleadings and P.W.2 got marked documents in his chief examination namely mutation extract as per Ex.P.3 in respect of Sy.No.200/3 and 3 RTC

extracts of the said land from Ex.P.4 to P.6 and two RTC extracts in respect of Sy.No.200/3B, which are marked at Ex.P.7 and P.8 and Ex.P.1(d) is the annexed Mohammed Ayan Pasha to the Memorandum of Understanding dated 14.12.2003 and P.W.2 further got marked statement of account extract as per Ex.P.9 in respect of his wife P.W.1. Hence, P.W.2 prays to grant a decree for specific performance as prayed in respect of schedule "B and C" properties.

12. The counsel for defendant cross examined P.W.2, wherein he admits that 2nd plaintiff is his brother-in-law and Ex.P.1 is prepared by advocate Sreeram in his office and himself, P.W.1 and defendant have put their signatures in the office of advocate Sriram at about 8 p.m on 14.12.2003 and P.W.2 admits that advocate Sreeram has not signed Ex.P.1 as scribe and Ex.P.2 is not attested by any attesting witnesses and P.W.2 admits that Sy.No. 200/2 , 1 acre 23 guntas and 3 guntas of kharab land and defendant is the owner of Sy.No.200/2 and he admits that Sy.No.200/3B belongs to 1st plaintiff and P.W.1 admits that Sy.No.200/2 originally belongs to 1st plaintiff and P.W.2 admits that Sy.No.200/2 originally 26 OS.414 of 2007 belongs to him and he admits that defendant has paid Rs.38- 00 lakhs amount to 1st plaintiff and he admits that Schedule "A" property is not agricultural land at present and in that land, houses have been constructed and he do not know how many sites have been formed in schedule "A" land measuring 32 guntas and P.W.2 denied his knowledge whether defendant has retained any sites in schedule "A" property and even he do not know whether he has constructed any house in Sy.No.200/3B and P.W.2 also stated that at the time of execution of Ex.P.1, there are 5-6 houses are constructed in schedule "A" property and thereafter, in the entire extent of the survey number in the sites houses have been built up and he admits that he has not taken any legal action against the said persons, who have constructed the houses and P.W.2 also admits that at the time of filing the suit, there are already constructed houses and also some of the purchasers are constructing the houses and he has not impleaded the purchasers of sites and owners as party defendants in this case and he denied that defendant has not executed Ex.P.1 rather it is created document by himself and 1st plaintiff and P.W.2 admits that as on the date of Ex.P.1, the market value of schedule "A" property valued at Rs.38-00 lakhs and P.W.2 denied that though they have received entire sale consideration amount from the defendant and in order to snatch away schedule "B" property , they have filed this false suit.

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13. The defendant has given rebuttal evidence as he is examined as D.W.1 through affidavit evidence filed under Order 18 Rule 4 of CPC, wherein D.W.1 has deposed corroborative evidence as per the contentions urged by him in his written statement and as such, his examination-in-chief is verbatimly reiterating the facts of defence filed in this case and D.W.1 got marked Ex.D.1 to D.5, the said documents are original sale deed dated 21.2.1995 executed by 2nd plaintiff in respect of Sy.No.200/2 as per Ex.D.1 mutation extract in respect of Sy.No.200/2 is at Ex.D.2, the reply notice issued to the plaintiffs dated 26.7.2006 is at Ex.D.3, postal receipt Ex.D.4 and postal acknowledgment Ex.D.5. Hence, D.W.1 relying upon Ex.D.1 to Ex.D.5 coupled with his oral evidence pray for dismissal of the suit.

14. The counsel for the plaintiff cross examined D.W.1, wherein he admits that 1st plaintiff is related to him as his sister and 2nd plaintiff is husband of 1st plaintiff and D.W.1 admits that there exists

