IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

REGULAR SECOND APPEAL No.624 OF 2018(SP)

BETWEEN:

1. SMT B K SHOBA DEVI
   W/O T M GANGANARASAIAH
   AGED ABOUT 51 YEARS
   R/A NO.6, 6TH CROSS
   MUNESWARA BLOCK
   RAJMAHAL GUTTAHALLY
   BANGALORE-560 003

2. SMT SUKANYA
   W/O SRI B K MANJUNATH
   AGED ABOUT 45 YEARS

3. SRI B K MANJUNATH
   S/O KEMPEERAIAH
   AGED ABOUT 48 YEARS

4. SRI GIRISH B K
   S/O KEMPEERAIAH
   AGED ABOUT 48 YEARS

   2 TO 4 ARE RESIDING AT
   NO.175, 17TH CROSS
   4TH MAIN ROAD, 4TH BLOCK
   IV STAGE, BASAVESHWARANAGAR
   BANGALORE-560 079

...APPELLANTS

(BY SRI. JAYAVITTAL RAO KOLAR, SENIOR ADVOCATE ALONGWITH SRI SRINIVASA.C AND SRI ANIRUDH ANAND, ADVOCATES)

Digitally signed by R MANJUNATHA
Location: HIGH COURT OF KARNATAKA

AND:

1. SRI NARASIMHA MURTHY
   S/O LATE SEEBA NAIK
   AGED ABOUT 57 YEARS

2. SRI GURU RAJU
   S/O LATE SEEBA NAIK
   AGED ABOUT 46 YEARS

3. SMT RANGAMMA
   W/O LATE SEEBA NAIK
   AGED ABOUT 77 YEARS

   1 TO 3 ARE RESIDING AT
   GONGIDIPURA VILLAGE
   KODIGEHALLY DHAKALE
   YESHWANTHPURA HOBLI
   BANGALORE TALUK-560 091

4. SMT KAMALAMMA
   D/O LATE SEEBA NAIK
   AGED ABOUT 56 YEARS

   PRESENTLY RESIDING AT
   NO.55, KANAKANAPALYA
   3RD CROSS, 2ND BLOCK
   JAYANAGARA
   BANGALORE-560 011

5. SMT GIRIJAMBA @ GIRIJAMMA
   D/O LATE SEEBA NAIK
   AGED ABOUT 53 YEARS
   PRESENTLY RESIDING AT NO.36
   3RD CROSS, ANJANEYA TEMPLE STREET
   T R NAGAR POST
   BANGALORE-560 028

6. SMT LALITHAMMA
   D/O LATE SEEBA NAIK
   AGED ABOUT 51 YEARS

   PRESENTLY RESIDING AT NO.35

4TH MAIN, 8TH CROSS
AGRAHARA DASARAHALLI
MAGADI MAIN ROAD
BANGALORE-560 079

7. SMT S MALA
D/O LATE SEEBA NAIK
AGED ABOUT 47 YEARS
PRESENTLY RESIDING AT NO.258
DODDAGOLLARAHATTI
BEHIND NEELAKANTESHWARA PAINTS
AND HARDWARE, MAGADI MAIN ROAD
BANGALORE-560 091

8. THE COMMISSIONER
BANGALORE DEVELOPMENT AUTHORITY
BANGALORE-560 020

9. THE ADDITIONAL LAND ACQUISITION OFFICER
BANGALORE DEVELOPMENT AUTHORITY
BANGALORE-560 020

…RESPONDENTS

(BY SRI RAJESWARA.P.N FOR SRI KARTHIK.C, ADVOCATES FOR R1 TO R3;

SRI K.KRISHNA, ADVOCATE FOR R8 AND R9;

R4 TO R7 ARE SERVED)

THIS RSA IS FILED UNDER SECTION 100 OF CIVIL PROCEDURE CODE, AGAINST THE JUDGMENT AND DECREE DATED 12.12.2017 PASSED IN R.A.NO.148/2016 ON THE FILE OF THE VIII ADDITIONAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL DISTRICT, BENGALURU, DISMISSING THE APPEAL AND CONFIRMING THE JUDGMENT AND DECREE DATED 13.07.2016 PASSED IN O.S.NO.112/1997 ON THE FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE, BENGALURU RURAL DISTRICT, BENGALURU.

THIS APPEAL HAVING BEEN RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

CAV JUDGMENT

Heard Sri Jaya vital Rao Kolar, learned Senior Advocate along with Sri Srinivasa.C and Sri Anirudh Anand, Advocates for the appellants and Sri Rajeswara P.N. advocate for Sri Karthik C, advocates for respondent Nos.1 to 3 and Sri K.Krishna, learned counsel for respondent Nos.8 and 9.

2. Parties are referred to as plaintiff and defendants as per their original ranking before the Trial Court, for the sake of convenience.

3. Plaintiffs' Second Appeal challenging the dismissal of the suit in O.S.No.112/1997 dated 13.07.2016 on the file of the Prl. Senior Civil Judge, Bengaluru Rural District, Bengaluru, confirmed in R.A.No.148/2016 dated 12.12.2017 on the file of the VIII Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru, whereby, suit for specific enforcement of the agreement to sell dated 15.11.1993 came to be dismissed.

4. Appeal came to be admitted by the Order dated 19.09.2019 on the following substantial questions of law:

> *(i) Whether this Court in this second appeal interfere with the finding of facts arrived by the Courts below on the ground that vital evidence, which if*

considered by the Courts below would have lead to a different conclusion, is omitted by the Courts below.

(ii) Whether the evidence relied upon the plaintiffs viz., Exs.P2(a), P2(b), P2(c), Exs.P2 to P5 with endorsement thereon and experts opinion land other evidence on record would be that vital evidence, which if considered by the Courts below could have lead to a conclusion different from the conclusion that they have now arrived at.

(iii) Whether the finding by the Courts below that the plaintiffs/appellants have not established ready and willingness is based on the evidence on record.

(iv) Whether the finding by the Courts that the appellants even otherwise would not be entitled for specific performance is in accordance with law."

5. Shorn of unnecessary details, factual matrix which are utmost necessary for disposal of the present appeal are-

6. The plaintiffs filed suit in O.S.No.112/1997 for the relief of specific performance of the contract of agreement to sell. In the plaint it is alleged that defendant Nos.1 and 2 being the absolute owners of the landed property bearing Sy.No.58/13 measuring six acres including 1 acre 3 guntas kharab land situated at Kodigehalli, Yeshwanthpur Hobli, Bengaluru North Taluk, entered into an agreement to sell the said property

morefully described hereunder and hereinafter referred to as 'suit property' by entering into an agreement with plaintiffs on 15.11.1993.

> *"An extent of 03 acres of land being the eastern portion including 22 guntas of phut kharab comprised in Sy.No.58/13 (i.e., out of the total extent of 06 acres including phut kharab of 01 acre 03 guntas) bounded on:*
>
> *East by: Marappa, S/o Chikkanna's land,*
>
> *West by: The western half portion of 03 acres in the same survey number conveyed in favour of the plaintiff No.3 and 4,*
>
> *North by: Land of N.Govindaraju,*
>
> *South by: Land of Srikantappa and Gurumallappa,*
>
> *Situated at Kodigehally village, Yeshwanthpur Hobli, Bengaluru North Taluk."*

7. The sale consideration was fixed at Rs.6,86,700/-. As on the date of agreement i.e., on 15.11.1993, plaintiff Nos.1 and 2 paid sum of Rs.50,000/-. Defendant No.3 being the mother of defendant Nos.1, 2, 4 to 7 has signed the said agreement as consenting witness.

8. It is further alleged in the plaint that even before expiry of the period fixed in the agreement to sell, defendant Nos.1 to

3 again approached plaintiff Nos.1 and 2 seeking for further payment of Rs.50,000/-. Plaintiff Nos.1 and 2 said to have paid said additional advance amount of Rs.50,000/- on 23.06.1994 which was acknowledged by defendant Nos.1 to 3 on the agreement. Thus, there was a total advance sale consideration of Rs.1,00,000/- paid by the plaintiffs.

9. Plaint averments further reveal that defendant No.1 had undertaken to get the khatha changed into their name and get the land surveyed by fixing the boundary which would facilitate the sale consideration.

10. When the matter stood thus, pertinently defendant No.3 executed an agreement to sell on 09.07.1994 in favour of plaintiff Nos.3 and 4 who are the nominees of plaintiff Nos.1 and 2, which the plaintiffs termed it as 'continuation agreement'. At that juncture, additional sum of Rs.50,000/- was paid by plaintiff Nos.3 and 4 to the defendants.

11. Another sum of Rs.1,00,000/- was paid according to plaintiffs on 01.01.1995 and there was an endorsement on the sale agreement. Thus, defendants received Rs.1,50,000/- from plaintiff Nos.3 and 4 apart from the earlier advance amount.

12. It is further case of plaintiffs that defendant No.3-Rangamma, when she executed the 'continuation agreement' on 09.07.1994 represented to the plaintiffs that property in question had fallen to her share at an oral partition which was effected among defendants subsequent to entering into agreement of sale dated 15.11.1993. Therefore, plaintiff Nos.3 and 4 being nominees of plaintiff Nos.1 and 2 agreed to pay balance sale consideration of Rs.1,61,850/- out of total sale consideration of Rs.3,11,850/- in respect of 'continuation agreement' at the time of execution of the sale deed.

13. It is further contention of the plaintiffs that defendant Nos.1 to 3 again approached plaintiff Nos.1 and 2 on 09.06.1995 for payment of further sale consideration of Rs.1,50,000/-. Plaintiffs heeded to their request and paid Rs.1,50,000/-. There was an endorsement by defendant Nos.1 to 3 on the original agreement to sell in that regard and thus, defendant Nos.1 to 3 have received Rs.2,50,000/- from plaintiff Nos.1 and 2 in respect of original agreement to sell dated 15.11.1993.

14. Plaintiffs also contended that defendant Nos.1 to 3 agreed that 'continuation agreement' dated 09.07.1994 was acted

upon and there was a sale deed executed by defendant No.3 on 09.08.1995 in favour of plaintiff Nos.3 and 4 in respect of three acres of land bearing Sy.No.58/13 out of six acres which was western half of land in Sy.No.58/13.

15. After execution of sale deed there was a further demand of Rs.2,50,000/- by defendant No.3 and plaintiff Nos.1 and 2 paid Rs.2,50,000/- to the defendants which is further acknowledged by the defendants on 09.08.1995 being the third endorsement on agreement dated 15.11.1993.

16. Thus according to plaintiffs, defendants have acknowledged receipt of total sale consideration of Rs.5,00,000/- from plaintiff Nos.1 and 2 in respect of original agreement wherein six acres of land was agreed to be sold and balance consideration was only to the tune of Rs.1,86,700/-.

17. Plaint averments also reveal that on 04.08.1994 there was yet another agreement executed by third defendant in continuation of the agreement dated 15.11.1993 in favour of plaintiff Nos.3 and 4 being nominees of plaintiff Nos.1 and 2.

18. The said agreement is in respect of balance three acres of land on the eastern half portion of Sy.No.58/13. While

executing said 'continuation agreement' on 04.08.1994 yet another sum of Rs.50,000/- was paid by plaintiff Nos.3 and 4 to the defendants. It is also contention of the plaintiffs that sum of Rs.72,000/- was paid on 28.01.1995 which is also acknowledged by defendants. Therefore, defendants were required to execute the registered sale deed in favour of plaintiff Nos.3 and 4 within six months from the date of 'continuation agreement' dated 04.08.1994.

