

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2019

PRONOUNCED ON : 08.01.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Civil Suit No.941 of 2010

M.Balaji

...

Plaintiff

Vs

1.Perim Janardhana Rao

2.M/s.JAY AR Enterprises,
Rep. By its Partner,
Perim Janardhana Rao,
No.7, N.S.Krishnan Street,
Eswaran Nagar, Pammal,
Chennai – 600 075.

3.Perim Janardhana Rao

4.K.Rajendra Reddy

...

Defendants

Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules r/w Order VII Rule 1 of C.P.C., for *directing the defendants jointly and severally to pay a sum of Rs.1,21,66,000/- to the plaintiff along with interest @ 18% per annum on the principal sum of Rs.79,00,000/- from date of plaint till realization and to pay the cost of the suit.*

For Plaintiff	:Mr.Sarath Chandran for Mr.S.V.Kirubanandam
For Defendants	:Mr.V.Balasubramanian

JUDGMENT

The plaint averment in brief:-

Mr.M.Balaji, the plaintiff herein is a businessman in real estate since 2004. He had entered into agreement with land owners in and around Bangalore advancing money to them. The first defendant a businessman dealing with leather products at Chennai in the name of M/s.JAY AR Enterprises, a partnership firm approached the plaintiff expressing his interest in purchasing those properties. On 09.09.2004, the first defendant purchased 50% interest in three acres of land in S.No.1, Giddanahalli Village, Anekal Taluk, Bangalore Rural District through the plaintiff and gained his trust. Subsequently, the first defendant expressed his interest to purchase 5 acres 22 ½ guntas of agricultural land in Bidaraguppe Village at Sarjapur Main Road, Anekal Taluk, Bangalore Rural District, in which, the plaintiff had already acquired interest. The sale price for the said land was finalised @ Rs.46 lakhs per acre with condition that the plaintiff should get permission for converting the usage of the said land from agricultural to non

agricultural purpose. The plaintiff spent huge money for the said conversion and also spent heavily on settling the Court dispute among the land owners.

2. Thereafter, the plaintiff arranged for the sale deeds being executed directly in the name of the first defendant. The plaintiff believing the first defendant paid the sale consideration to the land owners from out of his personal fund. The plaintiff by issuing post dated cheques got three sale deeds dated 19.03.2005 and one sale deed dated 11.04.2005 registered in the name of the first defendant directly. Based on the resolution passed by the second defendant firm cheque of the partnership firm was issued by the first defendant to purchase the above said land in his personal name. In the said transaction, the first defendant is liable to pay Rs.2,56,00,000/- whereas, he paid only a sum of Rs.1,77,00,000/- and the balance sum of Rs.79,00,000/- was due and payable by the plaintiff.

3. The entire transaction on behalf of the first defendant was done through his Power Agent Krishnamurthy. When the plaintiff demanded the balance of Rs.79,00,000/-, Krishnamurthy the Power Agent of the first defendant executed a letter of acknowledgment dated 15.04.2006 in favour of the plaintiff. Subsequently, the first defendant issued a cheque from the Bank account maintained by the second defendant for a sum of

Rs.79,00,000/- dated 30.10.2007 drawn on ABN AMRO Bank, Haddows Road Branch, Chennai. On 15.04.2008, the plaintiff presented the cheque for collection. The same was dishonoured with endorsement "Insufficient fund". Notice was issued to the first defendant calling upon him to pay the dues covered under the said cheque. Denying the liability, the first defendant sent a reply dated 30.05.2008. Therefore, the plaintiff has initiated proceedings under section 138 of the Negotiable Instruments Act to prosecute the first defendant before the XVI Additional Chief Metropolitan Magistrate, Bangalore, in C.C.No.19342 of 2008 and the same is pending.

4.Thus, the plaintiff is entitle to receive a sum of Rs 79,00,000/- with interest at the rate of 18% pa. Hence the suit for recovery of Rs 1,21,66,000/- with interest at the rate of 18% from the date of suit till the date of recovery on the principle sum of Rs. 79,00,000/-.

5.The Written statement averment in brief:-

The defendants deny the plaint averments in toto. According to them, the suit claim is barred by limitation since, the alleged cause of action took place between 19.03.2005 and 11.04.2005. The cheque dated 30.10.2007 is not a fresh promise to pay a time barred debt and it will not give a

supporting point for limitation. V.Krishnamurthy who was the erstwhile Power Agent and employee under the first defendant has stolen the cheque leaf from the first defendant. On the criminal complaint initiated against the plaintiff and Krishnamurthy before Central Crime Branch, Chennai, they were arrested and remanded to judicial custody. The said criminal case is pending before the Judicial Magistrate, Poonamallee. Further, the defendants had already instituted suit before the Civil Court at Tirupathi against Krishnamurthy and the plaintiff for surreptitiously withdrawing the defendants' money for purchase of property at Tirupathi in the name of the plaintiff. The alleged letter of acknowledgment dated 15.04.2006 executed by Krishnamurthy cannot be the basis for any claim against the defendants in the absence of any proof of money payable by the defendants.

6.The criminal case initiated under the Negotiable Instruments Act against the first defendant though initially ended in conviction before the trial court, the judgment of the trial Court was later reversed in the appeal by the Appellate Court and therefore, there is no enforceable debt against the defendants. The plaintiff along with Krishnamurthy who is the estranged employee of the first defendant had illegally withdrawn lakhs of rupees from the first defendant. There is no document to show that the plaintiff had interest in 5 acres 22 ½ guntas of agriculture land in Bidaraguppe Village at

Sarjapur Main Road, Anekal Taluk, Bangalore Rural District and he spent heavily towards conversion of the said agricultural land into non agricultural land. Further, the allegation of fixing the price of the land @ 46 lakhs per acre is not true. The claim of the plaintiff is false and is not entitled for any interest as claimed.

7. Based on the above averments, the following issues were framed by this Court on 18.09.2014:-

"1. Whether the plaintiff is entitled to recover a sum of Rs.1,21,66,000/- from the defendants along with interest at 18% p.a on the principal sum of Rs.79,00,000/- from the date of plaint ?

2. Whether the suit claim is sustainable on speculation as the plaintiff is a speculator and middle man in real estate business ?

3. Whether the suit is barred by limitation ?

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

5. Whether the dishonoured cheque will give raise to

a cause of action without any specific promise to pay a time barred debt under Section 25 (3) of Indian Contract Act ?

6.Whether the suit claim is sustainable in view of the provision of Section 139 of Negotiable Instruments Act and whether the presumption contemplated under section 139 is sufficient to prove the claim in the suit without any acceptable evidence to show that the defendants owe the suit claim to the plaintiff ?

7.Whether the claim of the plaintiff is proved beyond reasonable doubt in the absence of any legally enforceable claim to sustain in the suit ?

8.To what other reliefs, the parties are entitled to?"

8.To substantiate their respective claim, the plaintiff and the defendants have examined one witness each. On behalf of the plaintiff, 69 documents were marked as Exs.P.1 to P.69. On behalf of the defendants, 21 documents were marked as Exs.D.1 to D.21.

9.The plaintiff, M.Balaji was examined as P.W.1. According to him, the first defendant is the partner of second defendant firm. Defendants 3 and 4 are the other partners. The first defendant approached him for purchase of

5 acres 22 guntas of land at Bangalore in which, the plaintiff had acquired interest and right by entering into agreement with the land owners. Though initially, he was not interested to the proposal of the first defendant to sell the lands to the defendant later, agreed for it, on the specific understanding that the plaintiff will be paid Rs.46 lakhs per acre. Accordingly, he acted upon investing his money by advancing sale consideration and for other expenses to get conversion of land usage, settle the litigation between the land owners. He facilitated the first defendant to purchase of the properties and get it registered in the name of the first defendant directly.