Ex.P.1 in between himself and plaintiffs and even he admits execution of sale agreement, but D.W.1 denied his signature marked at Ex.P.1(a) and D.W.1 stated that he has got original agreement of sale executed in favour of plaintiffs and D.W.1 stated that he has produced the said agreement of sale in O.S. No.1600.2012 filed by him against plaintiff and D.W.1 stated that there is no Memorandum of Understanding executed between him and 28 OS.414 of 2007 plaintiffs as per Ex.P.1 and D.W.1 denied his signatures on Ex.P.1 and D.W.1 stated that he got the contents made known to him by his advocate on Ex.P.1, but D.W.1 further stated that the contents of Ex.D.1 are not true facts and he stated further that there is no agreement as per Ex.P.1 and also annexed sketch to Ex.P.1 and this sketch map confronted the witness is marked at Ex.P.10 and D.W.1 stated that in Ex.P.10 there is no signature of him and D.W.1 admits that Sy.No.200/2 measuring 1 acre 23 guntas and towards south of this land there is land of plaintiff No.1 bearing Sy.No. 200/3A and 200/3B and the said lands are in possession of 1st plaintiff and D.W.1 denied that he has constructed apartment in Sy.No.200/3A and 3B and D.W.1 denied the suggestion that as he has constructed the apartment in 1st plaintiff's land for that reason, there came to be executed Memorandum of Understanding as per Ex.P.1 in between himself and plaintiffs and D.W.1 admits that he has sold Sy.No.200/2 in favour of 3rd parties and D.W.1 stated that at the time of filing suit, the purchasers have constructed houses in Sy.No.200/2 and D.W.1 denied that Sy.No.200/2 is now vacant land and no constructions have come up in this land and D.W.1 admits that the agreement of sale executed between himself and plaintiffs is in respect of schedule "A" property and he admits that Sy.No. 200/3B exists towards south of Sy.No.200/2 and plaintiff No.1 is the owner of Sy.No.200/3A and 3B respectively and D.W.1 denied that he has constructed houses 29 OS.414 of 2007 in Sy.No.200/3A and 3B in schedule "A" property and he has filed a suit seeking refund of money paid by him in O.S. No.1660/2012 against plaintiffs. However, D.W.1 admits the certified copy of plaint copy in O.S. No.1600/2012 and it is marked at Ex.P.11 and D.W.1 admits that he has instructed to draft written statement to his counsel and he has filed written statement after noting down the contents and he admits that signatures found in written statement belongs to him and he admits that there is no dispute pending between himself and plaintiffs.

15. D.W.1 again cross examined on 22.7.2014, wherein he admits that he has purchased Sy.No.200/2 from 2nd plaintiff in the year 1995 and there was transaction in respect of 1st plaintiff's land between himself and plaintiffs. D.W.1 stated that plaintiffs have made allegations against him regarding encroachment to the extent of 5-6 ft., in Sy.No. 200/3B and plaintiffs have insisted him to purchase some portion of Sy.No.200/3B and accordingly, he has purchased 36 guntas of land belongs to 1st plaintiff and D.W.1 admits that he has encroached upon Sy.No.200/3B to the extent of 2 guntas and D.W.1 admits that there was sale agreement executed on 14.12.2003 and he has filed O.S. No.1660/2012 and sale agreement dated 14.12.2003 is prepared in two sets, one is retained by him and one is given to the plaintiffs and he admits regarding execution of Ex.P. 1 30 OS.414 of 2007 and also he admits his signature on Ex.P.1, but he denied to identify the signatures on Ex.P.1 of plaintiffs and D.W.1 stated that he knew the terms and conditions as recited in Ex.P.1 and he has not complied the terms of Ex.P.1 that he should re-convey the land measuring 8 guntas to plaintiffs and also to form road at his costs and he denied that plaintiffs approached him and requested him to convey the land and formed the road prior to filing of the suit and D.W.1 admits issuance of legal notice by the plaintiffs on 21.6.2006 and he denied that he has not replied the said notice Ex.P.2. The counsel for plaintiffs questioned to D.W.1 posing question that D.W.1 failed to perform his part

of contract as per the terms of Ex.P.1, for that witness D.W.1 answered that plaintiffs have allowed the presence of purchasers of site to construct the building in the portion of land purchased by him and on this reason, he could not perform his part of contract obligation as per Ex.P.1 and D.W.1 admits that he has not pleaded this fact in his written statement and D.W.1 denied that he has encroached upon plaintiffs land measuring 32 guntas while developing the property. Hence, plaintiffs are constrained to sell 32 guntas of land to him and D.W.1 denied that he is deposing false evidence.

16. The counsel appearing for the plaintiffs submitted his arguments relying upon Ex.P.1 contending that due to existing relationship between 1st plaintiff and defendant, 31 OS.414 of 2007 wherein there arrived at mutual understanding in view of the development of land by the defendants in the 1st plaintiff's land, she came for settlement and sold 32 guntas of land schedule "A" property to the defendant for Rs.38-00 lakhs and whereas defendant agreed to convey 8 guntas in Sy.No.200/2 in favour of 2nd plaintiff and also he had agreed for form the road of 25 ft., width in his land and defendant not fulfilled the terms of Memorandum of Understanding. Hence, plaintiff constrained to file the suit and he relied upon the citations referred herein and prays to grant a decree for specific performance.