19. Plaintiff Nos.1 and 2 further contended that they have paid Rs.50,000/- on 05.04.1995 to defendant Nos.1 to 3 towards balance sale consideration which was also acknowledged by the defendants.

20. Thus, plaintiffs furnished details of the payment which is actually to the tune of Rs.9,73,850/- which is in excess of agreed sale consideration of Rs.6,86,700/-.

21. It is further contention of the plaintiffs that defendants have agreed to repay excess amount of Rs.2,87,150/- on the date of execution of sale deed in respect of remaining three acres of land.

22. Further contention of the plaintiffs is that despite repeated demands, defendants failed to comply with the terms of the continuation agreement and they went on postponing the execution of the sale deed in respect of balance three acres of land on the eastern side of land in Sy.No.58/13, which necessitated the plaintiffs to initiate suit in O.S.No.300/1996 on the file of the II Additional Civil Judge (Jr.Dn.), Bengaluru, for the relief of injunction against defendant No.3.

23. It is also the contention of the plaintiffs that, for the first time in the said suit, third defendant being a party to the suit, denied the sale agreement entered into between the parties and as such, plaintiffs were constrained to file the present suit for specific enforcement of the contract.

24. During pendency of the suit, plaint got amended, since there was an acquisition of the balance three acres of the land by the Bengaluru Development Authority for formation of Nadaprabhu Kempe Gowda Layout by issuing the preliminary notification on 25.05.2008 and final notification on 18.02.2010 with a prayer that plaintiffs are entitled to receive the compensation amount or in *lieu* of the same, the plaintiffs are entitled to developed area as per the scheme proposed by the

Bengaluru Development Authority and thus sought for passing suitable orders.

25. In pursuance to the suit summons, defendants entered appearance.

26. The third defendant filed written statement which was adopted by defendant Nos.1 and 2. The fourth defendant filed separate written statement which was adopted by defendant Nos.5 to 7. Defendant Nos.8 and 9 did not choose to file any written statement.

27. The third defendant in her written statement did not dispute the agreement dated 15.11.1993, but denied the other averments of the plaint. The third defendant specifically contended that plaintiff Nos.1 and 2 did not have sufficient funds to purchase the entire six acres of land in Sy.No.58/13 on account of the financial constraints. Therefore, plaintiff Nos.1 and 2 got registered in their name only three acres of land and consideration was paid only to the said extent of three acres of land. Defendant No.3 admitted the filing of the case in O.S No.300/1996 by plaintiff Nos.3 and 4. It is further contended that being unable to meet the defence raised by the

defendant No.3 in the said suit, plaintiffs withdrew the said suit which was filed based on false and frivolous grounds.

28. The defendant No.3 also contended that plaintiff Nos.3 and 4 used to obtain signatures of 3rd defendant and her sons on blank stamp papers and concocted the same into agreements without there being any consent of the defendants with a *mala fide* intention of grabbing the suit property.

29. The third defendant denied the receipt of additional advance sale consideration as per endorsement which were marked in the evidence as Exhibits P-2, P-3 and P-4.

30. The fourth defendant in her written statement contended that defendant Nos.1 to 3 had no legal right or title whatsoever to enter into an agreement of sale in favour of the plaintiffs and defendant Nos.4 to 7 are also entitled for share in the suit property.

31. It is further contended by defendant No.4 that defendant Nos.5 to 7 did not execute any agreement to sell in favour of the plaintiffs. Therefore, defendant Nos.1 to 3 are not competent to enter into an agreement of sale with the plaintiffs

in respect of joint family property. Therefore, the suit agreement is *void ab initio* and cannot be enforced.

32. It is further contended by defendant Nos.4 to 7 that they were not aware of the transaction alleged to have taken place between plaintiffs and defendant Nos.1 to 3 as they were residing in Gongadipura Village. They also claimed share in the suit property.

33. Based on the rival contentions of the parties, learned Trial Judge raised following issues and additional issues.

ISSUES

"(i) Whether the plaintiffs proves that the 3rd defendant executed an agreement on 9.7.1994 being continuation agreement dated 15.11.1993 agreeing to sell the remaining extent of land in favour of plaintiffs 3 and 4?

(ii) Whether the plaintiffs prove that they have paid in all Rs.9,73,850/- to the defendants in excess of the agreed amount of Rs.6,86,700/-?

(iii) Whether the plaintiffs have been always ready and willing to get the sale deed registered in their names in respect of the remaining extent of land?

(iv) Whether the suit is bad for non joinder and mis-joinder of necessary parties?

(v) Whether the plaintiffs prove that the defendants have put them in possession of the entire extent of the land?

(vi) Whether the interference alleged is true?

(vii) Whether the plaintiffs are entitled for a decree for specific performance?

(viii) Whether the plaintiffs are entitled for permanent injunction?

(ix) What Order?

ADDITIONAL ISSUES

"(i) Do the plaintiffs prove that the third defendant Smt.Rangamma, the mother of the defendants No.1,2,4 and 7 is bound by the said agreement of sale dated 15.11.1993 as she being the consenting party to the same?

(ii) Do the plaintiffs 1 and 2 prove that they have paid another sum of Rs.40,000/- on 5.11.1995 to the defendants No.1 to 3 in respect of the agreement of sale dt.15.11.1993?

(iii) Do the plaintiffs prove that they have paid in all Rs.5,40,000/- in pursuance of the said agreement of sale dated 15.11.1993?

(iv) Do the plaintiffs prove that the third defendant in collusion with the defendants No.1, 2, 4 to 7 attempted to interference to dispossess and to alienate the remaining extent of 3 acre of land?"

34. In order to prove the case of the plaintiffs, fourth plaintiff got examined himself as PW-1 and placed on record 12 documentary evidence. Four independent witnesses were examined on behalf of the plaintiffs as PWs-2 to 5. The details of the witnesses examined on behalf of the plaintiffs is as under:

P.W.1-Sri B.K.Girish,

P.W.2-Sri Anjanappa,

P.W.3-Sri M.Nagaraju,

P.W.4-Sri Chennaiah,

P.W.5-Sri B.Andanaiah,

35. The details of the documents produced on behalf of the plaintiffs is as under:

Exhibit P.1- General Power of Attorney dated 30.10.2002.

Exhibit P.2- Agreement to sell dated 15.11.1993.

Exhibit P.3- Agreement to sell dated 09.07.1994.

Exhibit P.4- Agreement to sell dated 04.08.1994.

Exhibit P.5- Sale deed dated 09.08.1995.

Exhibit P.6- Mutation register

Exhibit P.7- RTC

Exhibit P.8- RTC

Exhibit P.9- RTC

Exhibit P.10 Receipt

Exhibit P.11 Order sheet in O.S.No.300/1996.

Exhibit P.12 Pachayath parikat

Exhibit P.13 Copy of mutation register

36. As against the material evidence placed on record by the plaintiffs, second defendant got examined himself examined as DW-1 and placed on record 8 documents i.e., Record of Rights which were exhibited and marked as Exhibits D-1 to D-8. Fifth defendant got herself examined as DW-2.

37. It is noticed that there is duplication of Exhibit D-1. In that regard, this Court listed the matter for clarification on 06.10.2026, wherein, a memo came to be filed which reads as under:

> *"The undersigned counsels for the appellants and respondents No.1 to 3 most humbly and respectfully submit that, before the Trial Court in O.S.No.112/1997 the P.W.1 was confronted with the plaint in O.S.No.300/1996 during cross-examination and the said document was marked as Exhibit D-1. During evidence of D.W.1 marked the RTCs as Exhibit D-1 to D-8. Since two documents are marked as Exhibit D-1,*

the appellants and respondents jointly pray this Hon'ble Court to treat plaint in O.S.No.300/1996 as Exhibit D-9.

Wherefore, it is most humbly and respectfully prayed before this Hon'ble Court to take this memo on record and the Exhibit D-1 plaint in O.S.300/1996 marked in O.S.No.112/1997 may be treated as Exhibit D-9 in the interest of justice and equity."

38. In view of memo, Exhibit D-1 which was marked in the cross-examination by confronting to P.W.1 is now treated as Exhibit D-9, as without considering the same, Record of Rights extracts of the suit property were marked as Exhibits D-1 to D-8.

39. After conclusion of the recording of evidence, learned Trial Judge heard the arguments of the parties and dismissed the suit of the plaintiff.

40. Being aggrieved by the same, it is the plaintiffs who filed an appeal before the VIII Additional District and Sessions Judge, Bengaluru Rural District, Bengaluru, in R.A. No.148/2016.

41. Before the First Appellate Court, plaintiffs not only challenged the validity of the Trial Court Judgment, but also challenged the authority of the Court on several grounds which

were culled out in paragraph 11 of the judgment of the First Appellate Court.

42. After securing the records, learned Judge in the First Appellate Court, formulated five points for consideration and then dismissed the appeal on re-appreciation of the material on record.

43. Being further aggrieved by the same, the present Second Appeal is filed by the plaintiffs.

44. As aforesaid, appeal came to be admitted on the aforesaid substantial questions of law.

45. Sri Jaya Vittal Rao Kolar, learned Senior Counsel representing the appellants, pursuant to the substantial questions of law formulated at the time of the admission of the appeal contended that both the Courts grossly erred in dismissing the suit of the plaintiffs especially, when there is admission by the defendants about Exhibit P-2.

46. He further emphasized that parties knowingfully well about the factual aspect of the matter placed their respective evidence on record pursuant to the pleadings.

47. Learned Senior Counsel would further contend that defendants have admitted the documents except the endorsements on Exhibits P-2 and P-3 to P-5. Defendants have specifically pleaded fraud and misrepresentation. But what type of fraud and misrepresentation is not detailed out.

48. He would further contend that though Exhibits P-3 to P-5 are disputed, there cannot be any dispute with regard to Exhibit P-3 which is the sale deed executed by defendant No.3 in favour of plaintiff Nos.3 and 4 who are the nominees of plaintiff Nos.1 and 2 in respect of western half portion of the land in Sy.No.58/13 of Kodigehalli, Yeshwanthpur Hobli, Bengaluru North Taluk, after receiving the sale consideration.

49. As such, the defence that defendant Nos.1 to 3 used to subscribe signature on blank papers stands not established.

50. Learned Senior Advocate would further invite attention of the Court that Exhibit P-4, though disputed by the defendants, same stands established by placing necessary material evidence on record.

51. Further, DW-1, has categorically admitted in his examination-in-chief itself that except the endorsement found

on Exhibit P-2 dated 15.11.1993, the endorsement dated 09.07.1994 which is found on Exhibit P-3 and endorsement dated 04.08.1994 found on Exhibit P-4, other endorsements are not disputed which would result in the fact that the disputed document, if any, is only Exhibit P-5.

52. Sri Kolar would further argue with vehemence that in the light of the fact that the fingerprint and handwriting have been disputed on the endorsements, the Trial Court allowed the application for referring the matter to the fingerprint and handwriting expert and the disputed signatures, handwriting and fingerprints were referred to 'Truth Lab', wherein report has been received that the signatures and thumb impressions did tally with the admitted signatures of defendants.

53. Admittedly, the disputed signatures and thumb impressions which were found beneath the endorsements found on Exhibits P-2, P-3 and P-4 tallied with the admitted signatures and thumb impressions. As such, the defence of fraud and misrepresentation pleaded by the defendants gets into insignificance.