10. According to the plaintiff, he entered into a sale agreement with one B.Chennakesava on 05.11.2004 who is the absolute owner of 7 ½ guntas of land situated at Bidaraguppe Village at Sarjapur Main Road, Anekal Taluk, Bangalore Rural District. In the said agreement, B.Chennakesava for himself and on behalf of the adjoining land owners falling under S.Nos.269, 270 and 279 at Bidaraguppe Village at Sarjapur Main Road, Anekal Taluk, Bangalore Rural District agreed to sell the land @ Rs.41 lakhs per acre and executed the sale agreement marked as Ex P-3. In the said agreement for sale between the plaintiff and B.Chennakesava, the parties have agreed for transfer of 5 acres 22 ½ guntas land for a sale consideration of Rs 41 lakhs per acre. The plaintiff has advanced a sum of

Rs.1,00,000/- to B.Chennakesava. The plaintiff contends that he invested his money for conversion of the said land into non agricultural land and to settle the dispute between the land owners. He arranged for execution of the sale deeds by the respective land owners directly in the name of the first defendant showing the guide line value of the properties which was far below the agreed value. The land owners accordingly, executed four sale deeds which were marked as Exs.P.5 to P.8 respectively. The sale consideration agreed by the first defendant for the said land was Rs.2,56,00,000/- whereas, he paid only Rs.1,77,00,000/-. For the balance sum of Rs.79,00,000/- one Krishnamurthy the Power Agent of the first defendant gave an acknowledgment letter dated 15.04.2006 (Ex.P.10). Later, the first defendant gave the cheque dated 17.03.2007 drawn in the name of the account of the second defendant, for a sum of Rs.79,00,000/- (Ex.P.11). When the said cheque was presented for collection, it was returned for want of sufficient fund. Criminal case was initiated for dishonouring the cheque after issuing notice. The legal notice issued by the plaintiff is marked as Ex.P.13 and the reply of the defendants is marked as Ex.P.14.

11.The criminal case initiated for dishonouring of cheque ended in conviction on 16.06.2009 and the order copy is marked as Ex.P.16. The bank statements of the plaintiff between 01/04/2004 and 01/07/2005 to

show that he has paid money to some of the land owners namely Sriramaiah, Narayanappa and Gangadaran is Ex.P.17. The statement of accounts for the period 10/12/2004 to 15/04/2005 to show payments made by the plaintiff to the land owners Chennakesava, Naryaanappa and Sriramaiah and to the Sub-Registrar, Anekal is marked as Ex P-42. These documents were relied to prove that the plaintiff was involved in the land purchased in the name of the first defendant through his power agent Krishnamurthy and he has financially contributed for the transaction.

12.To prove that in the earlier transaction in respect of the property at Giddanahalli village in which the first defendant purchased the land on 09/09/2004 and after converting into plots sold it for huge profit to third parties, the plaintiff relies on the sale deeds Exs.P-18, P-19, P-20 and P-21, to prove that the first defendant has taken inconsistent stand about the authroisation given by him to his power agent Krishnamurthy and the entrustment of signed cheques to him, the plaintiff relies on Ex P-22 and Ex P 23.

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13.The copy of the FIR dated 20/08/2007 given by the first defendant against his power agent Krishnamurthy and the plaintiff is Ex P-22. In this complaint the first defendant has alleged that Kirshnamurthy along with

Balaji (Plaintiff) had cheated him to the tune of Rs. 1.70 crores by misleading him that they have purchased land at Kanakapura, Bangalore for Rs 65 lakhs in the name of the first defendant, but actually they did not purchase any land at Kanakapura. The first defendant has also alleged that the plaintiff and Krishnamurthy had taken away Rs 2,56,00,000/- from him for the purchase of the properties at Sharjapur Road registered in his name, whereas on verification from the vendors he came to know that they were paid only Rs. 1,50,00,000/-.

14. The plaintiff relies on this document to show that the first defendant has admitted in his complaint that the said Krishnamurthy is the working partner in KVL Associates, Chennai which is the sister concern of the second defendant firm. Further Krishnamurthy was authorised by the first defendant to negotiate with the parties for purchase of property and he has executed a power of attorney deed in his favour for that purpose.

15. The stop payment letter given by the first defendant is marked as Ex P:-23. In this letter the first defendant informed ABN AMRO Bank, Nugambakkam Branch that 8 of his signed cheques are missing from his office. To avoid misuse of the cheques he instructed the bank to stop payment. The Cheque bearing No. 401681 (Ex P-11) is not one among the 8 cheques

referred in this letter dated 14/07/2008.

16.The counsel for the plaintiff pointing out that Ex P-11 cheque bearing No. 401681 dated 30/10/2007 was presented for collection by the plaintiff on 15/4/2008. The said cheque was returned by the banker with the memo Ex P-12 intimating that the cheque is returned unpaid for funds insufficiency. Therefore the plaintiff caused legal notice (Ex P-13) to the first defendant on 14/05/2008. The defendant in his reply Ex P-14 has stated that the plaintiff and Krishnamurthy were his agents for purchase of lands in Bangalore and sell it to third parties for higher value after some period. In the course of the said dealing, he being a frequent traveller abroad, gave signed 20 cheque leaves bearing Numbers 401071 to 401090 to the Plaintiff and Krishnamurthy to withdraw money from the second defendant firm account for effecting payment to the land owners. In the criminal complaint given to the Central Crime Branch on 20/08/2007 against the plaintiff and Krishnamurthy, the defendant has not whispered about entrustment of signed blank cheques to the plaintiff or to Krishnamurthy. In Ex P-23 dated 14/07/2008, the letter intimating the banker to stop payment, the first defendant has stated that the signed blank cheques are missing and to avoid misuse payment should be stopped. The next day the first defendant has given a complaint to the Commissioner of Police alleging that the plaintiff

(BALAJI) and Krishnamurthy hatched conspiracy to misuse one of the blank cheque bearing No. 401681 dated 30/10/2007 drawn on ABN AMRO BANK, Chennai which was issued for purchase of land during the year 2004-2005, filed it for Rs 79,00,000/-, presented the same and got it dishonoured. The learned counsel for the plaintiff submitted that having admitted the liability and issued cheque for Rs. 79,00,000/- just to deprive the plaintiff, the first defendant has taken different and inconsistent stands at different point of time only to be exposed of his falsehood.

17.Ex P-25, Ex-P-26, Ex P-30 to Ex P-33, Ex P-61 , Ex P-64 to Ex P-65, are documents relating to the proceedings in connection with the private complaint initiated before the XVI Addl. CMM at Bangalore in CC 19342/2008 under section 138 of the Negotiable Instruments Act in respect of the cheque marked as Ex P-11. The said criminal complaint filed by the plaintiff ended in conviction in C.C.19342/2008 on 18/11/2010 (judgment copy is marked as Ex P-33). On Appeal before the Session Judge, Bangalore in C.A. 878/2010 the conviction was set aside on 21/07/2012. (judgment copy is marked as Ex P-67). The plaintiff aggrieved by the order of the appellate court has preferred appeal before the High Court, Bangalore in Cri.Appeal No. 1110/2012.(Appeal copy is marked as Ex P-61).

18.The documents connected to the civil proceedings initiated by the

first defendant against Balaji (the plaintiff herein), Ravoori Swarnalatha w/o Balaji and Krishnamurthy before the Additional District Judge, Tirupathi in O.S 107/2007 is relied by the plaintiff and they are marked as exhibits P-29, Ex P-34 to 40. The pith and substance of the said suit is that Balaji (the plaintiff in this suit), his wife Ravoori Swarnalatha and krishnamurthy misappropriated the money of the first defendant and purchase property at Tirupathi, hence prayer to declare the properties purchased in the name of the Balaji and his wife were from out of the amounts received from the Perim Janarthan Rao (the first defendant herein).

19.The orders passed by the Government of Karnataka permitting the conversion of the agricultural land which are the subject matter of the transactions under consideration in the present suit is marked as Ex P-41. The plaintiff relies this document to show he had a role in getting the conversion orders and for which he has spent money.

