

## Sri.C.Shiva Shankar vs Smt.K.Savitri on 28 July, 2022

KABC010146442006

IN THE COURT OF THE XI ADDL. CITY CIVIL & SESSIONS JUDGE,  
BENGALURU CITY (CCH-8)

PRESENT

SRI SANTHOSHKUMAR SHETTY N., B.Com., LL.M.  
XI Addl. City Civil & Sessions Judge,  
Bengaluru City.

DATED THIS THE 28 th DAY OF JULY, 2022

O.S.No. 7173/2006

Plaintiff:- Sri.C.Shiva Shankar,  
Aged about 46 years,  
S/o.late C.T.Naidu,  
No.1017, Dr.Rajkumar Road,  
Rajajinagar,  
Bangalore - 560 010.

(By Adv. Sri.K.Suman)  
V/s

Defendant:- Smt.K.Savitri,  
Aged about 36 years,  
W/o.Sri.P.Yuvaraja,  
Residing at No.61,

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O.S.No.7173/2006

Sai-Babanagar,  
3rd Cross, Srirampuram Post,  
Bangalore - 560 021.

(By Adv. Sri.Venkataswami Gowda)

Date of institution of the suit	:	09.08.2006
Nature of the suit	:	Specific Performance of Contract
Date of commencement of	:	27.10.2009

Recording of the evidence				
Date on which the Judgment was pronounced	:	28.07.2022		
Total Duration	:	Years	Months	Days
		15	11	19

XI ADDL., CITY CIVIL & SESSIONS JUDGE,  
BENGALURU CITY.

### JUDGMENT

This is a suit filed by the plaintiff for the relief of specific performance of contract to direct the defendant to execute the Registered Sale Deed in his favour in respect of the suit schedule property by receiving the balance sale consideration of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) and delivery of vacant possession of the same. In case, the defendant fails to do so, to get the Sale Deed in his favour through the process of the court and for the cost of suit.

2. The brief facts of the case of the plaintiff is that, the defendant is the absolute owner of the residential house property bearing Municipal No.19/1, Old Municipal No.99, Ward No.25, situated at 4th Cross, Sai-Babanagar, Bengaluru, measuring East to West: 15 feet and North to South:40 feet. The defendant had purchased the suit schedule property through a Registered Sale Deed dated 20.04.1995 and khatha stood in her name. The defendant along with her husband and another wife of her husband by name Smt.Y.Amudha, have borrowed some amount from the Federal Bank Limited, Rajajinagar, Bangalore. When they could not repay the loan, the bank initiated proceedings against them under Securitisation Act for recovery of the loan amount. Hence, the husband of the defendant along with his wives approached the plaintiff by offering to sell the entire property for total sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only). The plaintiff being interested in purchasing a residential house for his own had accepted the offer. The defendant and aforesaid Smt.Y.Amudha, both executed two separate Sale Agreements in favour of the plaintiff on 20.12.2003 by agreeing to sell the suit schedule property and other portion of the suit schedule property. As on the date of the Sale Agreement, the plaintiff has paid the sum of Rs.8,00,000/- (Rupees Eight Lakhs only) to the defendant as advance. Utilising the said amount, the defendant along with her husband and another wife of her husband by name Smt.Y.Amudha have cleared the loan at Federal Bank. Even though, the plaintiff was ever ready and willing to perform his part of the contract and to pay the balance sale consideration of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only), the defendant went on evading to perform her part of the contract. Hence, the plaintiff got issued a legal notice on 25.07.2005 to the defendant as well as Smt.Y.Amudha, expressing his readiness and willingness to pay the balance sale consideration and to get the Sale Deed in his name and requested them to fix the date for execution of the Sale Deed. The notice sent to the defendant was returned with an endorsement that, 'Intimation delivered. Not claimed'. However, the notice issued under Certificate of Posting was received by the defendant. On 12.08.2005, the defendant issued an untenable reply. In the reply notice, the defendant has admitted that she along with Smt.Y.Amudha have borrowed certain some of money from the Federal Bank. But taken strange contention that,

they have borrowed the loan from the plaintiff to clear the loan at Federal Bank. But all those contentions are false. The defendant has no intention to complete the sale transaction and she has set up untenable contention only to wriggle out her obligations. Hence, the plaintiff was constrained to file this suit.

3. In response to the suit summons, the defendant appeared through her counsel and filed her written statement and admitted that, she is the owner of the suit schedule property.