54. Sri Kolar pointed out that the learned Trial Judge failed to consider the report of the expert on the ground that the same

is not marked in evidence. He would further contend that there is a presumption that the opinion of the expert is to be accepted even if it is not marked.

55. To buttress his arguments, he places reliance on the judgment of the Karnataka High Court in the case of ***Parappa and others vs. Bhimappa and Another*** reported in ***ILR 2008 KAR 1840***.

56. He invited the attention of this Court to paragraphs 19, 22 and 23 of the said Judgment and contended that under Order XXVI Rule 10 of the Code of Civil Procedure the report filed by the expert can be accepted even without marking the said report or examining the expert as a witness.

57. It is his specific case that the learned Trial Judge failed to note the correct proposition of law though ***Parappa's*** decision was cited and considered by the learned Trial Judge.

58. He would further contend that a report filed by the expert would become part of the Court records under Order XXVI Rule 10A(2) of the Code of Civil Procedure and therefore without further proof thereof, the same should be considered by the Court as proof of the document. In this regard, he relied on

various judgments of Hon'ble Supreme Court, High Courts of Kerala, Andhra Pradesh, Delhi.

59. He would also contend that, an application vide I.A. No.24 was filed seeking permission of the Court to reopen the side of the plaintiffs and examine the expert. But no order has been passed on the said application.

60. As such, all efforts made by the plaintiffs to examine the expert is not considered by the learned Trial Judge resulting in miscarriage of justice.

61. In furtherance to such arguments, Sri Kolar would also contend that even if the report is not marked, under Section 73 of the Evidence Act, the Court can very well compare the signature by itself.

62. In that regard, on behalf of the appellants I.A No.2/2026 is filed before this Court with the following prayer.

> "*That for the reasons stated and sworn to in the accompanying affidavit, the appellants prays that this Hon'ble Court may be pleased to remand this Appeal to 1st Appellate Court, to re-appreciate material evidence on records, to determine the point for consideration and better adjudication of the case*

between the parties in O.S.No.112/1997, in the interest of equity and justice."

63. Sri Kolar would contend that to do justice to the case, this Court can compare the admitted and disputed signatures or call for the finding from the First Appellate Court or by the Trial Court in the light of the report submitted by the Commissioner.

64. The power of the Court in this regard is emphasized by Sri Kolar by placing reliance on the following judgments:

(i) ***Murari Lal v. State of M.P.,*** reported in **(1980) 1 SCC 704.**

"7. *Apart from principle, let us examine if precedents justify invariable insistence on corroboration. We have referred to Phipson on Evidence, Cross on Evidence, Roscoe on Criminal Evidence, Archibald on Criminal Pleadings, Evidence and Practice and Halsbury's Laws of England but we were unable to find a single sentence hinting at such a rule. We may now refer to some of the decisions of this Court. In Ram Chandra v. U.P. State [AIR 1957 SC 381 : 1957 Cri LJ 559] , Jagannadhadas, J. observed: "It may be that normally it is not safe to treat expert evidence as to handwriting as sufficient basis for conviction" (emphasis ours). "May" and "normally" make our point about the absence of an inflexible rule. In Ishwari Prasad Misra v. Mohammad Isa [AIR 1963 SC 1728 : (1963) 3 SCR 722] Gajendragadkar, J. observed: "Evidence given by experts can never be conclusive, because after all*

it is opinion-evidence", a statement which carries us nowhere on the question now under consideration. Nor, can the statement be disputed because it is not so provided by the Evidence Act and, on the contrary, Section 46 expressly makes opinion-evidence challengeable by facts, otherwise irrelevant. And as Lord President Cooper observed in Davis v. Edinburgh Magistrate [Vide Lord President Cooper in Davis v. Edindurgh Magistrate, 1953 SC 34 quoted by Professor Cross in his Evidence] : "The parties have invoked the decision of a judicial tribunal and not an oracular pronouncement by an expert."

8. *In Shashi Kumar v. Subodh Kumar [AIR 1964 SC 529] Wanchoo, J., after noticing various features of the opinion of the expert said:*

> *"We do not consider in the circumstances of this case that the evidence of the expert is conclusive and can falsify the evidence of the attesting witnesses and also the circumstances which go to show that this will must have been signed in 1943 as it purports to be. Besides it is necessary to observe that expert's evidence as to handwriting is opinion-evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence. In the present case the probabilities are against the expert's opinion and the direct testimony of the two attesting witnesses which we accept is wholly inconsistent with it."*

So, there was acceptable direct testimony which was destructive of the expert's opinion; there were other features also which made the expert's opinion unreliable. The observations regarding corroboration must be read in that context and it is worthy of note that even so the expression used was "it is usual" and not "it is necessary".

9. *In Fakhruddin v. State of M.P. [AIR 1967 SC 1326 : 1967 Cri LJ 1197] Hidayatullah, J. said:*

> *"Both under Section 45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the finding of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two*

writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witness."

These observations lend no support to any requirement as to corroboration of expert testimony. On the other hand, the facts show that the Court ultimately did act upon the uncorroborated testimony of the expert though these Judges took the precaution of comparing the writings themselves.

11. *We are firmly of the opinion that there is no rule of law, nor any rule of prudence which has crystallised into a rule of law, that opinion-evidence of a handwriting expert must never be acted upon, unless substantially corroborated. But, having due regard to the imperfect nature of the science of identification of handwriting, the approach, as we indicated earlier, should be one of caution. Reasons for the opinion must be carefully probed and examined. All other relevant evidence must be considered. In appropriate cases, corroboration may be sought. In cases where the reasons for the opinion are convincing and there is no reliable evidence throwing a doubt, the uncorroborated testimony of an handwriting expert may be accepted. There cannot be any inflexible rule on a matter which, in the ultimate analysis, is no more than a question of testimonial weight. We have said so much because this is an argument frequently met with in subordinate courts and sentences torn out of context from the judgments of this Court are often flaunted.*

12. *The argument that the court should not venture to compare writings itself, as it would thereby assume to itself the role of an expert is entirely without force. Section 73 of the Evidence Act expressly enables the court to compare disputed writings with admitted or proved writings to ascertain whether a writing is that of the person by whom it purports to have been written. If it is hazardous to do so, as sometimes said, we are afraid it is one of the hazards to which Judge and litigant must expose themselves whenever it becomes necessary. There may be cases where both sides call experts and two [Vide Correction slip No. F. 3/79 (Ed.J) dt. 21-8-80] voices of science are heard. There may be cases where neither side calls an expert, being ill able to afford him. In all such cases, it becomes the plain duty of the court to compare the writings and come to its own conclusion. The duty cannot be avoided by recourse to the statement that the court is no expert. Where there are expert opinions, they will aid the court. Where there is none, the court will have to seek guidance from some authoritative textbook and the court's own experience and knowledge. But discharge it must, its plain duty, with or without expert, with or without other evidence. We may mention that Shashi Kumar v. Subodh Kumar [AIR 1967 SC 1326 : 1967 Cri LJ 1197] and Fakhruddin v. State of M.P. [AIR 1967 SC 1326 : 1967 Cri LJ 1197] were cases where the Court itself compared the writings."*

***(ii) State (Delhi Admn.) v. Pali Ram*, (1979)2 SCC 158.**

"24. *Just as in English Law, the Indian Evidence Act recognises two direct methods of proving the handwriting of a person:*

"(1) By an admission of the person who wrote it.

(2) By the evidence of some witness who saw it written."

These are the best methods of proof. These apart, there are three other modes of proof by opinion. They are:

"(i) By the evidence of a handwriting expert. (Section 45)

(ii) By the evidence of a witness acquainted with the handwriting of the person who is said to have written the writing in question. (Section 47)

(iii) opinion formed by the court on comparison made by itself. (Section 73)"

All these three cognate modes of proof involve a process of comparison. In mode (i), the comparison is made by the expert of the disputed writing with the admitted or proved writing of the person who is said to have written the questioned document. In (ii), the comparison takes the form of a belief which the witness entertains upon comparing the writing in question, with an exemplar formed in his mind from some previous knowledge or repetitive observance of the handwriting of the person concerned. In the case of (iii), the comparison is made by the court with the sample writing or exemplar obtained by it from the person concerned.

25. *A sample writing taken by the court under the second paragraph of Section 73, is, in substance and reality, the same thing as "admitted writing" within the purview of the*

first paragraph of Section 73, also. The first paragraph of the section, as already seen, provides for comparison of signature, writing, etc. purporting to have been written by a person with others admitted or proved to the satisfaction of the court to have been written by the same person. But it does not specifically say by whom such comparison may be made. Construed in the light of the English Law on the subject, which is the legislative source of this provision, it is clear that such comparison may be made by a handwriting expert (Section 45) or by one familiar with the handwriting of the person concerned (Section 47) or by the court. The two paragraphs of the Section are not mutually exclusive. They are complementary to each other.

26. *Section 73 is therefore to be read as a whole, in the light of Section 45. Thus read, it is clear that a court holding an inquiry under the Code of Criminal Procedure in respect of an offence triable by itself or by the Court of Session, does not exceed its powers under Section 73 if, in the interests of justice, it directs an accused person appearing before it, to give his sample writing to enabling the same to be compared by a handwriting expert chosen or approved by the court, irrespective of whether his name was suggested by the prosecution or the defence, because even in adopting this course, the purpose is to enable the court before which he is ultimately put up for trial, to compare the disputed writing with his (accused's) admitted writing, and to reach its own conclusion with the assistance of the expert.*

27. *In the instant case, the Magistrate, as the extract from his order dated May 20, 1972, shows after considering the peculiar circumstances of the case, and recalling the*

observation of the Calcutta High Court in Hiralal Agarwalla v. State to the effect, that Section 73 entitled "the court to assist itself for a proper conclusion in the interest of justice", expressly "applied this test to the present case". The peculiar circumstances which weighed with the Magistrate in directing the accused to execute sample writing to be compared, in the first instance, by the Government Expert of Questioned Documents, included the contumacious conduct of the accused and the resiling of the material witness, Tek Chand, which, according to Mr Marwah, was possibly due to his having been suborned or won over by the accused. It was apparent from the record that the accused was playing hide and seek with the process of law and was avoiding to appear and give his sample writing to the police. The Magistrate therefore, had good reason to hold that the assistance of the Government Expert of Questioned Documents was essential in the interest of justice to enable the Magistrate to compare the sample and the questioned writings with the expert assistance so obtained and then to reach a just and correct conclusion about their identity. Although the order of the Magistrate is somewhat inartistically worded, its substance was clear that although initially, the specimen writing sought from the accused was to be used for comparison by the Government Expert, the ultimate purpose was to enable the court to compare that specimen writing with the disputed one, Ex. PW 21-F, to reach a just decision.

28. *In the revision petition filed by the accused before the High Court a grievance is sought to be made out that the Magistrate's order will work prejudice to the defence and enable the prosecution to fill gaps and loopholes in its case.*

This contention was devoid of force. Once a Magistrate in seisin of a case, duly forms an opinion that the assistance of an expert is essential to enable the court to arrive at a just determination of the issue of the identity of the disputed writing, the fact that this may result in the "filling of loopholes" in the prosecution case is purely a subsidiary factor which must give way to the paramount consideration of doing justice. Moreover, it could not be predicated at this stage whether the opinion of the Government Expert of Questioned Documents would go in favour of the prosecution or the defence. The argument raised before the High Court was thus purely speculative.