20.The Andra Bank, Vidyapeetha Circle Branch, Bangalore in which the plaintiff maintains account had given the letter dated 08/09/2012 certifying that the plaintiff had purchased 5 pay orders from his account as on 13/03/2005 out of which 4 were purchased in favour of Sub-Registrar, Anekal and one in favour of Sreeramulu. Later the plaintiff has cancelled one

pay order of Rs 2,25,600/- purchased in favour of Sub-Registrar, Anekal. The plaintiff contention is that these are the investment he made on behalf of the first defendant to purchase the lands covering the sale deeds Ex P-5 to P-8.

21.The statement of bank accounts of the defendants in ABN Amro Bank, Indian Bank and Indian Overseas Bank are marked as Ex P-47 to 52. The statement of Bank Accounts of M/s Nimeesha Leathers Exports Ltd, M/s KVL Associates the cheques issued by Krishnamurthy for KVL Associates for purchase of demand drafts in the name of the vendors and cheques issued by the 2nd defendant are exhibits P-54 and P-55.

22.To show that after purchase of the properties under sale deeds Ex P-5 to Ex P-8 the his power agent Krishnamurthy, the first defendant has appointed one Sri Rama Bala Subba Rayudu as his power agent on 17/03/2007 under Ex P-57. सत्यमेव जयते

23.The Sub Registrar has refixed the guideline value of the said property after conversion and issued certificate of valuation and endorsment on 21/03/2011. The plaintiff rely on this document marked as exhibit P-59 since the endorsement certificate is addressed to the plaintiff.

24.The statement of account in respect of the 2nd defendant firm maintained at ABN Amro Bank, Chennai is Ex P-47. This document indicates that the cheques bearing No. 401673 for Rs 9,50,000/-, Cheque No. 401676 for Rs 5,00,000/- and cheque No. 401683 for Rs 5,00,000/- were issued by the 2nd defendant in favour of the plaintiff and same were encashed by the plaintiff.

25.The learned counsel for the plaintiff referring the above documents and explaining the purpose for which those documents are relied, submitted that there can be no doubt about the facts that the first defendant is one of the partners of the second defendant firm, the second respondent firm has resolved to utilise the funds of the firm to purchase lands in the name of the first defendant, the cheques of the second defendant firm were used for the purchase of the lands at Bangalore.

26.The first defendant though initially denied the status of Krishnamurthy, admits in his complaint to police commissioner and in the cross examination that Krishnamurthy was his authorised agent and only through him the sale deeds Ex P-5 to P-8 were got registered. The recitals in these Exhibits also indicates that Krishnamurthy is the authorised

representative of the first defendant. While so, the acknowledgment letter dated 15/04/2006 Ex P-10 given by Krishnamurthy binds the principal and the first defendant cannot turn around and plead that the act of his agent does not binds him.

27.Pointing the portion of the DW-1 testimony where the first defendant has admitted that he started the firm KVL Associates and he appointed Krishnamurthy as the working partner of the said firm, the learned counsel for the plaintiff would submit that, this admission positively disproves the claim of the defendants that the acknowledgment letter Ex P-10 admitting liability of Rs 79,00,000/- and the cheque Ex P-11 for Rs.79,00,000/- were documents created in collusion between the plaintiff and the said Krishnamurthy. Therefore the learned counsel submits that there is no reasonable ground to suspect Ex P-10 acknowledgment of debt and issuance of cheque (Ex P-11) to discharge the debt.

28.Regarding the criminal prosecution initiated under section 138 of NI Act, the learned counsel for the plaintiff submitted that the the present civil suit for recovery of money has to be independently decided based on the evidence and preponderance of probabilities. The finding of criminal court not relevant for deciding the civil suit. The learned counsel relies on the

judgment of the Supreme court rendered in **Seth Ramdayal Jat -vs- Lakmi Prasad** [2009(11) SCC 545] to add emphasis to his submission that the civil proceedings cannot be determined on the basis of the judgment of criminal court finding, except statement admitted by the parties which are relevant subject to sections 21,23, 42 and 43 of the Indian Evidence Act,

29.The learned counsel submit that it has to be reasonable presumed that a person who was issuing the cheque admits his liability by issuing the cheque irrespective of the fact whether the cheque is honoured or not. To buttress this submission he relies upon the judgments:-

- 1) **Rajpathi Prasad -vs Kaushalya Kuer and others** (1980 SCC OnLine Pat 107) and
- 2) **Hindustan Apparel Industries -vs- Fair Deal Corporation, New Delhi** (2000 SCC Online Guj 177).

and submitted that apart from the letter of the agent Ex P-10, the dishonoured cheque Ex P-11 independently constitutes direct acknowledgment of the debt by the defendant.

30.Rebutting the submission of the defendants that the blank cheques

entrusted to Krishnamurthy for a different purpose was misused by him in collusion with the plaintiff, the learned counsel submit that, the cheque Ex P-11 admittedly bears the signature of the first defendant. It is admitted by the first defendant in the connected proceedings that blank signed cheques was entrusted by him to Krishnamurthy to pay the sale consideration, broker commission, registration charges and other incidental expenses. The recital in Ex P-69 the power of attorney deed dated 14/03/2005 executed by the first defendant in favour of the said Krishnamurthy empowers the agent to appear before the Sub-Registrar , Anekal for the presentation of deeds that would be executed by the owners of the aforesaid lands. The bank account statements and the letter of the Andra Bank which are marked as Ex P-42, Ex P-43 and Ex P-44 clearly proves that the part sale consideration to the vendors and registration charges were paid by the plaintiff from his bank account. Even assuming only blank cheque was given by the first defendant it would attract the presumption under section 139 of the Negotiable Instruments Act, in case if the defendant fails to prove that the cheque was not issued to discharge of a debt.

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31.The learned counsel for the plaintiff would state that, the defendants have not rebutted the said statutory presumption, contrarily, the plaintiff through the above mentioned documents have established there was

financial transaction between the plaintiff and the defendants and the plaintiff has contributed his service and money for completion of the transactions pertaining to the land purchased under Ex P-5 to P-8.

32.Relying upon ***Bir Singh -vs- Mukesh Kumar*** [2019(4) SCC 197] the counsel for the plaintiff submitted that there is strong presumption against the defendants which has not been rebutted. Except a bald denial of debt and fake allegation of misuse of cheque by his agent in collusion with the plaintiff, there is no cogent evidence that there was no debt or liability. Hence suit to be allowed.

33.In defence, the first defendant has mounted the witness box. 21 documents are marked as defence side exhibits. Ex D-1 to D-5 are civil proceedings for recovery money initiated against the plaintiff and others by one Gottipatti Damodara Naidu. Ex D-6 and D-7 are the copy of the criminal complaint under section 200 Cr.P.C and FIR copy filed by one Narra Jagadish against the plaintiff and his wife before the Judicial Magistrate, Tirupathi. These documents are relied by the defendants to show that the plaintiff is a financier operating at Tirupathi and had involved in prize chit and money circulation fraud. Ex D-8 is the letter of acknowledgment purported to have been given by Krishnamurthy to the first defendant admitting the receipt of

Rs 3,20,45,826/- which is in tune with the auditor's report Ex P-46/-. Ex D-9 FIR in Cr.No. 470/ 2007 on the file of crime branch Chennai is duplication of Ex P-22. Ex D-10 legal notice under section 138 of NI Act issued by the plaintiff is duplication of Ex P-13. Ex D-11 reply notice of the defendants counsel is duplication of Ex P-14. Ex D-12 complaint to Commissioner of Police, Chennai given by the defendant is duplication of Ex P-24. Ex D-13 stop payment letter of the defendant is duplication of Ex P-23. Ex D-14 and Ex D-15 are orders of the Madras High Court, granting bail to the plaintiff and Krishnamurthy in Cr.No. 470/2007. Ex D- 16 is the copy of the application made by the first defendant before the JM-1, Poonamallee to furnish copy of the accused statements (Balaji and Krishnamurthy). Ex P-17 is replica of the complaint Ex D-12 and P-24. Ex D-18 is the final report filed by CCB, Chennai in Cr.No. 470/2007. Ex D-19 is replica of Ex P-67. Ex D-20 is duplication of Ex P-8 and Ex D-21 is duplication of Ex P- 30.