Further admitted that, the second wife of her husband Smt.Amudha is the owner of other portion of suit schedule property, situated on the Western side. It is also admitted that, she along with Smt.Amudha obtained loan from Federal Bank for the purpose of construction of residential house and the plaintiff was the co-obligant for the said loan. Since the bank initiated proceedings against them under Securitisation Act, her husband raised hand loan of Rs.2,00,000/- (Rupees Two Lakhs only) from his friend by name Govindraj and another sum of Rs.2,00,000/- (Rupees Two Lakhs only) from his uncle by name Kasi Viswanathan. Further, the defendant and Smt.Amudha along with her husband jointly obtained the loan of Rs.3,00,000/- (Rupees Three Lakhs only) from the plaintiff in the month of January, 2004. The said loan was an interest free loan. In fact, the plaintiff has given handwritten chit in that regard. The defendant had absolutely no intention or necessity to sell the suit schedule property. The said compact building is the only residential dwelling for this defendant. As the plaintiff and her husband were friends and both are doing real estate business, they have taken the sum of Rs.3,00,000/- (Rupees Three Lakhs only) as handloan from the plaintiff. The plaintiff has created the suit documents with an ulterior motive to knock off the suit schedule property. Hence, amongst other grounds, she prayed for dismissal of the suit with exemplary costs.

4. On the basis of the pleadings of the parties, my predecessor-in-office has framed the following issues for determination:-

#### ISSUES

1. Whether the plaintiff prove that the defendant has agreed to sell the schedule property for total sale consideration of Rs.12,50,000/- and executed an agreement of sale dated 20.12.2003 and received the advance amount of Rs.8,00,000/-?
2. Whether the defendant proves that while availing the loan from the plaintiff he has obtained signatures on the blank stamp papers and forged and fabricated the alleged suit agreement?
3. Whether the plaintiff proves that he has been always ready and willing to perform his part of the contract?
4. Whether the plaintiff is entitled the relief of Specific Performance of contract?
5. What Order or Decree?

5. After settlement of issues, the plaintiff and two witnesses by name Jayaram S and V.Shivakumar have entered into the witness box as PWs.1 to 3 and Ex.P.1 to Ex.P.14 were marked through them and closed their side. On behalf of the defendant, her husband and Special Power of Attorney holder has entered into the witness box as DW-1 and Ex.D.1 to Ex.D.4 were marked through him and closed her side.

6. Heard the arguments of learned counsel for the plaintiff and defendant. The learned counsel for defendant also filed his written arguments.

7. My findings on the above issues are as under:-

Issue No.1:	In the affirmative.
Issue No.2:	In the negative.
Issue No.3:	In the affirmative.
Issue No.4:	Partly in the affirmative.
Issue No.5:	As per final order for the following:

#### REASONS

8. Issues No.1 to 3:- Since all these Issues are interconnected, taken up together for discussion to avoid repetition. Before looking into the points in controversy, first of all, it is necessary to notice some of the undisputed facts. The defendant is the owner of the suit schedule property i.e., residential house property bearing Municipal No.19/1, Old Municipal No.99, measuring East to West: 15 feet and North to South: 40 feet, situated at 4th Cross, Sai Babanagar, Bangalore. It is also an admitted fact that, the Western portion of the suit schedule property is also measuring East to West: 15 feet and North to South: 40 feet and it is a compact block. The plaintiff herein also instituted the suit in respect of the other portion of the suit schedule property against another wife of defendant's husband. It is also not in dispute that, the defendant along with her husband and another wife of her husband, obtained loan from the Federal Bank, Rajajinagar, Bangalore and the plaintiff was the co-obligant for the said loan. Since they failed to repay the loan, the bank initiated the proceeding against them under Securitisation Act and for the purpose of repayment of bank loan, the defendant and the second wife of her husband obtained loan from the plaintiff and repaid the said bank loan.

9. According to the plaintiff, when the defendant and another wife of her husband failed to repay the bank loan, they themselves offered to sell the entire property for the total sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only). Since there are two separate Sale Deeds in the name of the defendant and another wife of her husband, both have executed two separate Sale Agreements in favour of the plaintiff by agreeing to sell the entire portion of the property for the total sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) and received Rs.8,00,000/- (Rupees Eight Lakhs only) each as earnest money.