29. *In addition to Section 73, there are two other provisions resting on the same principle, namely. Section 165, Evidence Act and Section 540 CrPC, 1898, which between them invest the court with a wide discretion to call and examine any one as a witness, if it is bona fide of the opinion that his examination is necessary for a just decision of the case. In passing the order which he did, the Magistrate was acting well within the bounds of this principle.*

30. *The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted*

writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert."

(iii) Fakhruddin vs. The State of Madhya Pradesh in AIR 1967 SUPREME COURT 1326.

12. *Therefore, to satisfy ourselves whether the testimony of the handwriting expert is acceptable or not, we sent for the record and compared the disputed writings with sonic comparable materiel. There were two such writings which were claimed as standard. One was a register maintained at the office of the. Association ii : which there was a signature in three places in Hindi which purported to be that of Fakhruddin (Exhibit P-56). The other was a writing which Fakhruddin made to the dictation of the Police Officer in Jail (Ex. P-61). These were, of course, not admitted by Fakhruddin and the question had to be first decided which of the two or both could be said to be approved standard material. Mr Kohli urged that Ex. P-56 could not be so treated as there was no proof that the signatures were made by Fakhruddin. In this submission Mr. Kohli is right. The evidence of Tahir Ali, P.W. 14 which has been relied upon is not definite on this point, He does not say that the signatures were of Fakhruddin who was the accused in the case. He only says that the persons whose signatures were made in the register, signed it rud this leaves the matter at large. There is, however, proof that the other writing was made by Fakhruddin the appellant. The Sub- Inspector, P.W. 33 took the precaution of having two witnesses P. Ws. Nos. 16 and 27. Of these P.W. 16 did not identify the appellant as*

the writer but the other P.W. 27 did. Exhibit P-61, therefore, furnishes the necessary comparative material.

14. *We sent for these writings and compared them to satisfy ourselves about the accuracy of the expert's observations. Exhibit P-61 and the disputed writings on the applications are so clearly written by the same person that one hardsly needs expert guidance. Numerous idiosyncrasies in one are faithfully reproduced in the other and leave no manner of doubt as to the authorship of the applications. They were written by the appellant. As the applications are ostensibly by different persons the conclusion is inescapable that Fakhruddin was making applications in diverse names and collecting iron sheets in this manner. Once the offence of forgery is established the proof of the other offence is clear Fakhruddin's conviction for the offences other than conspiracy was, therefore, soundly grounded."*

65. Sri Kolar would further contend that ***Parappa's*** decision was in fact pressed into service before the First Appellate Court also. Though learned Judge in the First Appellate Court has discussed the principles of law enunciated in ***Parappa's*** decision, failed to adhere to the ratio enunciated in ***Parappa's*** decision and non-comparison of the signature by the Court is a substantial question of law which requires to be addressed by this Court apart from the substantial questions of law already formulated at the time of admitting appeal.

66. In support of such a contention, he places reliance on the judgment of the Hon'ble Apex Court in the case of ***Municipal Committee, Hoshiarpur v. Punjab SEB*****,** reported in **(2010) 13 SCC 216,** paragraphs 27 and 28**.**

> ***"27.*** *There is no prohibition on entertaining a second appeal even on a question of fact provided the court is satisfied that the findings of fact recorded by the courts below stood vitiated by non-consideration of relevant evidence or by showing an erroneous approach to the matter i.e. that the findings of fact are found to be perverse. But the High Court cannot interfere with the concurrent findings of fact in a routine and casual manner by substituting its subjective satisfaction in place of that of the lower courts. (Vide Jagdish Singh v. Natthu Singh [(1992) 1 SCC 647 : AIR 1992 SC 1604] ; Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan [(1999) 6 SCC 343 : AIR 1999 SC 3067] and Dinesh Kumar v. Yusuf Ali [(2010) 12 SCC 740 : AIR 2010 SC 2679] .)*
>
> ***28.*** *If a finding of fact is arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant material or if the finding so outrageously defies logic as to suffer from the vice of irrationality incurring the blame of being perverse, then the finding is rendered infirm in the eye of the law. If the findings of the Court are based on no evidence or evidence which is thoroughly unreliable or evidence that suffers from the vice of procedural irregularity or the findings are such that no reasonable person would have arrived at those findings,*

then the findings may be said to be perverse. Further if the findings are either ipse dixit of the Court or based on conjecture and surmises, the judgment suffers from the additional infirmity of non-application of mind and thus, stands vitiated. (Vide Bharatha Matha v. R. Vijaya Renganathan [(2010) 11 SCC 483 : AIR 2010 SC 2685].)"

67. *Per contra,* Sri Rajeswara P.N. learned counsel for the respondents/defendants would contend that plaintiffs have not proved their readiness and willingness to conclude the sale transaction which was originally agreed upon.

68. He would further contend that because of the financial incapacity to conclude the transaction, there was variance in the original contract and specific understanding was reached among the parties to the effect that only three acres of land would be purchased by the plaintiffs as plaintiffs did not have financial capacity to purchase entire six acres of land as agreed in Exhibit P-2.

69. He also invited attention of this Court to the copy of the plaint in O.S.No.300/1996 marked at Exhibit D-9. Relevant portion of Exhibit D-9 reads as under:

"3. The plaintiffs submit that the defendant is the owner of the suit schedule property. The defendant under an agreement dated 04.08.1994 agreed to sell

eastern portion of Sy.No.58/13 situated in Kodigehalli village, Yeshwanthpura Hobli, Bangalore North Taluk, measuring in all three acres consisting of two acres and eighteen guntas of dry land and 22 guntas of karab which is part of entire extent of six acres situated in the said Sy.No. for a sum of Rs.1,26,000/- per acre and on the day when the said agreement was executed, the defendant received a sum of Rs.50,000/- as advance sale consideration towards the said sale transaction and the parties reduced the terms of agreement as per annexure-A.

4. The defendant on 28.1.95 also received a sum of Rs.72,000/- being further advance towards the said sale transactions and endorsement to this effect is made behind the said written agreement for having received the said advance.

5. The plaintiffs further submits that the defendant had in fact agreed to sell the entire extent of six acres of land out of the said Sy.No. under an agreement dt.15.11.93 executed by the sons of the defendant in favour of one of the plaintiffs wife and also in the name of the sister of the plaintiff. In fact, even under these agreements the sale price was fixed at Rs.1,26,000/- per acre and had under the said agreement received a sum of Rs.50,000/- towards the advance sale consideration. However, when it was found that the katha of the property in respect of the said Sy.No.58/13 (though it is stated as Sy.No.58/3) in the previous katha standing in the name of the defendant) was found not to be in the name of the persons who

have executed the agreement dt.15.11.93 (annexure-B). The parties felt that when the katha stands in the name of the defendant alone and when the plaintiffs expressed their desire to buy only 3 acres of land out of the entire extent of 6 acres in Sy.No.58/13 due to the circumstances such as finance etc., the said agreement dt.15.11.93 was substituted by two agreements splitting the extent of land into two bits i.e., for 3 acres each and two separate agreements has executed by the defendant. The one is dated 09.07.1994 which is in respect of the western portion of Sy.No.58/13 measuring 6 acres.

6. The plaintiffs further submits that the defendant has executed the registered sale deed in respect of 3 acres of land for which the agreement dated 09.07.1994 stood. The original sale deed is with the plaintiffs and it is produced in a Bank for raising loan. However, a certified copy of the sale deed in respect of the land referred to in the agreement dated 09.07.1994 is produced herewith. Its Xerox copy is annexure-C.

7. The plaintiffs further states that after having executed two separate agreements in respect of 6 acres of land one dt.9.7.94 and another dt.4.8.94, the later which is the subject matter of the suit and the defendant having executed a registered sale deed in respect of the previous agreement dt.9.7.94 the defendant has of late showing her dis-inclination to come forward to execute a registered sale deed in respect of the agreement dt.4.8.94 produced at Annexure-A.

8. xxx xxx xxx xxx

9. xxx xxx xxx xxx

10. The plaintiff further states that after obtaining registered sale deed dated 09.08.1995 in respect of the western portion measuring 3 acres of land in Sy.No.58/13 of the same village for which there was an agreement dated 15.11.1993 and 09.07.1994 the plaintiffs had in fact made further advance of Rs.40,000/- on 09.08.1995 in respect of the subject matter of this suit and an endorsement is made by the defendant and her children on 05.11.1995 behind the Annexure-B engaging the said sum of Rs.40,000/- towards the present subject matter of the suit. The plaintiffs have thus in all paid a sum of Rs.1,62,000/- so far."

11. The plaintiffs are ready and willing to perform their part of the contract and even ready now to pay the balance amount payable to the defendant under these agreement at annexure-A to obtain a registered sale deed."

70. He would further contend that sum of Rs.1,49,850/- was still outstanding as per the statement of the plaintiffs. Therefore, contentions urged on behalf of the plaintiffs that there is excess payment made in respect of the original contract and as such, proof regarding readiness and willingness

sought for by both the Courts itself is incorrect cannot be accepted.

71. He would also contend that as per Exhibit P-5/sale deed dated 09.08.1995, sum of Rs.3,11,850/- was paid by the plaintiffs. Exhibit P-5 is dated 09.08.1995 and there is no dispute with regard to the signatures found on the original document. But it is the specific case of the defendants that blank papers were mis-used by the plaintiffs in creating endorsement on Exhibits P-2(a), 2(b) and 2(c).

72. He would further contend that as per Exhibit P-2(c), if the amount is paid by the plaintiffs, there was no necessity to contend in Exhibit D-9 that there is still due in a sum of Rs.1,49,850/- as referred to supra.

73. He invited the attention of this Court to Exhibit P-2. Contents of Exhibit P-2 and signatures on Exhibit P-2 in comparison with contents of Exhibit P-1, it is crystal clear that there is variance of original contract and thus incapable of specific enforcement.

74. Sri P.N.Rajeswara, would submit that defendants would not dispute that pursuant to Exhibit P-3, sale deed has already

been executed in respect of three acres of land and endorsement in Exhibit P-3 thus would not serve any purpose insofar as plaintiffs seeking for specific enforcement of the contract in respect of balance of three acres of land or compensation or alternative relief.

75. He would also invite the attention of this Court to the date of Exhibit P-4 which is dated 04.08.1994 and would contend that the endorsements made on Exhibits P-2, P-3 and Exhibit P-4 would not stand to reason or logic, in view of the admission made in the plaint vide Exhibit D-9.

76. Sri Rajeswara would also contend that the theory of excess payment is an afterthought to get over the admission made in Exhibit D-9 and thus it should be inferred that the endorsements are *per se* concoction which if taken note of, would debar the plaintiffs from seeking specific enforcement of the suit agreement and thus sought for dismissal of the appeal.

77. In reply, Sri Jaya Vittal Rao Kolar would contend that defendants utterly failed in establishing the defence with regard to the concoction and the alleged fraud and misrepresentation.

78. In this regard, he would invite the attention of this Court to paragraphs 3 and 15 of the written statement and would contend that as is required under Order VI Rule 4 of the Code of Civil Procedure, a party who alleges the fraud and misrepresentation is required to plead the same in categorical terms of alleged fraud and misrepresentation so as to meet those allegations by the adversary.