17. The counsel for defendant in his arguments contended at the out set that Ex.P.1 is not enforceable contract, wherein no sale consideration amount is fixed for schedule "B" property and plaintiffs have failed to perform their part of contract and plaintiffs have not done equity and they have approached the court after long lapse of years for specific performance relief, wherein Ex.P.1 is dated 14.12.2003 and Ex.P.2 notice is issued after lapse of more than 3 years on 21.6.2006 and as per the agreement of sale, 9 months time was stipulated and time was the essence of contract and plaintiffs could not perform their part of contract and not executed sale deed in favour of defendant in respect of schedule "A" property and hence, the suit filed by the plaintiffs is not maintainable and Ex.P.1 is not enforceable contract and suit is 32 OS.414 of 2007 barred by limitation and counsel for defendants relied upon Sec.55 of Contract Act and also he relied upon various citations submitted in support of his arguments and pray for dismissal of the suit.

18. After hearing the arguments of both sides and on appreciation of the evidence of P.W.1 and P.W.2 and that of defendant, wherein the plaintiffs have not produced the agreement of sale executed by defendant in respect of schedule "A" property along with Ex.P.1 dated 14.12.2003 and on perusal of Ex.P.1, wherein it is a fact that 1st plaintiff has received Rs.38-00 lakhs entire sale consideration amount paid by defendant in respect of 32 guntas of land agreed to be conveyed in favour of defendant in Sy.No.200/3B of Kengeri village, Kengeri Hobli, Bangalore South Taluk and it is a fact that the defendant has purchased Sy.No.200/2 from 2nd plaintiff as per Ex.D.1 sale deed dated 21.2.1995 and as per Ex.P.1, the plaintiffs have agreed to convey schedule "A" property in favour of defendant, but plaintiffs have not executed registered sale deed in favour of defendant conveying 32 guntas of land by execution of sale deed. Admittedly, on perusal of recitals of Ex.P.1, wherein in this document, it is stated that 8 guntas of land have been handed over to 3rd parties to this agreement Memorandum of Understanding i.e., 2nd plaintiff on the date of execution of this Memorandum of Understanding i.e., on 14.12.2003 since plaintiffs have not 33 OS.414 of 2007 performed their part of contract as per Memorandum of Understanding dated 14.12.2003 as per