10. In support of his contention, the plaintiff has relied upon the oral testimony of himself and the evidence of two independent witnesses. PW.3 - V.Shivakumar is none other than the brother- in-law of the plaintiff. In their oral evidence, PWs.1 to 3 have reiterated the case set up by the plaintiff. The documents marked on behalf of the plaintiff at Ex.P.1 is the Sale Agreement dated 20.12.2003, said to have been executed by the defendant in respect of the suit schedule property. Ex.P.2 is the office copy of the Legal Notice. Ex.P.3 and P.4 are the Postal Receipts. Ex.P.5 is the Unserved Postal Cover. Ex.P.6 is the Reply Notice. Ex.P.7 to P.13 are the certified copies of Bank Statements of the plaintiff at Federal Bank Limited, Rajajinagar, Bangalore. Ex.P.14 is the certified copy of Cash Certificate in the name of the plaintiff, to show that he was having substantial sum of money to pay the balance sale consideration.

11. Looking to the cross-examination of PW-1, he has clearly admitted that, the husband of the defendant was his friend and they were business Partners. Further admitted that, he was surety for the mortgage loan availed by the defendant and her husband at Federal Bank. However, he denied that the suit transaction was a money transaction and the defendant and her husband had obtained Rs.3,00,000/- (Rupees Three Lakhs only) as interest free loan. Further, he denied the other suggestions put to him. PW.2-Jayaram S. deposed that he was present at the time of execution of the Sale Agreement and he put his signature on it as a witness . PW.3 - V.Shivakumar in his cross-examination has admitted that the plaintiff is his brother-in-law. He deposed that he put his signature on the Sale Agreement as a witness.

12. According to the defendant, she along with her husband and another wife of her husband, have taken the sum of Rs.3,00,000/- (Rupees Three Lakhs only) from the plaintiff as interest fee loan to discharge the dues of the Federal Bank. But the plaintiff has obtained their signatures on the blank stamp papers and thereafter got created the suit documents. As such, incidentally the onus is also casted upon the defendant to prove Issue No.2.

13. To substantiate her contention, the defendant has relied by upon oral evidence of her husband. Further, she relied upon Ex.D.1 to D.4. Ex.D.1 is the Special Power of Attorney executed in favour of her husband to appear in this suit and to adduce evidence. Ex.D.2 is the small Note Book of the defendant. According to her, in Ex.D.2 there is an entry regarding hand loan of Rs.3,00,000/- (Rupees Three Lakhs only) borrowed from the plaintiff. Ex.D.3 and D.4 are the Cheque Books relating to the defendant and another wife of her husband by name Smt.Amudha.

14. The Special Power of Attorney holder of the defendant in his examination-in-chief has reiterated the stand taken by the defendant in her written statement. During cross-examination he has admitted that, he availed loan from the Federal Bank. Further admitted that, there are two separate Sale Deeds in the name of his two wives in respect of the suit schedule property and other portion of the suit schedule property. According to him, he spent 40-50 lakhs for construction of house in the suit schedule property and the other portion of the suit schedule property. Further he admitted his signature and signatures of defendant on the suit documents. He also admitted that, as per recitals of Ex.P.1, 30 months time was given to complete the sale transaction.

15. Placing reliance on both oral and documentary evidence, the learned counsel for the plaintiff has vehemently argued that, as there was tenant in the suit schedule property, 30 months time was fixed to complete the sale transaction. But the plaintiff was ever ready and willing to perform his part of the contract. As the intention of the defendant was to sell the suit schedule property for the total sale consideration of Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand only), she executed the Sale Agreement in his favour and the original documents have been handed over to him at the time of the Sale Agreement. But the defendant herself has not entered into the witness box. On the contrary, her Special Power of Attorney holder gave his evidence as DW-1. Even though PWs.1 to 3 have been cross-examined, nothing worth has been elicited from their mouth to disbelieve the case of the plaintiff. Further argued that, even if, the amount given by the plaintiff was hand loan as contended by the defendant, certainly she would make the counter claim to get back those documents. But no such relief has been claimed in this suit. Further, he invited the attention of the court on certain admissions given by DW-1. It is not in dispute that, the plaintiff and the husband of the defendant were business Partners. But same is nothing to do with the suit transaction.