79. In the case on hand, no particulars are forthcoming in the written statement and reply notice belies the pleading of fraud and misrepresentation.

80. In support of such contentions, he places reliance on the judgment of the Hon'ble Apex Court in the case ***Ranganayakamma v. K.S. Prakash*** reported in **(2008) 15 SCC 673** and invited the attention of this Court to paragraph Nos.29, 32 and 40, which reads as under:

> ***29.*** *The fact remains that a consent decree was passed pursuant to a settlement arrived at between the two branches. They decided that the properties may be divided half and half. Indisputably, the said consent decree has been acted upon. Once that consent decree has been acted upon, the question of reopening the entire suit by setting aside the decree passed in the said OS No. 2459 of 1982 would not arise. It is also not in dispute that the properties which fell in the share of the parties hereto*

and Smt Venajakshi are only four houses. It is also of some significance to note that the plaintiffs initially filed a suit in respect of the house in which Singaramma had been given one-third share, after the partition was brought about in terms of the decree passed in the said OS No. 2459 of 1982. The basis for the entire suit being commission of fraud in obtaining the said consent decree, it was obligatory on the part of the plaintiffs to pray for setting aside the said decree. The pleadings of the appellants in the said suit in which they were parties are binding on them in the subsequent proceedings proprio vigore. Unless fraud was proved, they could not have got rid of the same. The said decree has been acted upon. Pursuant to or in furtherance of the said decree, ten sale deeds have been executed.

32. *All the parties including Singaramma came to the Office of the Sub-Registrar for the said purpose. There is nothing to show nor the plaint contains any averments that a fraud or misrepresentation had been practised on Singaramma. It is true that she was not well and had undergone an operation at Vellore but bereft of that there is nothing to show that she was keeping unwell for a long time so as not to possess a sound disposing mind. Before the said deed of partition was entered into, on 15-7-1983 a special power of attorney was executed by Ranganayakamma in favour of Respondent 1. A clear recital was made therein that she had agreed to relinquish her interest. The power of attorney was being executed pursuant thereto.*

40. *When a fraud is alleged, the particulars thereof are required to be pleaded. No particular of the alleged fraud or misrepresentation has been disclosed.*

81. He also places reliance on the judgment of the Hon'ble Apex Court in the case of ***Ramesh B. Desai v. Bipin Vadilal Mehta*** reported in **(2006) 5 SCC 638** and invited the special attention of this Court to paragraph Nos.22 and 24 which is culled out hereunder and would contend that in the absence of proper pleadings, furnishing the type of fraud or misrepresentation, the contentions urged on behalf of the plaintiffs must be accepted and sought for allowing the appeal.

> ***"22.*** *Undoubtedly, Order 6 Rule 4 CPC requires that complete particulars of fraud shall be stated in the pleadings. The particulars of alleged fraud, which are required to be stated in the plaint, will depend upon the facts of each particular case and no abstract principle can be laid down in this regard. Where some transaction of money takes place to which 'A', 'B' and 'C' are parties and payment is made by cheques, in normal circumstances a third party 'X' may not get knowledge of the said transaction unless he is informed about it by someone who has knowledge of the transaction or he gets an opportunity to see the accounts of the parties concerned in the Bank. In such a case an assertion by 'X' that he got no knowledge of the transaction when it took place and that he came to know about it subsequently through some proceedings in court cannot be said to be insufficient pleading for the purpose of Order 6 Rule 4 CPC. In such a case 'X' can only plead that he got no knowledge of the transaction and nothing more. Having regard to the*

circumstances of the case, we are of the opinion that the High Court was in error in holding that there was no proper pleading of fraud.

24. *Mr Iqbal Chagla, learned counsel for the respondents, has submitted that the full particulars of fraud had not been given in the company petition and as such there was no compliance with Order 6 Rule 4 CPC in the company petition and the learned Company Judge has rightly dismissed the same. In support of this submission he has placed reliance on Bishundeo Narain v. Seogeni Rai [1951 SCC 447 : 1951 SCR 548 : AIR 1951 SC 280] wherein it was held that: (SCR p. 556)*

> *"[I]n cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be…."*

Reliance has also been placed on Bijendra Nath Srivastava v. Mayank Srivastava [(1994) 6 SCC 117] and paras 208 and 228 of the report in Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad [(2005) 11 SCC 314] where the same principle has been reiterated. We have already considered this aspect of the matter and in our opinion in the facts and circumstances of the case the plea raised in the company petition cannot be held to be wanting in compliance with Order 6 Rule 4 CPC."

82. In the light of rival contentions of the parties, this Court bestowed its best attention to the material on record.

83. For the sake of certainty, endorsements on Exhibit P-2 marked as Exhibits P-2(a), P-2(b), P-2(c) and P-2(d) are culled out hereunder.

"Exhibit P-2(a):

1ನೇ ಷರಾ: ಸನ್ ಒಂದು ಸಾವಿರದ ಒಂಭೈನೂರ ತೊಂಭತ್ತನಾಲ್ಕನೇ ಇಸವಿ ಜೂನ್ ಮಾಹೆ ತಾರೀಖು ಇಪ್ಪತ್ತಮೂರರಲ್ಲು (23.6.1994) ಶ್ರೀಮತಿ ಬಿ.ಕೆ.ಶೋಭಾದೇವಿ ಮತ್ತು ಶ್ರೀಮತಿ ಸುಕನ್ಯಾರವರಿಗೆ, ನರಸಿಂಹಮೂರ್ತಿ ಮತ್ತು ಗುರುರಾಜು ಆದ ನಾವಿಬ್ಬರು ಸೇರಿ ಒಪ್ಪಿ ಬರೆಸಿಕೊಟ್ಟ ಷರಾ ಕ್ರಮವೇನೆಂದರೆ:– ಈ ಕ್ರಯದ ಒಪ್ಪಂದದ ಕರಾರಿನಲ್ಲಿ ಕಂಡ ಕ್ರಯದ ಮೊಬಲಗು ಪೈಕಿ 50,000/– ಐವತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳನ್ನು ಈ ದಿವಸ ಈ ಕೆಳಕಂಡ ಸಾಕ್ಷಿದಾರರ ಸಮಕ್ಷಮ ನಾವು ನಿಮ್ಮಿಂದ ನಗದು ರೂಪದಲ್ಲಿ ಎರಡನೇ ಮುಂಗಡವಾಗಿ ಪಡೆದುಕೊಂಡಿರುತ್ತೇವೆ. ಈ ರೀತಿ ಈವರೆಗೆ ನಿಮ್ಮಿಂದ ನಮಗೆ ಒಟ್ಟು 1,00,000/– ಒಂದು ಲಕ್ಷ ರೂಪಾಯಿಗಳು ಸಂದಾಯವಾಗಿರುತ್ತೆ. ನಾವುಗಳು ಅರ್ಜಂಟಾಗಿ ನಮ್ಮ ಹೆಸರಿಗೆ ಖಾತೆ, ಕಂದಾಯ, ಪಹಣಿ ಮತ್ತು ನೋಂದಣಿ ಬಗ್ಗೆ ಬೇಕಾಗುವ ಅಸಲು ದಾಖಲಾತಿಗಳನ್ನು ಮಾಡಿಸಿ ಮತ್ತು ಸರ್ಕಾರದಿಂದ ಸರ್ವೆ ಮಾಡಿಸಲು ಅಕ್ಕ ಪಕ್ಕದವರಿಗೆ ನೋಟಿಸ್ ಕೊಟ್ಟು ಕರೆಸಿಕೊಂಡು ಖರೀದಿದಾರರಾದ ನಿಮ್ಮನ್ನು ಸಹ ಕರೆಸಿಕೊಂಡು, ಪಕ್ಕ ಸರ್ವೆ ಮಾಡಿಸಿ ಮತ್ತು ಈ ಜಮೀನಿಗೆ ರಸ್ತೆಯನ್ನು ಸಹ ಬಿಡಿಸಿಕೊಟ್ಟ ನಂತರ ಒಂದು ತಿಂಗಳು ವಾಯಿದೆಯಲ್ಲಿ ಒಟ್ಟು ಜಮೀನಿನಲ್ಲಿ ಅರ್ಧ ಭಾಗವನ್ನು ನೀವು ತಿಳಿಸಿದವರ ಹೆಸರಿಗೆ ನೋಂದಣಿ ಮಾಡಿಸಿಕೊಡುತ್ತೇವೆ. ಉಳಿದ ಜಾಗವನ್ನು ಅನಂತರ ಎರಡು (2) ತಿಂಗಳಲ್ಲಿ ನೀವು ಹೇಳಿದವರ ಹೆಸರಿಗೆ ನೋಂದಣಿ ಮಾಡಿಸಿ ಕೊಡಲು ಒಪ್ಪಿರುತ್ತೇವೆ ಮತ್ತು ಬದ್ಧರಾಗಿರುತ್ತೇವೆ. ಬಾಕಿ ಎಲ್ಲಾ ಅಂಶಗಳು ಕರಾರಿನಲ್ಲಿ ಕಂಡಂತೆ ಈ ಷರಾಕ್ಕು ಸಹ ಅನ್ವಯವಾಗತಕ್ಕದ್ದು ಎಂದು ನಾವು ಒಪ್ಪಿ ಬರೆಸಿಕೊಟ್ಟ ಷರಾ.

Exhibit P-2(b):

2 ನೇ ಷರಾ: ಸನ್ ಒಂದು ಸಾವಿರದ ಒಂಭೈನೂರ ತೊಂಭತ್ತೈದನೇ ಇಸವಿ ಜೂನ್ ಮಾಹೆ ತಾರೀಖು ಒಂಭತ್ತರಲ್ಲೂ (9.6.1995) ಶ್ರೀಮತಿ ಬಿ.ಕೆ.ಶೋಭಾದೇವಿ ಮತ್ತು ಶ್ರೀಮತಿ ಸುಕನ್ಯಾರವರಿಗೆ, ಈ ಕ್ರಯದ ಒಪ್ಪಂದದ ಕರಾರಿನ ಪ್ರಕಾರ ದಿವಂಗತ ಸೀಬಾನಾಯ್ಕರವರ

