

IN THE COURT OF PRL. SENIOR CIVIL JUDGE ATHANI.

AT : ATHANI

Present: Shri. Ron Vasudev.
B.Com.LL.B (Spl.)
Prl. Senior Civil Judge, Athani.

Dated this 21st day of January, 2015

ORIGINAL SUIT No.97/2005

1. Sri.Sadashiv Tippanna Honawad
Age: 53 years, Occ: Agriculture,
R/o. Nalaband Galli, Athani, Dist.Belgaum.

...Plaintiff.

(By Sri. C.P.Hachibatti, Adv.)

Versus.

1. Sri. Baburao Kodiba Salunke
Age: 43 years, Occ: Agriculture
R/o. Bharmakhodi, Athani. Tal: Athani
Dist.Belgaum.
Since deceased by his LRs.
- 1A. Smt. Pramila w/o Balavanrao Savant
Age: 42 years, Occ.Household work
R/o Vishnuwadi Tal: Athani.
- 1B. Sri. Vithal Baburao Salunke
Age: 40 years, Occ. Agriculture
R/o Bharamakodi Tal: Athani.
- 1C. Smt. Sumitra w/o. Gulabrao Patil,
Age: 38 years, Occ.Household work
R/o Payappawadi, Tal: Miraj, Dist: Sangli.

- 1D. Sri. Tukaram Baburao Salunke,
Age: 35 years, Occ: Agriculture,
R/o Bharamakodi, Tal: Athani.
- 1E. Sri. Sambaji Baburao Salunke,
Age: 30 years, Occ: Agriculture,
R/o Bharamakodi, Tal: Athani.
- 1F. Sri. Ravikumar Baburao Salunke,
Age: 25 years, Occ: Agriculture,
R/o Bharamakodi, Tal: Athani.
- 1G. Smt. Rajashree w/o. Dileep Jadhav,
Age: 23 years, Occ: Household work,
R/o Jambagi, Tal: Jamkhandi.
- 1H. Sri. Ramesh Baburao Salunke,
Age: 21 years, Occ: Agriculture,
R/o Bharamakodi, Tal: Athani.

....Defendants.

(By Sri. S.A.Patil (A), Adv.)

Date of Institution of the suit	14.06.2005
Nature of the suit.	Specific Performance of Contract
Date of Commencement of recording of evidence.	03.06.2006
Date on which judgment was pronounced.	21.01.201
Total Duration.	<u>Year/s</u> 09 <u>Month/s</u> 07 <u>Day/s</u> 07

JUDGMENT

This is a suit for Specific Performance and in the alternative for refund of earnest money with interest.

2. The suit property is 2 acre of agricultural land in Sy.no.340/2A measuring in all 4 acre 12 gunta of Bharamkhodi village Tal: Athani and it is bounded by East – land belonging to Ganapati Salunke; West – land belonging to Laxman Ballolli; North – Government Road and South –

remaining land belonging to the defendant. That the defendant is the absolute owner of the said survey number land and on account of his family necessity and to discharge the debts he brought the suit property for sale in the month of April-2004. That after negotiations with him the plaintiff agreed to purchase it for a valuable consideration of Rs.1,20,000/- and it was agreed that out of the said total consideration Rs.60,000/- is to be paid as an advance consideration and balance amount has to be paid at the time of execution of sale-deed. Accordingly on 21.4.2004 the defendant executed agreement of sale in presence of witnesses and received earnest money of Rs.60,000/- agreeing to execute the sale-deed within one year from the date of said agreement at the expenses of plaintiff. That plaintiff was ever ready and willing to perform his part of the contract as he had sufficient funds at his disposal and the requisite amount for registration of sale-deed, so many time he requested the defendant to come and execute the sale-deed as per the solemn agreement dtd: 21.4.2004, however the defendant went on postponing the same on one or the other pretext. A final request was made by him on 23.5.2005 and when that was also not heeded, legal notice was got issued on 26.5.2005 through RPAD expressing his readiness and willingness to take the sale-deed at his expenses. The said notice was returned as unserved on 10.6.2005 stating that doors of defendant's house were locked. That intentionally the defendant is avoiding to execute the sale-deed and thereby he has committed breach of terms and conditions of the agreement. There are no factual or legal hurdles in executing the sale-deed by the defendant. Therefor plaintiff seek for specific performance of contract dtd: 21.4.2004 and in the event if court comes to the conclusion that enforcement of agreement is not feasible for the alternate relief of refund of earnest money with 18% interest per annum from the date of agreement till its complete realisation.

3. Defendant appeared and filed written statement as under:

That the defendant is an agriculturist as such himself and all his family members are depending on the agriculture. That the suit survey number land is a fertile and irrigated land wherein the defendant and his family members are growing sugarcane, turmeric, grape and such other commercial crops by investing their hard labour and they are getting sufficient income, so there is no financial difficulty for their family. Moreover for improvement of agriculture and growing of crops banks are liberally lending the loans so there was no need for the defendant to borrow money from others. Thus the defendant is leading a respectable life in the society. This being the state of affairs the so called witnesses of the agreement of sale i.e. Datta Mane and Jagadish Sappadle, both residents of Athani, few days back met the defendant and asked him to give money, when their demand was not met they got angry and stating that if he do not help them they would teach a lesson to him went away. It appears that the said persons forging the signature of this defendant might have deceived the plaintiff. That the said two persons are schemy persons and are in the habit of cheating the innocents. Infact the defendant has not at all seen the plaintiff nor met him at any time. The plaintiff is doing his job at Andhra Pradesh so there is no occasion for this defendant or his son to meet him, muchless to execute the agreement of sale as alleged. This defendant is a sober minded person and he stoutly denies his alleged signature as well as of his son on the alleged agreement of sale. The said Datta Mane and Jagadish Sappadle have not only cheated the plaintiff even they have cheated this defendant by forging his signature. If the suit agreement was indeed executed, plaintiff should have insisted for delivery of possession of the suit property. Apprehending that if he ventures to take possession it would come to the knowledge of this defendant the plaintiff has kept quite. That the suit property is consisting of a well and borewell and there is lot of