Further argued that, Ex.D.2 is the self serving entry and it does not come to the aid of the defendant. Further argued that, the entry forthcoming in Ex.P.7 is in respect of some other transaction. Even if, the transaction was money transaction, there was no impediment to the defendant to lodge a complaint against the plaintiff. As her intention was to sell the suit schedule property in favour of the plaintiff and it was a genuine transaction, she kept quiet for all these years. Further argued that, in Ex.P.1 there is a recital with regard to handing over of original documents in favour of the plaintiff. DW-1 in his oral evidence has clearly admitted that, only after going through the document and knowing the contents of the same, he and his wives used to put their signatures. All these facts makes it clear that, the defence now set up by the defendant is incorrect.

16. In support of his arguments, the learned counsel for the plaintiff has relied on the decision of the Apex Court reported in (2002) 5 SCC 481; Nirmala Anand Vs. Advent Corporation Pvt. Ltd. and others. At Para No.39 of the said decision, it was held as under:

" It is well-settled that in cases of contract for sale of immovable property the grant of relief of specific performance is a rule and its refusal an exception based on valid and cogent grounds. Further, the defendant cannot take advantage of his own wrong and then plead the decree for specific performance would be an unfair advantage to the plaintiff."

17. Further, he relied on the decision of the Hon'ble Supreme Court in the case of B.Santoshamma and others Vs. D.Sarala and others, reported in 2020 (4) CCC 51 . At para No.70, 87 and 88 of the said decision, it was held as under:

"70. After the amendment of Section 10 of the S.R.A., the words " specific performance of any contract may, in the discretion of the Court, be enforced" have been substituted with the words "specific performance of a contract shall be enforced subject to ....". The Court is, now obliged to enforce the specific performance of a contract, subject to the provisions of Sub-section (2) of Section 11, Section 14 and

Section 16 of the S.R.A. Relief of specific performance of a contract is no longer discretionary, after the amendment."

"87. Section 12 of the SRA is to be construed and interpreted in a purposive and meaningful manner to empower the Court to direct specific performance by the defaulting party, of so much of the contract, as can be performed, in a case like this. To hold otherwise would permit a party to a contract for sale of land, to deliberately frustrate the entire contract by transferring a part of the suit property and creating third party interests over the same."

"88. Section 12 has to be construed in a liberal, purposive manner that is fair and promotes justice. A contractee who frustrates a contract deliberately by his own wrongful acts cannot be permitted to escape scot free."

18. Refuting each and every contentions taken by the plaintiff, the learned counsel for the defendant has vehemently argued that, the husband of the defendant and plaintiff were business Partners and the plaintiff was the co-obligant to the loan borrowed by the defendant and when she failed to discharge the loan, she obtained loan of Rs.3,00,000/- (Rupees Three Lakhs only) from the plaintiff and it was an interest free loan. That apart, they have taken hand loan of Rs.2,00,000/- (Rupees Two Lakhs only) each from two other persons. Ex.P.7 is the Bank Statement of the plaintiff, wherein there is an entry with respect to payment of Rs.1,00,000/- (Rupees One Lakh only) by way of money transfer from the account of the defendant and the second wife of her husband. Relying on the said entry he has canvassed before the court that, as the transaction was money transaction, the defendant and another wife of her husband together have paid the aforesaid sum of money to the plaintiff. Otherwise, there was no occasion to them to make such payments. That itself shows that the story set up by the plaintiff is concocted. Further argued that, the alleged payment of Rs.8,00,000/- (Rupees Eight Lakhs only) as earnest money is totally incorrect. Even if, such payment was made, certainly it would find place in the IT returns of the plaintiff. But the plaintiff did not produce any piece of paper with respect to his IT returns for the said period. Further, in his written arguments the learned counsel for the defendant has reiterated all those contentions.

19 . One of the contentions taken by the learned counsel for plaintiff is that, the defendant did not enter into the witness box to put forth her case and her agent examined in this case is not a competent witness to speak the truth before the court. Refuting the said contention, the learned counsel for the defendant argued that, DW-1 examined in this case is none other than the husband of the defendant. As he was the business Partner of the plaintiff, he is the better witness than the defendant. In support of the said contention, he relied on the decision reported in AIR 2011 SC 3234; Mrs.Saradamani Kandappan v. Mrs.S.Rajalakshmi and others. At para No.47, their lordships have held as under:

"Where the entire transaction has been conducted through a particular agent or representative, the principal has to examine that agent to prove the transaction; and that where the principal at no point of time had personally handled or dealt with or participated in the transaction and has no personal knowledge of the transaction, and

where the entire transaction has been handled by the agent, necessarily the agent alone can give evidence in regard to the transaction."