ಧರ್ಮಪತ್ನಿ ಸುಮಾರು 50 ವರ್ಷ ವಯಸ್ಸಿನ ಶ್ರೀಮತಿ ರಂಗಮ್ಮ ಆದ ನಾನು ಮತ್ತು ನನ್ನ ಗಂಡು ಮಕ್ಕಳಾದ ಒಂದನೇ ಸುಮಾರು 34 ವರ್ಷ ವಯಸ್ಸಿನ ನರಸಿಂಹಮೂರ್ತಿ, ಎರಡನೇ ಸುಮಾರು 26 ವರ್ಷ ವಯಸ್ಸಿನ ಗುರುರಾಜ ಆದ ನಾವುಗಳೆಲ್ಲರು ಸೇರಿ ಈ ಕರಾರಿನಲ್ಲಿ ತಿಳಿಸಿರುವಂತೆ ನಮ್ಮ ಪಿತ್ರಾರ್ಜಿತ ಸ್ವತ್ತಾದ 58/13 ನೇ ಸರ್ವೆ ನಂಬರು ಜಮೀನು ನಿಮಗೆ ಮಾರಾಟಮಾಡಿ, ನಿಮಗೆ ಸ್ವಾಧೀನಕ್ಕೆ ಬಿಟ್ಟು ಕೊಟ್ಟಿರುವುದು ಸರಿಯಷ್ಟೆ. ಈ ಜಮೀನು ಬಾಬತ್ತು ನಮಗೆ ಬರಬೇಕಾಗಿದ್ದ ಹಣದ ಬಾಬ್ತು ಈ ದಿವಸ ನಮ್ಮಗಳ ದರದಿನ ನಿಮಿತ್ಯ ನಿಮ್ಮಿಂದ 1,50,000/– ಒಂದು ಲಕ್ಷದ ಐವತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳನ್ನು ಈ ಕೆಳಕಂಡ ಸಾಕ್ಷಿಗಳ ರೂಬು ರೂಬು ನಿಮ್ಮಿಂದ ನಗದಾಗಿ ಪಡೆದುಕೊಂಡಿರುತ್ತೇವೆ. ಇಲ್ಲಿಗೆ ಒಟ್ಟು 2,50,000/– ಎರಡು ಲಕ್ಷದ ಐವತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳು ನಿಮ್ಮಿಂದ ನಮಗೆ ಸಂದಾಯವಾಗಿರುತ್ತೆ. ಈ ಜಮೀನಿಗೆ ನೋಂದಣಿಗೆ ಬೇಕಾಗಿರುವ ಎಲ್ಲಾ ಕಾಗದ ಪತ್ರಗಳನ್ನು ಮತ್ತು ಜಮೀನನ್ನು ಸರ್ಕಾರಿ ಸರ್ವೆ ಮಾಡಿಸಿ ಸುತ್ತಲೂ ಕಲ್ಲುಗಳನ್ನು ಹಾಕಿಸಿ, ಈ ಜಮೀನಿಗೆ ರೋಡನ್ನು ಬಿಡಿಸಿಕೊಡುತ್ತೇವೆ. ನೀವುಗಳು ರೋಡನ್ನು ಮಾಡಿಕೊಳ್ಳುವುದು. ಈ ಕೆಲಸಗಳನ್ನು ಈ ಲಾಗಾಯ್ತಿನಿಂದ ಒಂದು ತಿಂಗಳ ಒಳಗಾಗಿ ಮಾಡಿಸಿಕೊಟ್ಟು ನಿಮಗೆ ನೋಂದಣಿಗೆ ಅನುವು ಮಾಡಿಕೊಡುತ್ತೇವೆ ಎಂದು ನಿಮಗೆ ನಂಬಿಕೆ ಹೇಳಿರುತ್ತೇವೆ. ನನ್ನ ಹೆಣ್ಣು ಮಕ್ಕಳ ಒಪ್ಪಿಗೆ ರುಜುವನ್ನು ಕ್ರಯಪತ್ರಕ್ಕೆ ನೋಂದಣಿ ವೇಳೆ ಹಾಕಿಸಿಕೊಡುತ್ತೇನೆ. ಮತ್ತು ನಿಮಗೆ ಹೆಚ್ಚಿನ ನಂಬಿಕೆಗೋಸ್ಕರ ಎಲ್ಲರ ಹೆಬ್ಬೆಟ್ಟಿನ ಗುರುತನ್ನು ಸಹಾ ಹಾಕಿಸಿಕೊಟ್ಟಿರುತ್ತೇವೆ. ಹೀಗೆ ಬರೆಸಿಕೊಟ್ಟ ಎರಡನೇ ಷರಾದ ಅಡ್ವಾನ್ಸ್ ಕರಾರು ಸಹಿ.

Exhibit P-2(c):

<u>3 ನೇ ಷರಾ:</u> ತಾರೀಖು 9.8.1995ರಲ್ಲು ಶ್ರೀಮತಿ ಬಿ.ಕೆ.ಶೋಭಾದೇವಿ ಮತ್ತು ಶ್ರೀಮತಿ ಸುಕನ್ಯಾರವರಿಗೆ ಸಹ ನರಸಿಂಹಮೂರ್ತಿ ಮತ್ತು ಗುರುರಾಜು ಆದ ನಾವಿಬ್ಬರು ಸಹ ಸೇರಿ ಒಪ್ಪಿ ಬರೆಸಿಕೊಟ್ಟ ಷರಾ ಕ್ರಮವೇನೆಂದರೆ: ಈ ಕರಾರಿನಲ್ಲಿ ಕಂಡ ಪೂರಾ ಜಮೀನಿನ ಪೈಕಿ 2–19 ಎರಡು ಎಕರೆ ಹತ್ತೊಂಭತ್ತು ಗುಂಟೆ ಖುಷ್ಕಿ ಜಮೀನು ಮತ್ತು 0–21 ಇಪ್ಪತ್ತೊಂದು ಗುಂಟೆ ಖರಾಬು ಜಮೀನು ಒಟ್ಟು 3–00 ಮೂರು ಎಕರೆ ಜಮೀನನ್ನು ನಿಮ್ಮ ಅಪೇಕ್ಷೆ ಮೇರೆಗೆ, ನಿಮ್ಮ ಸಹೋದರರಾದ ಬಿ.ಕೆ.ಮಂಜುನಾಥ ಮತ್ತು ಬಿ.ಕೆ.ಗಿರೀಶ ಆದ ಇವರುಗಳ ಹೆಸರಿಗೆ ಈ ದಿವಸ ಕ್ರಯ ಪತ್ರ ಬರೆಸಿ ನೋಂದಣಿ ಮಾಡಿಸಿಕೊಟ್ಟಿರುತ್ತೇವೆ. ಅಂದರೇ ಈ ಜಮೀನು ನಾವು ಮತ್ತು ನಮ್ಮ ತಾಯಿ ಸಹ ಸೇರಿ ಮಾಡಿಕೊಂಡಿರುವ ಪಂಚಾಯ್ತಿ ಪಾರೀಖತ್ತು ಪ್ರಕಾರ ನಮ್ಮ ತಾಯಿ ರಂಗಮ್ಮರವರ ಭಾಗಕ್ಕೆ ಹೋಗಿದ್ದು, ಈ ಜಮೀನಿನ

ಕ್ರಮವಾದ ಕ್ರಯಪತ್ರವನ್ನು ನಮ್ಮ ತಾಯಿ ರಂಗಮ್ಮರವರಿಂದ ನಿಮ್ಮ ಹೆಸರಿಗೆ ಬರೆಸಿ ಸದರಿ ಕ್ರಯಪತ್ರಕ್ಕೆ ನಾವು ಮತ್ತು ನಮ್ಮ ಸಹೋದರಿಯವರು ಸಹ ಸೇರಿ ಒಪ್ಪಿಗೆ ರುಜು ಹಾಕಿ ಕ್ರಯಪತ್ರವನ್ನು ರಂಗಮ್ಮರವರಿಂದ ನಿಮ್ಮ ಹೆಸರಿಗೆ ನೋಂದಣಿ ಅಲ್ಲ ನಿಮ್ಮ ಸಹೋದರರ ಹೆಸರಿಗೆ ನೋಂದಣಿ ಮಾಡಿಸಿ ಜಮೀನನ್ನು ಸಹ ನಿಮ್ಮ ಸಹೋದರರ ಸ್ವಾಧೀನಪಡಿಸಿರುವುದು ಸರಿಯಷ್ಟೆ. ಈ ಕರಾರಿನಲ್ಲಿ ಕಂಡ ಕ್ರಯದ ಮೊಬಲಗು ಪೈಕಿ 2,50,000/– ಎರಡು ಲಕ್ಷದ ಐವತ್ತು ಸಾವಿರ ರೂಪಾಯಿಗಳನ್ನು ಈ ದಿವಸ ಈ ಕೆಳಕಂಡ ಸಾಕ್ಷಿದಾರರ ಸಮಕ್ಷಮ ನಾವು ನಿಮ್ಮಿಂದ 4ನೇ ಮುಂಗಡವಾಗಿ ಪಡೆದುಕೊಂಡಿರುತ್ತೇವೆ. ಈ ಕರಾರಿಗೆ ಈ ಲಾಗಾಯ್ತಿನಿಂದ (6)ಆರು ತಿಂಗಳವರೆಗೆ ವಾಯಿದೆಯನ್ನು ಮುಂದುವರೆಸಿಕೊಟ್ಟಿರುತ್ತೇವೆ. ಸದರಿ ವಾಯಿದೆಯಲ್ಲಿ ಈ ಕರಾರಿನಲ್ಲಿ ಕಂಡ ಪ್ರಕಾರ ನಾವು ನಡೆದುಕೊಂಡು ಈ ಕರಾರಿನ ಅನುಸೂಚಿ ಪೂರಾ ಜಮೀನಿನ ಪೈಕಿ ಪೂರ್ವಭಾಗದ ಖುಷ್ಕಿ ಮತ್ತು ಖರಾಬು ಸೇರಿದ ಒಟ್ಟು 3–00 ಮೂರು ಎಕರೆ ಜಮೀನಿನ ಕ್ರಮವಾದ ಕ್ರಯಪತ್ರವನ್ನು ನಮ್ಮ ತಾಯಿ ರಂಗಮ್ಮರವರಿಂದ ನಿಮ್ಮ ಹೆಸರಿಗಾಗಲಿ, ನೀವು ಅಪೇಕ್ಷೆ ಪಟ್ಟವರ ಹೆಸರಿಗಾಗಲಿ ಬರೆಸಿ, ನೋಂದಣಿ ಮಾಡಿಸಿಕೊಟ್ಟು ಸದರಿ ಕ್ರಯಪತ್ರಕ್ಕೆ ನಾವು ಮತ್ತು ನಮ್ಮ ಸಹೋದರಿಯವರು ಸಹ ಒಪ್ಪಿಗೆ ರುಜು ಮಾಡಿ ಬಾಕಿಯಾಗುವ ಕ್ರಯದ ಮೊಬಲಗು 1,86,700/– ಒಂದು ಲಕ್ಷದ ಎಂಭತ್ತಾರು ಸಾವಿರದ ಏಳುನೂರು ರೂಪಾಯಿಗಳನ್ನು ನಾವು ನಿಮ್ಮಿಂದ ಪಡೆದುಕೊಂಡು ಈ ಕ್ರಯದ ವ್ಯವಹಾರವನ್ನು ಪೂರ್ಣ ಮಾಡಿಕೊಡುತ್ತೇವೆ. ಸದರಿ ಮೂರು ಎಕರೆ ಜಮೀನನ್ನು ಸಹ ತಾರೀಖು 23.6.1994 ರಲ್ಲಿಯೇ ನಿಮ್ಮ ಸ್ವಾಧೀನಪಡಿಸಿರುತ್ತೇವೆ. ಬಾಕಿ ಎಲ್ಲಾ ಅಂಶಗಳು ಕ್ರಯದ ಒಪ್ಪಂದದ ಕರಾರಿನಲ್ಲಿ ಕಂಡಂತೆ ಈ ಷರಾಕ್ಕು ಸಹ ಅನ್ವಯವಾಗತಕ್ಕದ್ದು ಎಂದು ನಾವು ಒಪ್ಪಿ ಬರೆಸಿಕೊಟ್ಟ ಷರಾ ಸಹಿ.