34.The learned counsel for the defendant s relying upon the testimony of the first defendant and the documents, contend that believing Krishnamurthy, blank signed cheques were entrusted to negotiate with the land owners for purchase of the land covered under Exs.P.5 to P.8. The plaintiff who was the middleman for the said transaction has received his remuneration. However he in connivance with the power agent

Krishnamurthy has overdrawn money from the 2nd defendant's bank account more and above what is payable to the vendors. For the said act of cheating criminal complaint lodged with Commissioner of Police, Chennai against the plaintiff and Krishnamurthy. On his complaint, Balaji and Krishnamurthy were arrested and released on bail by order of the High Court Madras vide Ex D-15 and D-16. Therefore in connivance with his estranged Power Agent, Krishnamurthy the blank cheque Ex P-11 was filed up and presented for collection.

35.The plaintiff initiated private complaint under the Negotiable Instruments Act in respect of the cheque issued in favour of the plaintiff for a sum of Rs.79,00,000/-. The Judicial Magistrate convicted the defendant. Later, the Principal City Civil Court and Sessions Judge Bangalore City vide order dated 21.07.2012 in Criminal Appeal No.878 of 2010 (Ex.D.19) has set aside the judgment and order of the trial Court dated 18.11.2010 convicting the first defendant. The Learned Counsel for the Defendant further states across the bar that the further appeal preferred by the plaintiff before the High Court against the order of acquittal also dismissed by the High Court, Bangalore.

36.The prime contention of the learned counsel for the defendant is

that, there is no agreement between the plaintiff and the defendants to pay Rs 46 lakhs per acre in respect of the property covered under the sale deeds Ex P-5 to P-8. The plaintiff was duly paid for his services and nothing payable to him. Contrarily the plaintiff and Krishnamurthy (since deceased) has fraudulently encashed the blank signed cheques entrusted and facing criminal prosecution. Though the criminal court finding does not bind the civil proceedings, the admissions and statements made by the parties in the criminal proceedings are relevant and admissible in evidence in the subsequent proceedings. In those proceedings the plaintiff has admitted that he has received more than 19,50,000/- from the defendants. He has also admitted that there is no documentary evidence to show that he had prior agreement with the land owners except Chennakesava who held only 7 ½ guntas of land.

37.The Learned counsel for the defendant strongly relying upon section 188 of the Indian Contract Act, submitted that the power of attorney deed given in favour of Krishnamurthy never authorised him to borrow money or acknowledge debts. He was only authorised to carryout the registration work. Therefore Ex P-10 alleged acknowledgment of debt letter given by the agent without authorisation is invalid.

38.On considering the rival submissions, this court finds that the

dispute between the plaintiff and the defendants primarily centres upon Ex.P.10, the letter of acknowledgment alleged to have been given by Krishnamurthy, the Power Agent of the first defendant. The content of the said Exhibit (Ex.P.10) reads as below:-

"Towards purchase of lands through M.Balaji at Bidaraguppe Village at Sarjapur Main Road, Bangalore in Sy.Nos.269, 270 and 273.

Extent of land 5 Acres and 22 ½ guntas at the rate of Rs.46 lakhs per acre.

Total amount payable Rs.2,56,00,000/-

Amount paid by way of cheques, costs and DD's Rs.1,77,00,000/-

Amount due to M.Balaji from P.Janardha Rao Rs.79,00,000/-

*K.Krishnamurthy (s/d)
G.P.A Holder of
P.Janardhan Rao*

*Bangalore
15-04-2006"*

39.The specific case of the plaintiff is that, he had an understanding with the land owners to sell 5 acres 22 ½ guntas at the rate of Rs 41 lakhs. Knowing this the first defendant expressed his desire to buy those land for a sale consideration @ Rs.46 lakhs per acre. To substantiate this contention the plaintiff relies the recital in Ex.P.10 and Ex.P.3.

40.However, the recital in Ex.P.3 would show that one B.Chennakesava holding 7 ½ guntas of land has agreed to sell 5 acres of land @ Rs.41 lakhs per acre in S.Nos.269, 270 and 279 at Bidaraguppe Village at Sarjapur Main Road, Anekal Taluk, Bangalore Rural District to the plaintiff. In this document, Chennakesava claims himself as the representative of the owners of 5 acres 22 ½ guntas of land. The plaintiff has not explained how this document could be relied upon for his contention that he had interest in the entire 5 acres 22 ½ guntas of land situated at S.Nos.269, 270 and 279 at Bidaraguppe Village at Sarjapur Main Road, Anekal Taluk, Bangalore Rural District when there is no document to link B.Chennakesava and other owners of 5 acres 22 ½ guntas of land at S.Nos.269, 270 and 279 at Bidaraguppe Village at Sarjapur Main Road, Anekal Taluk, Bangalore Rural District. The lack of privity of contract with other owners, renders a plaintiff case weak. Even assuming that the plaintiff

have some claim over the property which is covered under Exs.P.5 to P.8 by virtue of Ex.P.3 agreement of sale, it is an agreement between the plaintiff and one of the several owners who hold only 7 ½ guntas of land. How this agreement of sale will bind the remaining owners holding more than 5 acres of land is unexplained by the plaintiff. Further, the evidence available reveals that the first defendant has purchased the property directly from the land owners and got it registered including the portion of the land for which the plaintiff had entered into agreement of sale with Chennakesava under Ex.P-3. If at all the plaintiff wants to ascertain his right or interest, before or the moment sale deeds executed and got registered in favour of the first defendant he should have challenged the said transaction.

41. Therefore, this Court holds that the plaintiff has failed to prove that he had any interest or right in respect of properties covering Ex P-5 to P-8 and also the plaintiff has not proved that there was agreement between him and the defendants to alienate the property at the rate of Rs 46 lakhs per acre.

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42. The counsel for the plaintiff states that Ex in P-10 the agent of the first respondent has acknowledged the existence of agreement and debt of

Rs 79,00,000/- . As pointed out by the learned counsel for the Defendant, to acknowledge the debt, the agent should have authorisation. In the absence of authorisation, the act of the agent will not bind the principal.

42.Sections 186 to 188 of the Indian Contract Act, read as below:-

"186. Agent's authority may be expressed or implied.—The authority of an agent may be expressed or implied. ⁵⁵

187. Definitions of express and implied authority.—An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case. —An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case; and things spoken or written, or the ordinary course of dealing, may be accounted circumstances of the case." Illustration A owns a shop in Serampor, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied authority from A to order goods from C in the name of A for the purposes of the shop. A owns a shop in Serampor, living himself in Calcutta, and visiting the shop occasionally. The shop is managed by B, and he is in the habit of ordering goods from C in the name of A for the purposes of the shop, and of paying for them out of A's funds with A's knowledge. B has an implied

authority from A to order goods from C in the name of A for the purposes of the shop."

188. *Extent of agent's authority.—An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act. —An agent having an authority to do an act has authority to do every lawful thing which is necessary in order to do such act." An agent having an authority to carry on a business, has authority to do every lawful thing necessary for the purpose, or usually done in the course, of conducting such business. Illustrations*

(a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same. (a) A is employed by B, residing in London, to recover at Bombay a debt due to B. A may adopt any legal process necessary for the purpose of recovering the debt, and may give a valid discharge for the same."

(b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business. (b) A constitutes B his agent to carry on his business of a ship-builder. B may purchase timber and other materials, and hire workmen, for the purpose of carrying on the business."

In the light of these provisions, it is essential to see the recital of the general power of attorney dated 14/03/2005 executed by the first defendant in favour of the said Krishnamurthy which is marked as Ex P 69. The recital in this deed speaks about the agreement already entered between the

defendant and the land owners in respect of 2 acres 35 guntas of land in Survey No. 270 and 269 at Bidaragauppe Village. The defendant expressing his inability to go over to Anekal has authorised Krishnamurthy to do all or any of the following acts, deeds and things on behalf of Pertim Janarthana Rao (first defendant).