20. The other contention taken by the learned counsel for the defendant is that, the plaintiff was never ready and willing to perform his part of alleged contract. Since the Sale Agreement itself was denied and in the absence of readiness and willingness, the plaintiff is not entitled for any relief. In support of the said contention, he relied on the decision of Allahabad High Court, reported in AIR 1985 Allahabad 223; Bajai Bahadur and others v. Shri Shiv Kumar and another. At para No.6 of the said decision, it was held as under:

"The compliance of the requirements of S.16(c) of the Specific Relief Act is mandatory in nature and in the absence of necessary averments in this respect in the plaint even in the presence of proof that the plaintiff had been ready and willing to perform his part of the contract, the plaintiff cannot hope to succeed in his suit. Even where there is a complete absence of a plea in defence on this point, it is the duty of the Court to feel satisfied on these twin mandatory requirements of law. Thus, mere proof of readiness and willingness where the essential ingredients are absent in the pleadings must be deemed to be an exercise in vain. Proof of such cases cannot be regarded as substitute for averments which were absent in the pleadings."

21. The learned counsel for the defendant further argued that, the relief of specific performance of contract is a discretionary relief. But in the instant case, the alleged Sale Agreement has not been proved by placing satisfactory evidence. Such being the case, the plaintiff is not entitled for the relief. Further argued that, even if the intention of the party was to alienate the property in favour of the plaintiff, there was no impediment to the plaintiff to get one Agreement instead of two as the property is one compact block. In support of said contention, he relied on the decision reported in (1994) 4 SCC 18; Sardar Singh v. Smt.Krishna Devi and another. In the said decision, it was held as under:

"Grant of decree for specific performance discretionary - Exercise of discretion whether justified on facts - Regard to equity and justice - Arbitrator awarding that appellant and his brother entitled to half share in a house - Property mutated in the joint name of the two brothers and both in possession and enjoyment of the house - Subsequently agreement of sale of the entire house entered into by appellant's brother with respondent, a neighbour - Held, courts below erred in exercising discretion of granting decree for specific performance of the agreement of sale of the entire house - Respondent should have made enquiries before entering into the agreement - However, having regard to the equity and justice, partial enforcement of the contract may be granted."

22. In this background, I have carefully gone through the pleadings of the parties, their evidence before the court, both oral and documentary, as well as the law laid down in the aforesaid decisions. In the instant suit, the definite case of the plaintiff is that, two wives of DW-1 got their properties separately under two different Sale Deeds and both of them executed the Sale Agreements in his



favour, separately. Both properties are having separate khatha. Hence he cannot seek relief in one suit. Such being the case, the law laid down by the Hon'ble Supreme Court in the case of Sardar Singh v. Smt.Krishna Devi and another cited above relied by the learned counsel for the defendant does not come in the way of this case on hand.

23. Regarding his readiness and willingness, the specific contentions of the plaintiff is that, the total sale consideration is Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand only) and he paid Rs.8,00,000/- (Rupees Eight Lakhs only) on the date of the Sale Agreement, as advance. Further, he was ever ready to pay the balance sale consideration on the date of execution of the Sale Deed and to get the Sale Deed in his favour. As there were tenants in the suit schedule premises, 30 months time was fixed to get the full fledged Sale Deed. That apart, to show his financial capacity to pay the balance sale consideration, the plaintiff has produced the certified copies of his Bank Statements marked at Ex.P.7 to P.13. This being the state of affair, the decision relied by the learned counsel for the defendant in the case of Bajai Bahadur and others v. Shri Shiv Kumar and another cited above does not come to the aid of the defendant.

24. In the case of B.Santoshamma and others Vs. D.Sarala and others relied by the learned counsel for the plaintiff it was held that, by virtue of amendment of Section 10 of the Specific Relief Act, the relief of specific performance of contract is no more discretionary relief and the court is obliged to enforce the specific performance of contract. But it is not in dispute that, the Specific Relief Act came to be amended in the year 2018 and from that day onwards, the Amendment Act came into force. But in the instant case, the alleged Sale Agreement came to be executed in the year 2003. Hence the amended provisions would not come in the way of this suit. As such, the relief claimed in the suit is still continued as discretionary.