Exhibit P-2(d):

ತಾರೀಖು 5.11.1995ರಲ್ಲಿ (ಐದನೇ ತಾರೀಖು ನವೆಂಬರ್ ಮಾಹೆ ಒಂದು ಸಾವಿರದ ಒಂಭೈನೂರ ತೊಂಭತ್ತೈದು) ಬೆಂಗಳೂರು–560003 ರಾಜಾ ಮಹಲ್ ಗುಟ್ಟಹಳ್ಳಿ ಮುನೇಶ್ವರ ಬ್ಲಾಕ್ 6ನೇ ನಂಬರ್ ಮನೆಯಲ್ಲಿರುವ ಶ್ರೀ ಬಿ.ಎಮ್.ಗಂಗನರಸಯ್ಯನವರ ಧರ್ಮಪತ್ನಿ ಸುಮಾರು 27 ವರ್ಷ ವಯಸ್ಸುಳ್ಳ ಶ್ರೀಮತಿ ಬಿ.ಕೆ.ಶೋಭಾದೇವಿಯವರಿಗೆ ಮತ್ತು ಬೆಂಗಳೂರು–79 ಬಸವೇಶ್ವರನಗರ 4ನೇ ಹಂತ, 4ನೇ ಬ್ಲಾಕ್, 4ನೇ ಮುಖ್ಯ ರಸ್ತೆ 17ನೇ

ಅಡ್ಡ ರಸ್ತೆ 175ನೇ ನಂಬರ್ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿರುವ ಶ್ರೀ ಬಿ.ಕೆ.ಮಂಜುನಾಥರವರ ಧರ್ಮಪತ್ನಿಯಾದ ಸುಮಾರು 22 ವರ್ಷ ವಯಸ್ಸಿನ ಶ್ರೀಮತಿ ಸುಕನ್ಯರವರಿಗೆ,

ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು ಯಶವಂತಪುರ ಹೋಬಳಿ ಗೊಂಗಡಿಪುರದಲ್ಲಿರುವ ಲೇಟ್ ಸೀಬಾನಾಯಕರವರ ಧರ್ಮಪತ್ನಿ ಶ್ರೀಮತಿ ರಂಗಮ್ಮ ಮತ್ತು ಒಂದನೇ ಮಗ ನರಸಿಂಹಮೂರ್ತಿ ಎರಡನೇ ಮಗ ಗುರುರಾಜ ಬರೆಸಿಕೊಟ್ಟ ಹಣಸಂದಾಯವಾದ ಷರಾ ಏನೆಂದರೆ ನಾವು ನಿಮಗೆ ತಾರೀಖು 15.11.1993ರಲ್ಲಿ ನಮ್ಮ ಬಾಬ್ತು ಕೊಡಿಗೆಹಳ್ಳಿ ಸರ್ವೆ ನಂಬರ್ 58/13 ನೇ ನಂಬರಿನಲ್ಲಿರುವ ಆರು (6) ಎಕರೆ ಜಮೀನನ್ನು ಶುದ್ಧ ಕ್ರಯಕ್ಕೆ ಕೊಟ್ಟಿದ್ದು ಅಗ್ರಿಮೆಂಟ್ ಪೇಪರಿನಲ್ಲಿ ಕಂಡಂತೆ ಮೂರನೇ ಸಾರಿ ಹಣ ಪಡೆದುಕೊಂಡಿರುತ್ತೇನೆ. ಈ ದಿನ ಮೇಲ್ಕಂಡ ಅಗ್ರಿಮೆಂಟ್ ಬಾಬ್ತು ರೂ 40,000/– (ರೂಪಾಯಿ ನಲವತ್ತು ಸಾವಿರ ಮಾತ್ರ) ಗಳನ್ನು ಈ ಕೆಳಕಂಡ ಸಾಕ್ಷಿಗಳ ಸಮಕ್ಷಮ ನಗದಾಗಿ ಪಡೆದಿರುತ್ತೇನೆ. ಈ ಅಗ್ರಿಮೆಂಟ್ ಬಾಬ್ತು ಒಟ್ಟು ರೂ 5,40,000/– (ರೂಪಾಯಿ ಐದು ಲಕ್ಷದ ನಲವತ್ತು ಸಾವಿರ)ಗಳು ನಮಗೆ ಸಂದಾಯವಾಗಿರುತ್ತದೆ ಎಂದು ಹೇಳಿ ಬರೆಸಿಕೊಟ್ಟ ನಾಲ್ಕನೇ ಷರಾ.''

84. The dates of those endorsements are 23.06.1994, 09.06.1995, 09.08.1995 and 05.11.1995 and amount said to have been paid by the plaintiffs in cash to the defendants as per those endorsements are ₹50,000/-, Rs.1,50,000/-, Rs.2,50,000/- and Rs.40,000/- which would amount to Rs.5,40,000/-, including the amount of Rs.50,000/- paid on 15.11.1993.

85. In this regard, memo of calculation filed by the learned counsel for respondent Nos.1 to 3 assumes significance. For ready reference, same is culled out hereunder:

"The plaintiffs/appellants have contended that they have performed their part of the contract and in fact made excess payment than agreed between the parties. It is submitted that from the material on record the following calculations are made which demonstrate that the case set up by the plaintiffs/ appellant is not borne out from the records.

***TABLE I**: Sale consideration @ Rs.1,26,000/- per acre (Rs.3150 per gunta) for an extent of 5 acres 18 guntas.*

Sl. No.	*Particulars*	*Total Sale consideration amount (in Rs.)*
1	*5A-18G x 126000* *Or* *218 guntas x 3150*	*6,86,700/-*

***TABLE II**: Dates and total payment claimed to have been made by the plaintiffs/appellants as on the date of the suit.*

Sl. No.	*Date*	*Exhibit*	*Amount (in Rs.)*
1	*15.11.1993*	*P2*	*50,000.00*
2	*23.06.1994*	*P(a)*	*50,000.00*
3	*09.07.1994*	*P3*	*50,000.00*
4	*04.08.1994*	*P4*	*50,000.00*
5	*01.01.1995*	*P3(a)*	*1,00,000.00*
6	*08.01.1995*	*P4(a)*	*72,000.00*
7	*09.06.1995*	*P2(b)*	*1,50,000.00*
8	*09.08.1995*	*P2(c)*	*2,50,000.00*
9	*09.08.1995*	*P5*	*1,61,850.00*
10	*05.11.1995*	*P2(d)*	*40,000.00*
TOTAL			***9,73,850.00***

***TABLE III**: Payment made and acknowledged under Sale Deed dated 09.08.1995 Ex.P-5.*

Sl. No.	*Date*	*Amount (in Rs.)*
1	*09.07.1994*	*50,000.00*
2	*01.01.1995*	*1,00,000.00*
3	*09.08.1995*	*1,61,850.00*
	TOTAL	***3,11,850.00***

***TABLE IV**: Payments claimed by the plaintiffs towards the transaction in Ex.P-2 and Ex.P-4.*

Sl. No.	*Date*	*Amount (in Rs.)*
1	*Paid before 09.08.1995*	*3,72,000.00*
2	*Paid on 09.08.1995*	*2,50,000.00*
3	*Paid on 05.11.1995*	*40,000.00*
	TOTAL	*6,62,000.00*
	Actually payable	*3,74,850.00*
	Excess claimed to have been paid	*2,87,150.00*

***TABLE V**: Amounts paid towards transaction under Ex.P-2 and Ex.P-4 prior to 09.08.1995 that is before Ex.P-2(c) endorsement.*

Sl. No.	*Date*	*Amount (in Rs.)*
1	*15.11.1993*	*50,000.00*
2	*23.06.1994*	*50,000.00*
3	*04.08.1994*	*50,000.00*
4	*28.01.1995*	*72,000.00*
5	*09.06.1995*	*1,50,000.00*
	Total	*3,72,000.00*

***TABLE VI**: Calculation showing amount due as per plaintiff's own admission in Ex.D-1 (*sic Exhibit D-9*).*

Sl. No.	*Particulars*	*Amount (in Rs.)*
1	*Total sale consideration*	*6,86,700.00*
2	*Paid and acknowledged under Ex.P.5*	*3,11,850.00*
3	*Balance required to be paid towards Ex.P.4.*	*3,74,850.00*
4	*Amount admitted as paid in Ex.D-1 plaint as on 27.05.1996*	*(-)1,62,000.00*
	Due as per plaintiff as on 27.05.1996	*2,12,850.00*

***TABLE VII**: Calculation showing amount due as per plaintiffs own admission in Ex.P2(c).*

Sl. No.	*Particulars*	*Amount (in Rs.)*
1	*Sale consideration as per Ex.P.4*	*3,74,850.00*
2	*Payment towards Ex.P.4 agreement as on 09.08.1995*	*3,72,000.00*
	Balance due as on 09.08.1995	***28,500.00***
3	*Less paid on 09.08.1995 Ex.P.2(c)*	*2,50,000.00*
4	*Excess paid*	*(-)2,47,150.00*
	Balance payable claimed under Ex.P.2(c)	***1,87,000.00***
5	*Payment claimed on*	*40,000.00*

	05.11.1995	
	Balance still payable going by Ex.P.2(c)	*1,47,000.00*

Thus, the plaintiffs documents do not establish their case of payment as there is total mismatch."

86. Pertinently, as per Exhibit P-2 which is the first agreement, what has been agreed upon by the children of Sri Sheeba Naik, namely Narasimhamurthy and Gururaju being the vendors is to sell 4 acres 37 guntas of land plus 1 acre 3 guntas of Kharab land, in all, 06 acres which Sri Sheeba Naik possessed in Sy.No.58/13 of Kodigehalli.

87. There was an excess land of 22 guntas of kharab which was agreed to be sold free of cost. The sale consideration was fixed at Rs.1,26,000/- per acre and total sale consideration was Rs.6,86,700/-. Period fixed for completion of the sale was ten months.

88. Advance amount in a sum of Rs.50,000/- was paid as per Exhibit P-2 and balance amount Rs.6,36,700/- was agreed to be received at the time of registration of the sale deed. An endorsement is found on Exhibit P-2 which is termed as first shara dated 23.06.1994 whereunder a sum of Rs.50,000/- was

received as additional advance amount whereby total advance sale consideration got increased to Rs.1,00,000/-. An endorsement termed as second shara was there on Exhibit P-2 which is dated 09.06.1995 where again they agreed to receive Rs.1,50,000/- which works out to Rs.2,50,000/-, in all.

89. It is pertinent to note that Exhibit P-5 is the sale deed whereunder three acres of the land in Sy.No.58/13 was sold. Total sale consideration thereunder is Rs.3,11,850/-.

90. In Exhibit P-5/sale deed, it has been mentioned that the said sale deed is pursuant to Exhibit P-2 executed by Smt.Rangamma, w/o Sri Sheeba Naik, who is the mother of the vendors in Exhibit P-2 in favour of B.K.Manjunath and B.K.Girisha.

91. In the said sale deed, it has been mentioned that on 21.08.1993 Sheeba Naik died and thereafter his wife Rangamma and her children namely Narasimhamurthy and Gururaju became the absolute owners of the suit property and they agreed to sell the same in favour of B.K.Manjunath and B.K.Girisha who are the nominees of Smt. Shobha Devi who is the purchaser in Exhibit P-2.

92. It is also found from the contents of Exhibit P-5 that there was a settlement between Rangamma and her two sons whereby three acres of the land had fallen to the share of Rangamma which is more fully described in the schedule to Exhibit P-5. Therefore, she is selling three acres of land for total consideration of Rs.3,11,850/-.