- 1) *To appear before the Sub- Registrar, Anekal for the purpose of presentation of the sale deeds that would be executed by the owners of the aforesaid lands. To appear on my behalf before the sub-Registrar for the purpose of registration of the sale deeds in my name and on my behalf and to sign all statutory application forms, to swear to affidavits or such other documents or papers as may be required and also to do such other acts, deeds and things that may be required to be done for the effective completion of registration of sale deeds in my favour.*
- 2) *To represent me before the Revenue Authorities for the purpose of transfer of Khatha in respect of the aforesaid lands in my name and for the said purpose to sign applications, statutory forms, to swear to affidavits. My lawful attorney shall have powers to pay cess, tax and such other outgoings in respect of the aforesaid lands on my behalf."*

44.The recital thus authorise Krishnamurthy only to do acts and deeds relating to registration of the sale deeds and nothing more. While so, the alleged acknowledgment of debt executed by Krishnmurthy on behalf of the first defendant will not bind the defendants.

45.In this context, it is also relevant to refer Sections 226, 227 and 228 of the Indian Contracts Act which deals enforcement and consequences of agent's contracts, and how far the act of agent exceeding his authority will bind the principal.

"226. Enforcement and consequences of agent's contracts.— Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person. —Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner, and will have the same legal consequences as if the contracts had been entered into the acts done by the principal in person." Illustrations
(a) A buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B. (a) A

buys goods from B, knowing that he is an agent for their sale, but not knowing who is the principal. B's principal is the person entitled to claim from A the price of the goods, and A cannot, in a suit by the principal, set-off against that claim a debt due to himself from B."

(b) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B. (b) A, being B's agent, with authority to receive money on his behalf, receives from C a sum of money due to B. C is discharged of his obligation to pay the sum in question to B."

227. *Principal how far bound, when agent exceeds authority.—When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal. —When an agent does more than he is authorized to do, and when the part of what he does, which is within his authority, can be separated from the part which is beyond his authority, so much only of what he does as is within his authority is binding as between him and his principal."* Illustration A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the policy on the cargo. A, being owner of a ship and cargo, authorizes B to procure an insurance for 4,000 rupees on the ship. B procures a policy for 4,000 rupees on the ship, and another for the like sum on the cargo. A is bound to pay the premium for the policy on the ship, but not the premium for the

policy on the cargo."

228. *Principal not bound when excess of agent's authority is not separable.—Where an agent does more than he is authroized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction. —Where an agent does more than he is authroized to do, and what he does beyond the scope of his authority cannot be separated from what is within it, the principal is not bound to recognize the transaction."*
Illustration A, authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction. A, authorizes B to buy 500 sheep for him. B buys 500 sheep and 200 lambs for one sum of 6,000 rupees. A may repudiate the whole transaction."

46.It is seen that Ex P-10 letter given by Krishnamurthy the agent of the first defendant is not within the authority and it is separable from the acts authorised. Therefore, execution of the letter Ex P-10 as agent of first defendant is an act in excess of the authorisation. This execution of this letter does not fall within the acts authorised to do under Exhibit P-69. Therefore, it is held that for want of authorisation, the first defendant who is the principal is not bound by Ex P-10 executed by his agent.

47.Dehors of Ex P-10, independently if other documents are analysed for ascertaining the existence of liability, in the absence of the documents to

show that the plaintiff has incurred expenses in dealing with the property and the first defendant agreed for a sale consideration of the properties at the rate of Rs. 46 lakhs per acre the plaintiff averments stand in air without any corroboration. Neither in the sale agreement (Ex P-3) nor in sale deeds marked as Ex.P.5 to P.8 the property is valued at Rs 46 lakhs per acre.

48.It is the contention of the plaintiff that, though the market value of the property was Rs 46 lakhs per acre, just for registration purpose, it was undervalued. If that is so, it is for the land owners to speak about it and not the plaintiff who has nothing to do with the property. Further, in Ex P-59, the endorsement certificate issued by the Sub-Registrar, Anekal this Court finds that the Government after conversion of the land use has fixed the market value of the property at the rate of Rs.31,50,000/-. Therefore, even by remote preponderance of probabilities, the case of the plaintiff could not be accepted.

49.This Court finds that except Exs.P-3, P-10 and P.11, all other documents relied by the plaintiff is either documents relating to the criminal proceedings initiated by either side or civil proceedings initiated by third parties. The relevancy of these evidence are almost nil or very remote. The materials available and culled out by the learned counsel for the plaintiff

proves that the parties are not strangers. There was money transactions between them. Later, in view of the dispute cropped up, litigations at various forum have been initiated. As for as the relief sought in this case, the parallel criminal prosecution based on the cheque marked as Ex P-11 alone is some relevancy. The said prosecution has ultimately ended in acquittal. However, as fairly conceded by both the learned counsel on either side, the finding of the Criminal Court has less binding effect on the civil proceedings. Therefore, to arrive at a conclusion on the issues framed evidence has to be appreciated independently. For that purpose, essentially, 3 documents are to be scrutinized. Those documents are Exs.P-3, P-10 and P-11.

50.As pointed out earlier, Ex P-3 is an agreement for a miniscule minuscule extent of land (7 ½ guntas) with one owner and the property under consideration is of vast extent of 5 acres and 22 ½ guntas. (About 40 guntas is equal to one acre) owned by several persons. The plaintiff has no evidence to show he has any agreement with all the owners except one.

51.Ex.P.10 is a letter given by Krishnamurthy, the Power Agent of the first defendant. It is claimed to be letter acknowledging the debt. However, when tested with the recital of power of attorney deed (Ex P 69) 'whether Krishnamurthy had authority to give such letter', it is found to be beyond his

authority. Under section 188 of the Indian Contract Act, an Agent can do an act only to an extent which he is authorised explicitly or impliedly and not beyond that.

52.Ex.P.10, acknowledgment alleged to have been executed by Krishnamurthy is dated 15.04.2006. This letter indicates that the first defendant is liable to pay Rs.79,00,000/- towards purchase of land bought through the plaintiff. If the statement found in the document is true, then there must be some evidence that the plaintiff had entered into an agreement with the other land owners holding the entire 5 acre 22 ½ guntas of land whereas, the only document produced by the plaintiff is Ex.P.3, which is in respect of 7 ½ guntas of land held by B.Chennakesava. When the entire transfer of property got completed and sale deeds Exs.P-5 to P-8 got registered between 19.03.2005 and 11.04.2005, the necessity to give the letter Ex P-10 on 15/04/2006 is also left unexplained by the plaintiff.

53.The learned counsel for the plaintiff relying upon the entries made in the statement of bank accounts and the letter of the Andra Bank which are marked as Exs.P-17; P-42; P-43 and P-44 would submit that the plaintiff had paid money to the other land owners on the dates relevant to the date of sale deeds and paid the necessary registration charges to the

Sub-registrar and the same is admitted by the first defendant.

54. Merely by such entries and admission, the case of the plaintiff cannot be held to be proved, when there are contra evidence let in by the defendant that more than Rs.19 lakhs been paid to the plaintiff and the plaintiff has not rendered accounts to the first defendant. The plaintiff in his wisdom has thought fit not to examine the vendors to show that he had some role in the transactions covered under Exs.P.5 to P.8. Neither he has placed evidence to lend credence to his case that he has spent money for conversion and to settle the litigation between the vendors. Therefore, by all means, this case could be viewed only as a speculative litigation webbed out of documents given in trust or held during the normal course of business transaction. For the above reasons, issues No.1 and 2 are answered in negative.

55. Both the plaintiff as well as the defendants have multiple litigations against each other. In each case, they have taken different stand. As far as the present case is concerned, the plaintiff would rely upon Ex P.11 cheque to prove the liability. No doubt, there shall be an initial presumption of liability regarding the cheque, however, the said presumption is rebuttable. The defendants can rebut the presumption by placing materials to show that

the cheque was not issued for the liability in the manner in which the plaintiff has projected.