25. As stated earlier, the defendant has not at all denied her signatures on the suit documents. Even DW-1 in his cross- examination has clearly admitted the signature of himself and his wife on the suit document marked at Ex.P.1. The only defence is that, as a security for the hand loan, the plaintiff took their signatures on blank stamp papers. But looking to the Sale Agreement marked at Ex.P.1, no reason to hold that, the Agreement in question was created on signed blank stamp papers. Added to that, DW-1 in the course of his cross-examination has clearly admitted that, he and his wife used to put their signatures on the document only after knowing the contents of the same. Further has admitted that, DW-1 was a business Partner to the plaintiff. As such, looking to his background, no reason to hold that, DW-1 and his wife put their signatures on blank stamp papers and handed over the same to the plaintiff and thereby, the plaintiff got created the Sale Agreement. Hence, the preponderance of evidence is in favour of the plaintiff to hold that, the defendant herself has executed the Sale Agreement in favour of the plaintiff. With these observations, Issues No.1 and 3 are answered in the affirmative and Issue No.2 in the negative.

26. Issue No.4:- While answering the aforementioned issues, this court has come to the conclusion that, the defendant has executed the Sale Agreement in favour of the plaintiff in respect of the suit schedule property. Further held that, plaintiff was ever ready and willing to perform his part of the contract. It is also held that, as the Sale Agreement came to be executed much prior to the amendment of Specific Relief Act, the relief one claimed in this suit is discretionary.

27. Looking to the documents relied by the plaintiff, except the documents at Ex.P.1 to P.14, nothing is placed before the court to show that, as on the date of the suit, the khatha in respect of the suit schedule property was standing in the name of the defendant. As per the provisions contained under Section 132 of the Karnataka Land Revenue Act, when the suit is filed in respect of an immovable property, the plaintiff is required to produce the property extract with respect to the subject-matter of the suit. Since the property is situated within the limits of BBMP, the provisions of Karnataka Land Revenue Act cannot be applied in its strict sense. But, the intent and object of the said provision is squarely applicable to the case in hand. For the reasons best known to the plaintiff, he has not produced any piece of paper to show that, as on the date of the suit, the suit schedule property was in the name of the defendant. Since the defendant has not denied her right, title and interest over the suit schedule property, the court can infer that, as on the date of the suit and till today, the suit schedule property is continued in the name of the defendant.

28. Admittedly, the suit schedule property is situated within the limits of BBMP. The suit schedule property referred herein and other portion of the property, which is the subject-matter in O.S.No.7174/2006, are totally measuring 30 x 40 feet. The defendant in the said case is none other than wife of DW-1 herein. It is an admitted fact that, the suit schedule property consisting of multi-storied building. The said fact is forthcoming in the cross-examination of DW-1 and his version has not been denied by the plaintiff. Further, DW-1 in the course of cross-examination deposed that, they have spent in all Rs.40-50 lakhs for construction of the building in the suit schedule property and for the said purpose they have taken loan from the Federal Bank. It is also not in dispute that, the plaintiff is the co-obligant to the said loan and when the defendant and the second wife of her husband failed to repay their loans, the bank initiated proceedings against them under Securitisation Act. The manner in which they executed the Sale Agreement in favour of the plaintiff gives strong inference that, in a compelling situation, they were forced to execute the Sale Agreements in favour of the plaintiff by agreeing to sell their property for total sale consideration of Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand only) each. In the cross-examination of DW-1 it is forthcoming that, he married defendant herein in the year 1982 and in the said wedlock, he is having 3 daughters and in the year 1992, he married second wife, who is defendant in other suit and in the said wedlock, he is having a son. Further deposed that, except the suit schedule property they are not having any other property for their dwelling.

29. As the defendant and her husband are having worldly knowledge, this court is of firm opinion that, no reason to deny the relief of specific performance of contract in favour of the plaintiff. However, the court is bound to look into the other compelling circumstances. As the suit schedule property is within the limits of BBMP, there are reasons to believe that, the value of the suit schedule property has been increased multiple times than the one referred in the Sale Agreement. Looking to the pathetic condition of the defendant and her family, the court is required to look into the point of equity. Otherwise, it would give scope for unjust enrichment in favour of plaintiff. At this stage, I have gone through the law laid down by the Apex Court in the decision reported in AIR 2000 SC 3106; Gobind Ram v. Gian Chand. In the said decision, it was held as under:

"Escalation of price during the period may be a relevant consideration under certain circumstances for either refusing to grant the decree of specific performance or for

decreeing the specific performance with a direction to the plaintiff to pay an additional amount to the defendant and compensate him. It would depend on the facts and circumstances of each case."