93. According to Exhibit P-5, sale consideration of Rs.3,11,850/- came to be paid as under:

09.07.1994	Rs.50,000/-
01.01.1995	Rs.1,00,000/-
09.08.1995	Rs.1,61,850/- (on the date of sale deed)

94. These amounts mentioned in Exhibit P-5 do not tally either with the description found in Exhibit P-2 or the endorsements at Exhibits P-2(a) and P-2(b).

95. According to Exhibit P-2(c), on 09.08.1995 sum of Rs.2,50,000/- is received by the defendants. If as on 27.05.1996 total amount paid by the plaintiffs namely B.K.Manjunath and B.K.Girish is only to the tune of Rs.1,62,000/- as per paragraph 10 of Exhibit D-9, then endorsement at Exhibits P-2(b) and P-2(c) appears to be incorrect and must have been concocted as is contended by the

learned counsel for the defendants. Absolutely there is no explanation on behalf of the plaintiffs in this regard.

96. Thus, as on the date of Exhibit P-2(c) that is 09.08.1995, sum of Rs.5,00,000/- was paid to Rangamma and her children if taken into consideration for the sake of arguments, still a sum of Rs.1,86,700/- was due towards sale consideration.

97. But when the suit in O.S.No.300/1996 came to be filed on 27.05.1996 by the purchasers namely B.K.Manjunath and B.K.Girish against Rangamma, there is a specific mention that on 28.01.1995 there was a payment of Rs.72,000/- and at the time of Exhibit P-2 there was a payment of Rs.50,000/- as advance amount.

98. Amount in a sum of Rs.72,000/- paid on 28.01.1995 is not found either on Exhibit P-2 or on Exhibit P-3 vide Exhibit P-3(a).

99. However, on Exhibit P-4, there is an endorsement Exhibit P-4(a) indicating that a sum of Rs.72,000/- is paid. The contents mentioned in Exhibit D-9, plaint in O.S.No.300/1996 tallies with Exhibit P-4(a).

100. Thus, total amount paid as on 28.01.1995 was only to the tune of Rs.1,22,000/- inasmuch as Rs.50,000/- has been paid at the time of agreement/Exhibit P-2 and balance sum of Rs.72,000/- on 28.01.1995.

101. Thus, total payment as on 28.01.1995 was only to the tune of Rs.1,22,000/-. Another sum of Rs.42,000/- was paid on 05.11.1995. Thereby, total amount paid by the plaintiff to the defendants is only to the tune of Rs.1,62,000/-. It is to be noted that either the statement made before the Court of law in O.S No.300/1996 must be correct or the endorsements vide Exhibit P-2(a), P-2(b), P-2(c) and P-3(a) must be correct, as plaintiffs are relying on those statements to prove their case.

102. But, plaintiffs have utterly failed to offer any explanation in this regard.

103. It is settled principles of law that, in a suit for specific performance, it is for the plaintiff to plead and prove the readiness and willingness to perform his portion of the contract with cogent material on record.

104. As referred to supra, in Exhibit D-9, i.e., copy of the plaint in O.S.No.300/1996 at paragraph 5, there is a mention

as to modification of the original agreement to sell(Exhibit P-2) and nominees of plaintiff Nos.1 and 2 agreed to purchase only three acres of land as against six acres.

105. Pertinently, it is mentioned in the said paragraph that due to circumstances such as finance etc., Exhibit P-2 is split into two bits i.e., two agreements.

106. Thus, it is the plaintiff Nos.3 and 4 being the nominees of original purchasers i.e., plaintiff Nos.1 and 2 who failed to perform their portion of the contract and wanted to purchase the land in two different bits of three acres each. It is to be noted that original purchasers who are plaintiff Nos.1 and 2 gave up their right in respect of Exhibit P-2. It is plaintiff Nos.3 and 4 who are the nominees of plaintiff Nos.1 and 2 who wanted to proceed with the rights of plaintiff Nos.1 and 2 under Exhibit P-2. It is also to be noted that said statement of the plaintiffs in O.S.No.300/1996 is voluntary, at an undisputed point of time, after getting the sale deed executed for three acres of land.

107. No reasons whatsoever is forthcoming as to why suit in O.S.No.300/1996 came to be withdrawn. As on 27.05.1996, i.e., the date of filing of the suit in O.S.No.300/1996, (much

after lapse of ten months of execution of Exhibit P-2, roughly three years), if the plaintiffs were unable to pay the entire sale consideration, the endorsements as referred to *supra* on Exhibits P-2 and P-3 will have no meaning whatsoever at all.

108. It is in this context, the plea of the defendants that the 'endorsements on Exhibit P-2, P-3 and P-4 are concocted' assumes significance.

109. No doubt, the report from 'TRUTH Labs' has been placed on record which confirms that the disputed signatures and the thumb impressions tallies with the admitted signatures and thumb impressions of the defendants.

110. Much has been argued about the non acceptance of the report by the Trial Court as well as the First Appellate Court in this appeal.

111. Sri Kolar, in this regard strenuously contended that both the Courts have failed to appreciate the principles of law enunciated in the decision in the case of ***Parappa*** supra, placing reliance on the principles of law enunciated in the case of ***Murari Lal*** supra.

112. Alternatively, Sri Kolar also contended that the Court is not precluded from comparing the signatures and thumb impression by resorting to Section 73 of the Indian Evidence Act.

113. There cannot be any dispute with regard to acceptance of the report furnished by the expert as it carries the presumption, if the report is furnished by an expert who is from authorized or official laboratory.

114. But, in the case on hand, there was an application filed by the plaintiffs to get the Commissioner examined before the Court. But did not pursue the same for the reasons best known to them. Therefore, plaintiffs are now precluded from contending to the contra.

115. However, whenever report of an expert is available on record, the Court is not precluded from considering the same as it is part of the record as is contemplated under Order XXVI Rule 10 of the Code of Civil Procedure. However, the same would not enure to the benefit of the plaintiffs in the case on hand for the simple reason that report is not by the Government Examiner, but by a private agency.

116. Therefore, distinction can be drawn with regard to principles of law enunciated in the case of ***Parappa*** supra to the case on hand having regard to the peculiar facts of getting the signatures and thumb impression examined through private hand writing expert.

117. This would further take this Court to the next limb of argument of Sri Kolar that under Section 73 of the Indian Evidence Act the Courts are not precluded from comparing the admitted and disputed signatures.

118. It is in this regard Sri P.N.Rajeswara would contend that assuming that the signatures and thumb impressions are held to be proved, having regard to the discrepancy shown in the memo of calculation filed by the defendants with regard to plea of excess payment which is falsified from the admitted material on record as discussed supra, no useful purpose would be served by calling for a finding from the Trial Court or the First Appellate Court with regard to acceptance of Commissioner report and thus sought for passing suitable orders in this appeal itself.

119. As such, this Court is of the considered opinion that there is no necessity for this Court to further delve upon the

contentions urged on behalf of the plaintiffs that such an exercise should be carried out by this Court under Section 73 of the Indian Evidence Act.

120. For the sake of arguments, if the signatures and thumb impressions are held to be genuine, considering the contents of the endorsements as well as the admitted pleadings in O.S.No. 300/1996 (Exhibit D-9 as referred to supra) the contentions urged on behalf of the plaintiffs that there is excess payment made by the plaintiffs cannot be countenanced in law having regard to the discussion *supra*.

121. Yet another submission on behalf of the plaintiffs which requires consideration by this Court is with regard to want of pleading of fraud and misrepresentation.

122. No doubt, the principles of law enunciated by the Hon'ble Apex Court in the case of ***Ranganayakamma*** and ***Ramesh B. Desai*** *supra*, would render sufficient force to the contentions urged on behalf of the appellants that the pleadings on behalf of the defendants lack the desired details in regard to fraud and misrepresentation.

123. Even though the pleadings of defendants is insufficient with regard to alleged fraud and misrepresentation, since the contents of the endorsements do not tally with the memo of calculation placed on record by the plaintiffs as well as the defendants, more so, having regard to the own pleadings of the plaintiffs in O.S.No.300/1996 in paragraph 10 as referred to supra in Exhibit D-9, it is to be inferred that to patch up the lacunae in the case of the plaintiffs, endorsements have come into existence. Perhaps, utilizing blank space above the signature and thumb impression of defendants in the signed documents vide Exhibits P-2, P-3 and P-4.

124. At any rate, since there is no explanation whatsoever on behalf of the plaintiffs with regard to the discrepancy in the amount of money mentioned in the endorsements and the actual payment made as has been reflected in Exhibit D-9, want of pleadings with regard to fraud and misrepresentation in the written statement of defendants is of no avail for the appellants to succeed in this appeal.

125. Further, when paragraph 5 of the plaint in O.S.No. 300/1996 vide Exhibit D-9 itself specifically mentions that there was financial constraint for the plaintiffs to purchase entire six

acres of land and Exhibit P-2 is thus split into two bits, it should not lie in the mouth of the plaintiffs that they have made excess payment.

126. In the present case, plaint is silent as to the contentions that were urged in O.S.No.300/1996, which came to be withdrawn and the present suit in O.S.No.112/1997 came to be filed on 12.02.1997 except mentioning about filing of suit in O.S.No.300/1996 in paragraph 14 of the present suit.

127. When there was financial constraint for plaintiffs to purchase entire six acres much after lapse of ten months as per Exhibit P-2, the pleading in present suit that plaintiffs were always ready and willing to perform their portion of contract is meaningless.

128. Plaintiffs also failed to prove that Exhibits P-3 and P-4 are continuation agreements of Exhibit P-2, with cogent and convincing material on record.

129. The witness examined on behalf of the plaintiffs viz., P.Ws.2 and 3 i.e., Anjanappa and M.Nagaraju would not improve the case of the plaintiffs with regard to readiness and

willingness of the plaintiffs. They have identified their signatures on Exhibit P-2 and endorsements thereof.

130. Further, in Exhibit P-5/sale deed there is no mention as to the sale being made in two bits and that the first bit is as per the schedule in Exhibit P-5.

131. On the contrary, it is defendant No.3-Rangamma alone who is executant of Exhibit P-5 whereas, in the suit agreement i.e., Exhibit P-2, she is a consenting witness. No doubt, there is a mention that after the agreement subject matter of three acres of the property in Exhibit P-5 has been allotted to Rangamma and therefore, she is selling the property in favour of the plaintiffs.

132. But there is no mention that balance three acres is held by sons of Rangamma who are the vendors in Exhibit P-2 which would also be conveyed to plaintiffs in continuation of Exhibit P-2.

133. Nothing prevented the plaintiffs to incorporate in Exhibit P-5 that out of six acres of land, only three acres has been purchased as on the date of execution of Exhibit P-5 and remaining land would be purchased by them subsequently.

134. Even as on the date of execution of Exhibit P-5 i.e., 09.08.1995, total sale consideration paid was Rs.3,11,850/-. This fact would also *belie* the contentions urged on behalf of the plaintiffs that there is excess payment.

135. Thus viewed from any angle, the material evidence placed on record would be hardly sufficient to answer the substantial questions of law in favour of the appellants/ plaintiffs, as plaintiffs have failed to prove that there is excess payment made and they were ready and willing to perform their part of the contract all along, even after execution of Exhibit P-5/ sale deed dated 09.08.1995.

136. Accordingly, substantial questions of law are answered against the appellants/plaintiffs.

137. In view of the foregoing discussion, the following:

ORDER

(i) Appeal ***dismissed***.

(ii) No order as to costs.

Sd/-
(V SRISHANANDA)
JUDGE

Kcm
CT:VRR