56.The plaintiff to prove his entitlement of Rs.79,00,000/- would heavily rely upon the sale agreement for 7 ½ guntas of land and the acknowledgment letter of Krishnamurthy. The content of documents does not correlates the parties, value of the property and liability mentioned in the cheque Ex P-11. The claim of Rs.79,00,000/- for the transactions covered under the sale deeds viz., Exs.P.5 to P.8 executed by the land owners directly in the name of the first defendant either should be established through impeccable documents or through independent reliable oral evidence. In this case, the plaintiff has failed to state the exact date the cheque was issued and from whom he received the cheque.

57.Under section 118 of the Negotiable Instruments Act , unless contrary is proved, it has to be presumed that it was issued on the date on which it bear. Being a rebuttable presumption, it is the duty of the Court to look whether the cheque would have been given on 30/10/2007. In this context, Ex P-22 the criminal complaint before the Crime Branch, Chennai on 30.08.2007, against the plaintiff and Krishnamurthy given by the first defendant is relevant and requires consideration. This complaint was taken

on file for investigation in Crime No. 470/2007. In this complaint it is specifically alleged that the plaintiff and Krishnamurthy has cheated the first defendant to a tune of Rs.1.50 crores in connection with the land dealing. While so, after lodging criminal complaint on 20/08/2007, the first defendant could not have issued the cheque Ex P-11 in favour of the plaintiff on 30.10.2007.

58.In alternate, the probable date or month of issuance of this cheque can be ascertained by verifying the dates on which the previous and subsequent cheques were encashed. From Ex P-47 the ABN/AMRO bank statement of account of the second respondent firm indicate that most of the cheques bearing Numbers between 401673 and 401683 were encashed between October 2004 and January 2005. Out of these cheques, the plaintiff himself has encashed the following 4 cheques for total sum of Rs 19,50,000/-:-

- 1) 27/10/2004 – Cheque No. 401673 Rs. 9,50,000/-
- 2) 13/12/2004 – Cheque No. 401676 Rs. 5,00,000/-
- 3) 01/01/2004 – Cheque No. 401683 Rs. 5,00,000/-

59.Therefore, by preponderance of probabilities, the defendants had rebutted the presumptions under sections 118 and 139 of the Negotiable

Instruments Act, that the cheques were not issued on 30/10/2007 for any debt or existing liability. After the rebuttal, the burden shifts on the plaintiff to prove 'whether the cheque Ex P-11 was given to him by the first defendant on 30/10/2007' and 'whether the same was given for discharge of liability'. The evidence available does not prove the facts asserted by the plaintiff. Therefore, there is no doubt in the mind of this Court that the case of the plaintiff is a story concocted by making use of the cheque and letter given by Krishnamurthy. Accordingly, the issues 6 and 7 are answered in negative.

60.The suit is laid before this Court on 25/10/2010 based on the dishonoured cheque dated 30/10/2007 issued pursuant to the acknowledgment of debt given by Krishnamurthy on 15/04/2006. As far as the letter of acknowledgment Ex P-10, which is given by the agent and already in the earlier part of this judgment it is held that the agent has given this letter without authority. In so far as the Cheque Ex P-11 is concerned, though it bears 30/10/2007 as date and under section 118 of the Negotiable Instruments Act, it shall be presumed unless the contrary is proved the negotiable instrument bearing a date was made or drawn on such date, this point has been discussed above at length and held that the presumption under section 118 of the Negotiable Instruments Act regarding the date has

been rebutted through the entries found in the 2nd defendant's bank statement of account marked as Ex P-47.

61.Sub-section (3) of section 25 Indian Contracts Act deals with acknowledgment time barred debt. According to Pollock and Mulla (The Indian Contract Act and Specific Relief Act - 14th Edition, Lexis Nexis - Butterworths Wadhwa), in order to invoke the provisions of Section 25(3) of the Indian Contracts Act, the following conditions must be satisfied:-

1. It must be referred to a debt which the creditor but for the period of limitation, might have enforced;
2. There must be a distinct promise to pay wholly or in part such debt and
3. The promise must be in writing signed by the person or by his duly appointed agent.

62.Therefore, a promise to pay a time-barred debt is a condition precedent for application of Section 25(3) of the Indian Contract Act. The said promise must be express and unequivocal. Now, when we read the content of the letter - Ex P-10 given by Krishnamurthy as general power of

Attorney holder of the first defendant, leave alone the authority to give such letter, we find that the promise to pay is conspicuously absent in this letter. Assuming the letter acknowledging the debt is valid and given prior to the expiry of limitation, it is highly improbable to say the cheque - Ex P-11 was issued on 30/10/2007. Undoubtedly, it should have been left the possession of the defendants and come to the possession of the plaintiff prior to 20/08/2007, the date on which the first defendant gave complaint to the Commissioner of Police, Chennai alleging fraud and cheating.

63.However, the cheque being dishonoured, one of the issue framed in this case is 'whether a dishonoured cheque will save the limitation of time barred debt, in the absence of promise'. This issue is a significant question of law, though may not have serious bearing on the case in hand, even if held either way.

64.Cheque is defined under section 4 of the Negotiable Instruments Act as a 'bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand'. Cheque is therefore a negotiable instrument carrying the promise implicitly, unlike a pro-note where the promise is explicit and mandatory. Therefore, limitation has to be reckoned from the the date the cheque and not on the fact 'whether the cheque was

honoured or dishonoured'. Under the Negotiable Instruments Act, the issuance of cheque is to be presumed to be issued for discharge of debt. The consequence event 'whether the said cheque on presentation honoured or not,' is immaterial.

65. In the opinion of this Court, even if the said cheque is not presented in time and become stale, but it is proved that the cheque was issued with intention to discharge the debt or part of the debt then, the limitation has to be reckoned from the date of the cheque considering the cheque as acknowledgment of debt.

66. As far as the facts of this case in hand, the cheque in the name of the plaintiff gives him the cause of action to sue and suit being filed within 3 years from the date on which the cheque bear, this *prima facie* saves the limitation. The plaintiff cannot be desuited on the ground of limitation. However, the plaintiff fails to succeed, since, this Court has held that the plaintiff has not proved his case for recovery of money and the cheque is not issued for any enforceable debt. Therefore, the discussions on limitation based on the fact 'whether dishonour of cheque will save limitation is academics'. Issues 3 and 5 are answered accordingly.

67.The first defendant is the signatory of the cheque - Ex P-11 and he has signed the cheque on behalf of the 2nd defendant partnership firm. Therefore, the other partners of the 2nd defendant firm are arrayed as defendants 3 and 4. Hence, this court finds no legal error in joinder of parties. Issue No. 4 is answered in negative.

68.As a result, for the reasons stated, the issues are held against the plaintiff and the suit is dismissed with costs.