30. In the reported decision the vendor, who was appellant had agreed to sell the disputed property situated at Lajpat Nagar IV, New Delhi, for a consideration of Rs.16,000/- to the vendee, who was the respondent. On 24.01.1973, a sum of Rs.1,000/- was paid as earnest money. As the appellant did not execute the sale deed in spite of the time granted, the respondent filed the suit for specific performance of the contract which was decreed. Immediately, on the decree of the suit the respondent deposited a sum of Rs.15,000/- in the trial Court. The vendee filed appeal in the High Court which was dismissed. However, to mitigate the hardship to the appellant and as the respondent agreed to pay more sum, the High Court directed the respondent to deposit a further sum of Rs.1,00,000/- which was to be released to the vendor on giving possession of the suit property. The said sum was also deposited in the Registry of the High Court. The vendor came up in an appeal before Supreme Court by way of Special Leave Petition. Senior counsel who appeared for the vendor offered to pay a sum of Rs.1,16,000/- to the vendee to cancel the contract and get out the decree. The vendee after his appearance before Hon'ble Supreme Court offered another sum of Rs.50,000/- so as to make the total consideration of Rs.1,50,000/-. Supreme Court came to the conclusion that the vendor was trying to wriggle out of the contract due to escalation in prices of real estate properties and therefore under circumstances the vendor is entitled to get a decree as he had not taken any undue or unfair advantage over the appellant. On a concession made the vendor was directed to deposit a further sum of Rs.3 lakhs.

31. In my considered view, the law laid down in the aforesaid decision is squarely applicable to the case in hand. As such, this court can also mould the relief. Considering the escalation of price and as the property is situated in a prime locality, to do complete justice to the parties, it is just and proper to direct the plaintiff to pay an additional sum of Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty Thousand only) to the defendant to get the Sale Deed in his favour. With these observations, Issue No.4 is answered partly in the affirmative.

32. Issue No.5:- In view of the above discussions,I proceed to pass the following:-

ORDER The suit of the plaintiff is partly decreed as under:

As observed in the body of judgment, the plaintiff shall deposit the sum of Rs.17,00,000/- (Rupees Seventeen Lakhs only) in the office within 15 days, from the date of this order.

The defendant is hereby directed to execute the Regular Sale Deed in favour of the plaintiff within 45 days from the date of deposit of Rs.17,00,000/- (Rupees Seventeen Lakhs only).

In case, the defendant fails to execute the Registered Sale Deed in favour of the plaintiff within the stipulated time, the plaintiff is at liberty to get the Sale Deed in his

favour through the process of the court.

No order as to cost.

Draw decree accordingly.

(Dictated to the Judgment Writer, typed by her, the transcript thereof corrected and then pronounced by me, in the open court, this the 28th day of July, 2022) (SANTHOSHKUMAR SHETTY N.) XI ADDL., CITY CIVIL & SESSIONS JUDGE BENGALURU CITY.

ANNEXURE List of witnesses examined for plaintiff:

PW.1 -	Sri.C.Shiva Shankar
PW.2 -	Sri.Jayaram S.
PW.3 -	Sri.V.Shiva Kumar

List of documents exhibited for plaintiff:

Ex.P. 1	:	Sale Agreement dated 20.12.2003
Ex.P.1(a)	:	Signature of Defendant
Ex.P.1(b)	:	Signature of PW-1
Ex.P.1(c)	:	Signature of the husband of Defendant
Ex.P.2	:	Copy of Legal Notice
Ex.P.3	:	Postal Receipt
Ex.P.4	:	Receipt under Certificate of Posting

Ex.P.5	:	Unserved Postal Cover
Ex.P.6	:	Reply Notice dated 12.08.2005
Ex.P.7 to 13:		Certified copies of Bank Account Statement
Ex.P.14	:	Certified copy of Cash Certificate

List of witnesses examined for defendant :

DW.1 -	Sri.P.Yuvaraj
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List of documents exhibited for defendant:

Ex.D.1	:	Special Power of Attorney
Ex.D.2	:	Hand Written Diary
Ex.D.3 & 4	:	Two Cheque Books

XI ADDL., CITY CIVIL & SESSIONS JUDGE  
BENGALURU CITY.