Ex.P.1 and also alleged sale agreement of same date in favour of defendant, but Ex.P.1 recitals shows that the defendant has made payment through cheque transaction in favour of plaintiffs, wherein Rs.5-00 lakhs was paid by cash on the date of execution of Memorandum of Understanding and remainign Rs.33-00 lakhs paid by the defendant as per the cheque payments mentioned in Ex.P.1 and as per Ex.P.1 Clause No.13(a), wherein the 1st party i.e., defendant has to enter into agreement of sale with plaintiff No.1(2nd party) to purchase land measuring 32 guntas in Sy.No.200/3B for sale consideration amount of Rs.38-00 lakhs, but plaintiffs have not produced any sale agreement entered into between 1st plaintiff and defendant in this case along with Ex.P.1 and on perusal of Ex.P.1 Memorandum of Understanding terms and conditions, wherein in this entire document , there is no specific clause or term agreed between the parties that in case of breach of terms of any clause in this agreement shall give raise to cause of action and this agreement can be enforced in law in seeking specific performance relief, but on the contrary, on perusal of the terms of Memorandum of Understanding Ex.P.1, wherein this document is not attested by anybody, wherein plaintiffs No.1 and 2 and defendant are party to this agreement and it is only an understanding arrived between the parties, wherein plaintiffs and defendant have related to each other and there is 34 OS.414 of 2007 no specific clause agreed under the contract in order to hold that Ex.P.1 is a binding contract to be enforced in law under the provision of Contract Act nor under the Specific Relief Act. On the contrary, Ex.P.1 is only Memorandum of Understanding arrived between plaintiffs and defendant with understanding of exchange of properties, wherein defendant had purchased 32 guntas of land by paying valid consideration amount of Rs.38- 00 lakhs to plaintiff No.1 and there is no land vacant in the hands of defendant in Sy.No.200/2 to convey 8 guntas of land in favour of 2nd plaintiff and P.W.2 himself admits that in Sy.No.200/2 entire land has been formed with layout and there is no land vacant as on today and buildings have come up in Sy.No.200/2 and as per Ex.P.1, it shows that 2nd plaintiff has already parted with possession of 8 guntas of land as per Clause No.13(3) since plaintiffs have not performed their part of contract in conveying the sale deed in favour of defendant in respect of schedule "A" property, though they have received entire sale consideration amount and hence, plaintiffs have not done equity as per law and they have approached this court for seeking equitable relief of specific performance which is discretionary relief, wherein in my opinion, Ex.P.1 is not enforceable document under the provision of Contract Act and Ex.P.1 is not a document to be enforceable under law in order to seeks specific performance relief and plaintiffs have caused legal notice on 21.6.2006 much after lapse of more than 3 years to defendant and defendant has replied the plaintiffs 35 OS.414 of 2007 notice by giving reply as per Ex.D.3 on 6.7.2006. Hence, after appreciation of evidence of P.W.1 and 2 and that of D.W.1, wherein the time was the essence of contract , wherein plaintiffs have not performed their part of contract within period of 9 months stipulated under the agreement of sale and plaintiffs have issued legal notice Ex.P.2 after lapse of more than 3 years and once the agreement Ex.P.1 executed between the parties and the validity of this agreement is for 3 years, but plaintiffs have not filed the suit within the period of 3 years and they have failed to perform their part of contract and it appears that defendant had already left the road in his land Sy.No.200/2 for the ingress and aggress of the public at large and also to facilitate to reach lands of plaintiffs and defendant in between Sy.No.200/2 and 200/3A and 3B and hence, the suit relief in respect of schedule "B" property became infructuous and plaintiffs have not impleaded the purchasers of site and also who have constructed the building in the layout formed in Sy.No.200/2 and in Sy.No.200/3A and 3B in this suit and it is already fact proved on record that respective purchasers of sites are in possession and they constructed the building and as such, the

suit filed by the plaintiffs is also barred by limitation, wherein the suit filed by the plaintiffs is governed by 1st part of Article.54 of Limitation Act 1963 and plaintiffs need not wait till defendant refused the relief of specific performance and as such, cause of action construed by the plaintiff appears to be created for the purpose of this 36 OS.414 of 2007 case and plaintiffs admits that the less payment made by the defendant on 8.4.2004 by that time itself, cause of action has arisen and also soon after expiry of 3 years of Ex.P.1 terms i.e., on 14.12.2006, time for seeking specific performance as expired, but plaintiffs have filed this suit against defendant by presenting the plaint on 12.1.2007, wherein the suit filed by the plaintiffs is also barred by limitation and hence, with these observations, I hold that the citations relied by the plaintiffs in support of their contention are not acceptable one and as such, the citations furnished and relied by the plaintiffs have no obligation to the facts of the case made out by the plaintiffs. On the contrary, the citations one referred and relied by the defendant are applicable to the defense filed by the defendant and hence, with these observations, I hold that though plaintiffs have proved that defendant has executed Memorandum of Understanding as per Ex.P.1 and also they proved that defendant had agreed to purchase 32 guntas of land and further defendant agreed to convey 8 guntas of land in favour of 2nd plaintiff, but plaintiffs have utterly failed to prove their readiness and willingness in performing their part of contract, which is mandatory under Sec. 16(c) of Specific Relief Act and once there is failure on the part of plaintiffs in proving readiness and willingness, which is mandatory under Sec. 16(c) of Specific Relief Act and also this court has come to the conclusion that Ex.P.1 is not enforceable contract to be filed in a suit for specific performance are contract and hence, 37 OS.414 of 2007 with these observations I record my finding on Issue No.1 to 3 in affirmative and Issue No.4 and 5 in negative and Issue No.7 in negative, Issue No.8 is in affirmative.