jbm

Index: Yes

Speaking order/non speaking order

List of witness examined on the side of the plaintiff :-

M.Balaji – P.W.1

List of witness examined on the side of the defendants :-

Perim Janardhan Rao – D.W.1

List of exhibits marked on the side of the plaintiff :-

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EXHIBITS

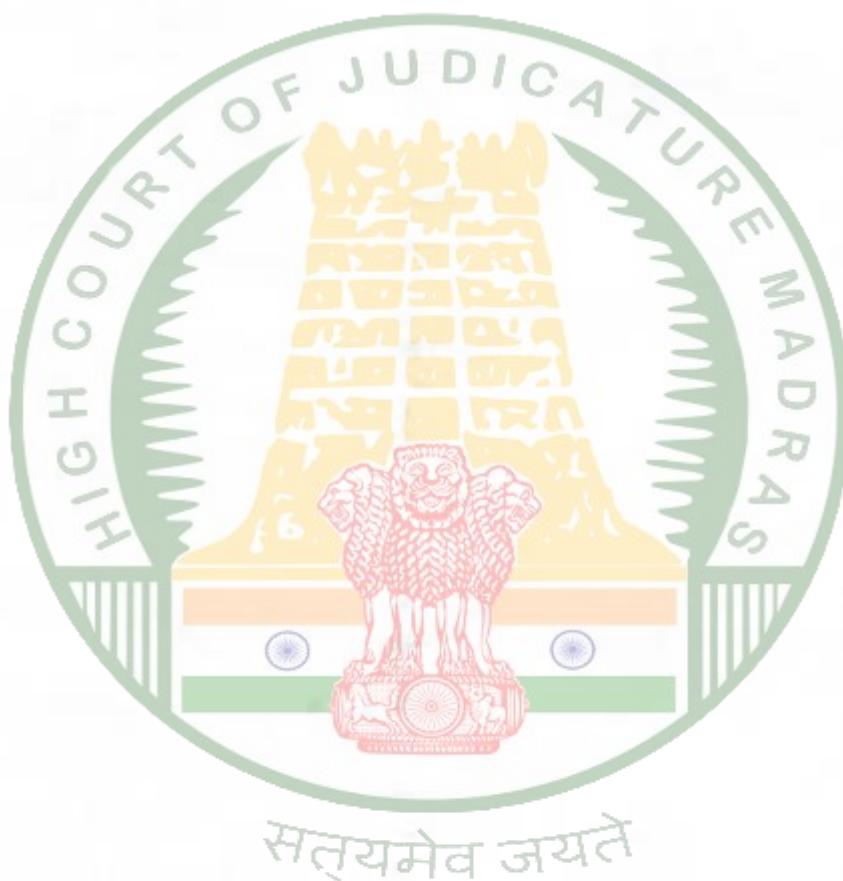
Exhibit No.	Description
Ex.P1	Certified copy of the registration certificate of 2 nd defendant dated 12.05.2000.
Ex.P2	Certified copy of the resolution passed by the 2 nd defendant dated 30.06.2004.
Ex.P3	Certified copy of the agreement of sale dated 05.11.2004.
Ex.P4	Certified copy of the resolution dated 01.03.2005.
Ex.P5	Certified copy of the sale deed dated 19.03.2005.
Ex.P6	Certified copy of the sale deed dated 19.03.2005.
Ex.P7	Certified copy of the sale deed dated 19.03.2005.
Ex.P8	Certified copy of the sale deed dated 11.04.2005
Ex.P9	Certified copy of the order in O.S.No.54 of 2005 dated 25.05.2005.
Ex.P10	Certified copy of the letter of acknowledgment executed by the 1 st defendant's Power Agent to the plaintiff dated 15.04.2006
Ex.P11	Certified copy of the Cheque No.401681 on ABN AMRO Bank, Chennai
Ex.P12	Certified copy of the Cheque return slip issued by ABN AMRO Bank, Chennai dated 15.04.2008.
Ex.P13	Certified copy of the legal notice issued by the plaintiff dated 14.05.2008.
Ex.P14	Certified copy of the reply notice issued by the 1 st defendant dated 30.05.2008.
Ex.P15	Certified copy of the complaint filed by the plaintiff dated 30.06.2008.

Exhibits	Description
Ex.P16	Certified copy of the order passed in Criminal Petition No.5483 of 2008 dated 16.06.2009.
Ex.P17	Certified copy of the Bank statement of plaintiff for the period 01.04.2005 to 01.07.2005.
Ex.P18	Certified copy of the sale deed dated 08.09.2004.
Ex.P19	Certified copy of the sale deed dated 21.07.2005.
Ex.P20	Certified copy of the sale deed dated 08.03.2006
Ex.P21	Certified copy of the sale deed dated 10.03.2006
Ex.P22	Certified copy of the F.I.R. No.470/2007 dated 20.08.2007
Ex.P23	Certified copy of the stop payment letter dated 14.07.2008
Ex.P24	Certified copy of the complaint dated 15.07.2008 to the Commissioner of Police, Chennai
Ex.P25	Certified copy of the petition in CrI.P.No.5483/2008
Ex.P26	Certified copy of the affidavit dated 24.12.2008 in I.A.No. 1/2008 in CrI.P.No.5483/2006
Ex.P27	Certified copy of the fabricated letter of acknowledgment dated 30.06.2006
Ex.P28	Two original sample copies of RTC Forms (In Kannada) and same are translated into English
Ex.P29	Certified copy of the calculation memo filed by the first defendant in O.S.No.107/2007
Ex.P30	Certified copy of the plaintiffs affidavit dated 27.05.2009 filed in C.C.No.19342 of 2008
Ex.P31	Certified copies of the affidavits (2 nos) dated 07.10.2009 and 10.02.2010 series
Ex.P32	Certified copies of deposition dated 17.11.2009, 11.12.2009, 19.12.2009, 07.01.2010 and 22.03.2010 filed in NI Act case
Ex.P33	Certified copy of the judgment in 138 NI Act case
Ex.P34	Certified copy of the plaint in O.S.No.107 of 2007
Ex.P35	Certified copy of the affidavit dated 28.12.2007

Exhibit No.	Description
Ex.P36	Certified copy of the affidavit and amendment copies dated 22.12.2008 filed by the first defendant in O.S.No.107/07
Ex.P37	Certified copy of the order dated 30.03.2011
Ex.P38	Certified copy of the written statement and additional written statement of D1 dated 22.07.2008 and 20.03.2012 filed in OS.No.107/07.
Ex.P39	Certified copy of the written statement and additional written statement of D3 dated 22.07.08 and 20.03.2012
Ex.P40	Certified copies of the deposition dated 22.04.13, 17.07.13, 29.06.15, 10.08.15 and 28.09.15.
Ex.P41	Original land conversion copies from agriculture to non-agriculture in Kannada version with English version 14.02.2005, 18.03.05 and 11.04.05
Ex.P42	Certified copies of Andhra Bank statement of account of the plaintiff dated 10.12.2004 to 15.04.2006
Ex.P43	Original Bank statements of Andhra bank (5 Nos.) of the land owners and the agent
Ex.P44	Certified copy of the letter from Andhra Bank dated 13.03.05
Ex.P45	Certified copy of the affidavit dated 24.01.08
Ex.P46	Certified copy of the statement of account dated 08.09.04 to 30.04.05.
Ex.P47	Certified copy of the ABN/AMRO bank statement dated 01.04.2004 to 30.04.05.
Ex.P48	Certified copy of the first and fourth defendants statement of account dated 01.04.2004 to 06.10.2005 of Indian Bank
Ex.P49	Certified copy of the statement of account of M/s.Jay Ar.Enterprises in Indian Overseas Bank SSI (North) dated 01.04.2004 to 31.03.2005
Ex.P50	Certified copy of the Indian Overseas Bank statement of account dated 01.04.04 to 30.04.05

Exhibit No.	Description
Ex.P51	Certified copy of the Indian Bank statement of account dated 01.04.04 to 06.10.05
Ex.P52	Certified copy of the Indian Overseas Bank statement of account dated 01.08.04 to 30.04.05
Ex.P53	Certified copy of the Indian Bank statement of account of M/s.KVL Associates for the period from 14.08.03 to 06.03.06
Ex.P54 series	Certified copies of the cheques (7 nos) issued by the M/s.KVL Associates
Ex.P55 series	Certified copies of cheques (7 nos.) issued by the first and fourth defendant
Ex.P56	Certified copy of the sale deed dated 14.03.2007
Ex.P57	Certified copy of the general power of attorney dated 17.03.2007
Ex.P58	Certified copy of the sale deed dated 07.12.2010
Ex.P59	Original endorsement copy dated 21.03.2011 from the Sub-Registrar Office, Anekal Taluk, Bangalore.
Ex.P60	Certified copy of the Joint development agreement dated 10.02.2011.
Ex.P61	Certified copy of the ground of appeal in Crl.Appeal No.1110/2012 by the plaintiff
Ex.P62 series	Certified copies of cheques (3 nos) dated 27.10.04 and 31.12.04.
Ex.P63 series	Certified copies of the cheques (4 nos.) dated 09.11.2004, 10.11.04, 23.11.04 and 19.03.05 issued by the first defendant
Ex.P64	Certified copy of the petition in Crl.Appeal No.878/2010
Ex.P65	Certified copy of the written argument dated 18.01.2012
Ex.P66	Certified copy of the written argument dated 16.12.2011
Ex.P67	Certified copy of the judgment dated 21.07.12

Exhibit No.	Description
Ex.P68	Certified copy of the income tax assessment produced by the first defendant in OS.No.107/2007
Ex.P69	Certified copy of the canceled power of attorney dated 14.03.2005.