19. Issue No.6: It is the case of the plaintiffs that as per Ex.P.1, the defendant had agreed to form 25 ft road in Sy.No.200/2 as per the terms of Ex.P.1 appended the sketch Ex.P.1(d). The defendant had admitted execution of Ex.P.1 dated 14.12.2003 and D.W.1 in his oral evidence stated that he has already formed road in para NO.26 of his written statement as he has left a portion of property measuring 25 ft., width and 600 ft., length for the purpose of road and this portion of land left towards road is towards southern portion of his land Sy.No. 200/2 and already road has been formed, but plaintiffs have failed to perform their part of contract in conveying the property described in schedule "A" of 32 guntas in his favour. Hence, in view of the statement made by the defendant in para No.26 of written statement and the statement made by D.W.1 in his oral evidence. Hence, the relief as prayed by the plaintiff in schedule "A" property appears to be become infructuous and as such, Issue No.6 does not survive for consideration and accordingly, Issue No.6 is answered that the defendant has already formed road as agreed under Ex.P.1.

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20. Issue No.9: The plaintiffs have filed this suit for the relief of specific performance of contract in respect of "B" schedule property and mandatory injunction relief in respect of schedule "C" property. The defendant in their written statement at para No1.5 contended that plaintiffs have not paid proper court fee and the court fee paid on the plaint is insufficient and inadequate and hence, suit of the plaintiff is not maintainable unless plaintiffs paid proper and correct court fee and in view of this contention, Issue No.9 is framed in this case. The counsel for the plaintiffs submitted his



arguments in support of Issue nO.9 contending that though plaintiffs have pleaded schedule "A to C" properties, wherein the plaintiffs have restricted their claim for specific performance of contract in respect of schedule "B" property and have sought for mandatory injunction in respect of schedule "C" property and in respect of schedule "B" property, wherein defendants had agreed to convey 8 guntas of land in Sy.No.200/2 in order to compensate the encroachment made to the extent of 32 guntas of land in Sy.No.200/3A and 3B of Kengeri village, Kengeri Hobli, Bangalore South Taluk in respect of the land hold by 1st plaintiff and defendant agreed to purchase 32 guntas of land for sale consideration amount of Rs.32-00 lakhs and agreed to convey 8 guntas of land in favour of 2nd plaintiff. Hence, counsel for plaintiffs relied upon the valuation slip filed in this case stating that in respect of schedule "B" property 39 OS.414 of 2007 i.e, 8 guntas of land as per the market value, the plaintiffs have calculated the market value at Rs.10,80,000/- of schedule "B" property as on the date of suit, wherein 32 guntas of land is valued at Rs.38-00 lakhs and corresponding value of 8 guntas appears to be Rs.10,80,000/- which is appropriate market value in respect of 8 guntas of land. Though there is no specific consideration amount of sale consideration is arrived for conveying 8 guntas of land and in respect of schedule "C" property, the suit is valued under Sec. 26© by valuing the suit at Rs.1,000/-. Hence, counsel for plaintiffs submitted that the court fee one paid by the plaintiffs on the relief sought for in respect of schedule "B and C" properties of the plaint schedule are proper and correct and contentions of defendant has to be negated.

21. The defendant's counsel in his arguments contended that in Ex.P.1 and also in the alleged agreement of sale dated 14.12.2003, there is no sale consideration amount fixed for schedule "B" property in respect of 8 guntas of land and plaintiffs have not produced Sub Registrar guidance value prevailing in the year 2007 when the suit came to be filed and plaintiffs have valued the suit by showing approximate value of showing market value at Rs.10,80,000/- in the valuation slip filed by them. Hence, counsel for defendant contended that the court fee paid by the plaintiffs appears to be inadequate for the relief of specific performance. Hence, defendant's 40 OS.414 of 2007 counsel raised this objections in respect of payment of court fee.

22. After hearing the arguments of both sides on this court fee issue framed in this case, wherein as per the pleadings filed by the plaintiffs, wherein they have restricted their claim only in respect of schedule "B and C" properties as per pleadings stated in para No.11 of the plaint, wherein plaintiffs have sought for specific performance relief only in respect of schedule "B" property directing the defendant to execute sale deed by conveying schedule "B" property by executing conveyance deed and schedule "C" property, they have prayed for mandatory injunction relief seeking direction to the defendant to form 25 ft., road in terms of Memorandum of Understanding dated 14.12.2003 and the sketch annexed to the Memorandum of Understanding as per Ex.P.1 and p.1(d) respectively and plaintiffs have valued the suit for mandatory injunction relief at Rs.1,000/- and they have paid court fee under Sec. 26© of SVF and SU Act. Admittedly there is no fixed sale consideration amount is arrived between parties for 8 guntas of land between plaintiffs and defendant and on the contrary, it was agreed to convey 8 guntas of land by exchange of properties and to compensate plaintiffs in view of the encroachment made on the land of the plaintiffs and also parties to the suit are related to each other and hence, the valuation one shown by the plaintiffs for 8 guntas of land in 41 OS.414 of 2007 the year 2007 appears to be proper and correct and as such, the payment of court fee paid on the plaint by showing the valuation in the valuation slip and payment of court fee are held to be

proper and correct and as such, the contention of defendant taken in the written statement is hereby rejected and I hold that court fee paid on the reliefs prayed by the plaintiffs are held to be proper and accordingly, Issue no.9 is answered in negative.

23. Issue No.10: The plaintiff No.1 and 2 have sought for specific performance relief in respect of schedule "B" property against defendant and this court though come to the conclusion that there is Memorandum of Understanding executed between plaintiffs and defendant on 14.12.2003 as per Ex.P.1 and also defendant had agreed to convey 8 guntas of land in Sy.No.200/2 owned by him in favour of plaintiff No.2, but after appreciation of the oral and documentary evidence, wherein in the recitals of Ex.P.1 itself, it is stated that the possession of 8 guntas of land is already conveyed in favour of 3rd party i.e., plaintiff No.2 herein on the date of this execution of Memorandum of Understanding and in view of finding recorded by this court and already it has come in the evidence that defendant is not in possession of an extent of land in Sy.No.200/2 and also this court has further held that Ex.P.1 is not enforceable contract rather it is only an understanding arrived mutually between plaintiffs and 42 OS.414 of 2007 defendant and as such, there is no enforceable clause stipulated in Ex.P.1 to make this agreement enforceable under law. Hence, Ex.P.1 is not enforceable contract and also there is no consideration amount mentioned for conveyance of 8 guntas of land and since plaintiffs have failed to prove their readiness and willingness and plaintiffs have approached this court for specific performance relief by issue of notice as per Ex.P.2 after lapse of more than 3 years from the date of Memorandum of Understanding, wherein they have issued notice on 21.6.2006 after lapse of 3 years from the date of Ex.P.1 and once Ex.P.1 transaction entered into is not an executable contract to be enforced before the court of law and hence, plaintiffs are not entitled for the relief of specific performance of contract in respect of schedule "B" property and since defendant has already formed road in his land towards south site of Sy.No.200/2 and as such, suit relief prayed by the plaintiffs in schedule "B" property is also not sustainable and hence, plaintiffs are not entitled for the relief of specific performance of contract much less the relief of mandatory injunction as sought for by them. Accordingly, Issue No.10 is answered in negative.

24. Issue No.11: In view of my findings on Issue No.1 to 10 and in view of the reasons and findings given on Issue No.1 to 10, wherein the suit filed by the plaintiffs deserves to be dismissed. However in the facts and circumstances of the 43 OS.414 of 2007 case, parties to bear their own costs. Hence, with these observations, I proceed to pass the following:-

ORDER The suit filed by the plaintiff seeking the relief of specific performance of contract in respect of suit schedule "B" and "C" properties is hereby dismissed.

However, in the facts and circumstances of this case, parties to bear their own costs.

Draw decree accordingly.

{Dictated to the Judgment writer, transcribed by her, corrected and then pronounced by me in open court this 31st day of July, 2015.} (S.V.Kulkarni) XI Addl.City Civil Judge Bangalore city.

ANNEXURE List of witnesses examined for plaintiff:-

P.W.1 K.R. Jayamma

P.W.2 K.H. Thayappa

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List of documents exhibited for plaintiff:-

Ex.P.1 Memorandum of understanding  
Ex.P.1(a) Signature of respondent  
Ex.P.1(b) Signature of plaintiff  
Ex.P.1(c) Signature of plaintiff No.2  
Ex.P.1(d) Sketch  
Ex.P.2 Legal notice  
Ex.P.3 M.R.extract  
Ex.P.4-6 RTC  
Ex.P.7,8 RTC  
Ex.P.9 Copy of passbook  
Ex.P.10 Sketch  
Ex.P.11 Copy of plaint in O.S.1660/12

List of witnesses examined for defendant:

D.W.1 K.R.Somashekar List of documents exhibited for plaintiff:-

Ex.D.1 Original sale deed  
Ex.D.2 M.R.extract  
Ex.D.3 Reply notice  
Ex.D.4 Postal receipt  
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Ex.D.5 Postal acknowledgment

XI ADDL.CITY CIVIL JUDGE,  
BANGALORE CITY