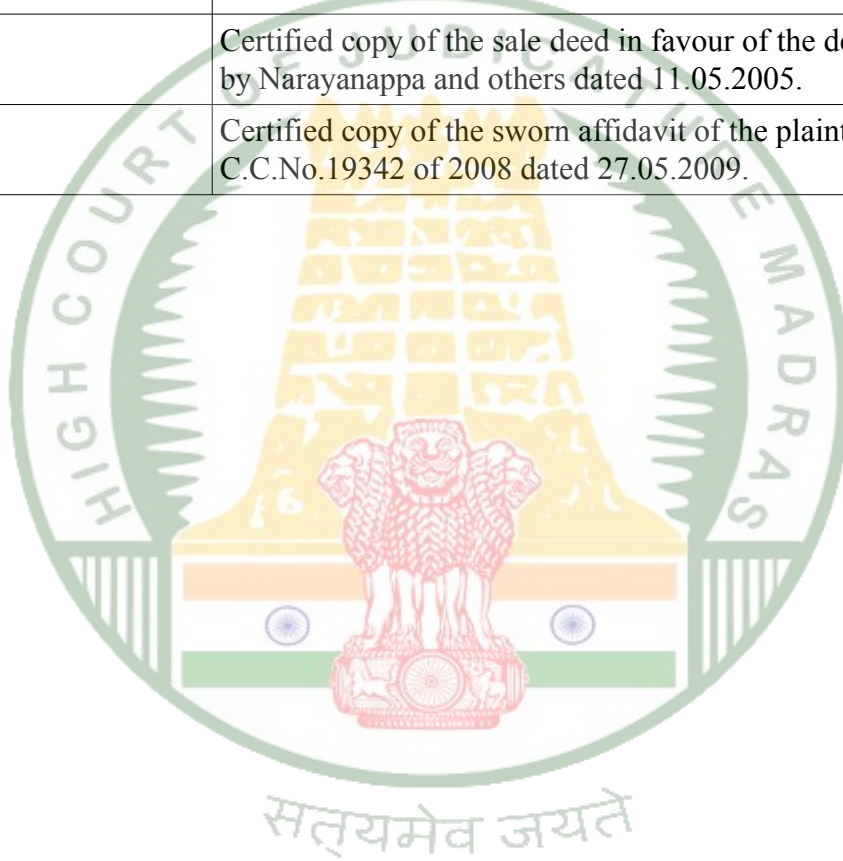


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List of Documents exhibited on the side of the defendants:-

<i>Exhibit No.</i>	<i>Description</i>
Ex.D1	Certified copy of the plaint in O.S.No.14 of 2002 dated 25.02.2002.
Ex.D2	Certified copy of the Judgment in O.S.No.14 of 2002 dated 06.02.2009
Ex.D3	Certified copy of the decree in O.S.No.200 of 2006 dated 06.02.2009
Ex.D4	Certified copy of the plaint in O.S.No.13 of 2002 dated 25.02.2002
Ex.D5	Certified copy of the order in O.S.No.13 of 2002 dated 04.03.2006
Ex.D6	Certified copy of the criminal M.P.No.2199 of 2008 dated 28.05.2008
Ex.D7	Certified copy of the FIR 265 of 2008 filed against the plaintiff by Narra Jagadesh dated 22.08.2008
Ex.D8	Certified copy of the letter of acknowledgment from Krishnamurthy dated 30.06.2006.
Ex.D9	Certified copy of the FIR filed against plaintiff in Crime No.470 of 2007
Ex.D10	Certified copy of the Notice to the defendant by counsel for plaintiff dated 14.05.2008
Ex.D11	Certified copy of the reply from defendant dated 30.05.2008
Ex.D12	Certified copy of the complaint from the defendant to the Commissioner of Police dated 15.07.2008.
Ex.D13	Certified copy of the Stop instruction issued by the defendant to ABN Amro Bank dated 14.07.2008.
Ex.D14	Certified copy of the order of the High Court, Madras in Crl.O.P.No.2774 of 2008 dated 08.02.2008.
Ex.D15	Certified copy of the order of the High Court in Crl.O.P.No.1371 of 2008 dated 28.01.2008.
Ex.D16	Certified copy of the affidavit and petition filed by the defendant before the Judicial Magistrate – I, Poonamallee

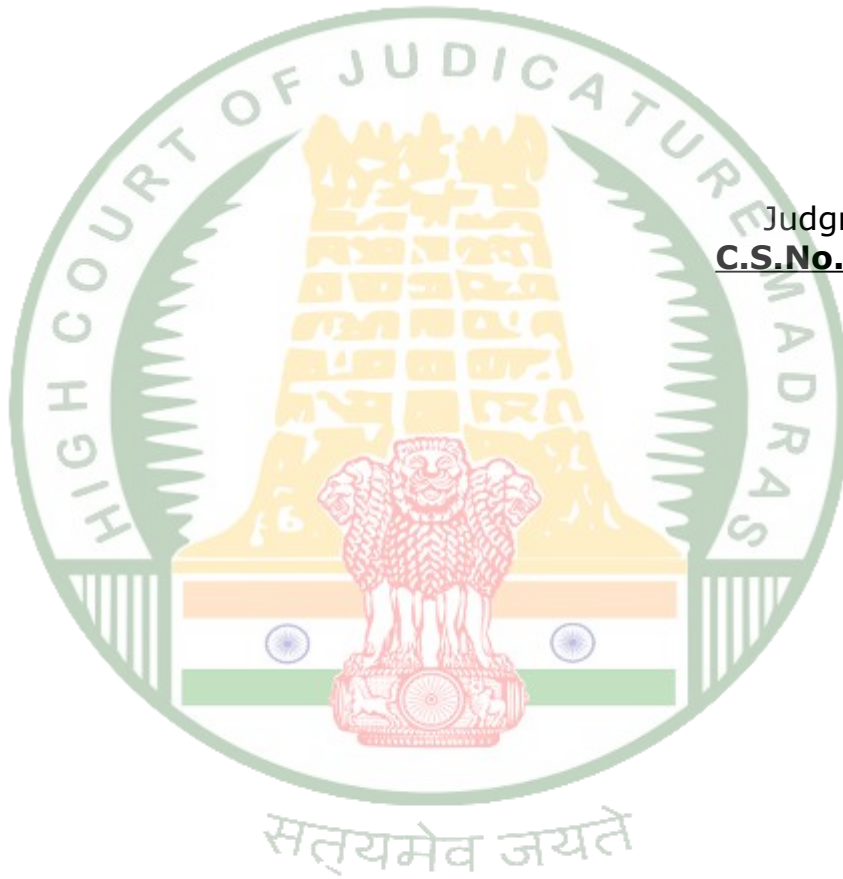
<i>Exhibit No.</i>	<i>Description</i>
	for production of confession statement of the plaintiff.
Ex.D17	Certified copy of the complaint given to the Commissioner of police by the defendant.
Ex.D18	Certified copy of the charge sheet filed before the Judicial Magistrate, Poonamallee dated 25.08.2009.
Ex.D19	Certified copy of the judgment in Cl.Appeal No.878 of 2010 dated 21.07.2012.
Ex.D20	Certified copy of the sale deed in favour of the defendant by Narayanappa and others dated 11.05.2005.
Ex.D21	Certified copy of the sworn affidavit of the plaintiff in C.C.No.19342 of 2008 dated 27.05.2009.



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G.JAYACHANDRAN.J.,

jbm



Judgment made in
C.S.No.941 of 2010

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08.01.2020