water in them so by raising commercial crops in it the defendant is earning approximately Rs.1,00,000/- per acre. That the defendant is having five sons and their family has no land except the suit Sy.no.340/2A measuring 4 acre 12 gunta. They have made it fertile by investing their hard labour. Now the market value of the said land is more than Rs.2,50,000/- per acre and moreover it has been granted by the Land Tribunal as per the provisions of Land Reforms Act, so it cannot be alienated without prior permission. In order to extract money from the defendant at the instigation the said Mane and Sappadle the plaintiff has filed this false and vexatious suit. It is denied that the defendant is the absolute owner of the said survey number land and for the sake of family difficulty out of the said land he brought out suit property for sale and agreed to sell it for Rs.1,20,000/- and received advance consideration of Rs.60,000/-. All other contrary plaint averments are false, frivolous and vexatious. There is no cause of action for the suit and alleged one is false and invented, wherefore the defendant prays to dismiss the suit with compensatory cost of Rs.3,000/-.

4. Based on the said pleadings my predecessor-in-office has framed the following issues:

ISSUES

1. Whether the plaintiff proves that the defendant entered into an agreement of sale to sell the suit property for valuable consideration of Rs.1,20,000/-?
2. Whether the plaintiff further proves that the defendant received a sum of Rs.60,000/- as an earnest money and executed an agreement of sale?
3. Whether the plaintiff proves that he is ever ready and willing to perform his part of contract?
4. Whether the defendant proves that the plaintiff obtained his signature by playing fraud and created a forged document?

5. Whether the defendant proves that without permission from the competent authority property cannot be alienated?
 6. Whether the plaintiff is entitle for the relief of specific performance of contract?
 7. Whether Order or Decree?
5. In support of his case plaintiff examined himself as Pw.1, said Dattu Mane as Pw.2 and scribe Kiran Kulkarni as Pw.3. In all 5 documents are marked on his behalf. On the other hand as the defendant died during the pendency of the suit, his LRs. were brought on record and among them defendant no.1D examined himself as Dw.1, defendant no.1B examined himself as Dw.2 and they examined one Siddu Jadhav as Dw.3. They got marked Ex.D.1 to D.16. Since the deceased defendant and Dw.2 denied their signatures on the suit agreement, by filing IA no.10 U/O.26 R.10A of CPC plaintiff got appointed a hand writing expert as a court commissioner to compare their admitted and disputed signatures and on receipt of the said report as it was objected by the defendants, the court commissioner was examined as Cw.1 and the commission warrant and his report were marked as Ex.C.1 and C.2. Heard the arguments of CPH advocate for the plaintiff and SAP(A) advocate for the LRs of deceased defendant. Perused the decisions cited by CPH advocate, SAP(A) advocate and the written synopsis submtited by SAP(A) advocate.
6. My findings on the above issues are as under:
- Issue No.1 : In the negative
 - Issue No.2 : In the negative
 - Issue No.3 : In the negative
 - Issue No.4 : In the affirmative.
 - Issue No.5 : In the negative

Issue No.6 : In the negative

Issue No.7 : As per below, for the following

:REASONS:

7. **Issue No.1, 2 & 4:-** Since these three issues are intricately interwoven, I have taken them simultaneously for discussion.

8. Consensus ad idem is a hallmark of every sale transaction whether it is movable or immovable property. At the same time though sale of both kinds of property involve transfer of ownership of the property transacted, one can find drastic distinction between the sale of an immovable property and that of movable one. Unlike in sale of movable property, which normally takes place immediately or across the table with the exchange of consideration and the commodity transacted, in the case of immovable property no buyer would proceed to purchase the property hurriedly and without enquiring the title of his owner as such transaction would invariably involve huge amount. It is true that the principle viz., Caveat Emptor i.e. buyer beware is applicable to both kinds of sale transaction of movable and immovable property, in view of considerable very nature of the sale truncation of immovable property the said principle applies rather more. With this preface I will evaluate the pleadings and evidence on record.

9. Since the deceased defendant denied not only his signature even the alleged signature of his son on the suit agreement, which has been marked as Ex.P.1, and took a precise defence that their signatures have been forged by the Mane (Pw.2) and Sappadle and further that those persons might have cheated the Pw.1 etc., more burden lies on the shoulders of the Pw.1 to prove that with all their knowledge the deceased defendant and Dw.2 subscribed their signatures to the agreement being fully aware of the contents of it. In this context when I say that consensus ad idem is an essential ingredient of such

transaction, Pw.1 has to lay a solid foundation in the form of "watagati" i.e. the sale talks between him and the deceased defendant as it would act as a seed to the Ex.P.1. Unfortunately no god evidence is produced by the Pw.1 to hold that there was really a sale talk or watagati between them before they proceeded to execute the alleged agreement of sale. It may be noted that since defendant did not file his written statement in time, taking the same as not filed trial was commenced in the case and at that time Pw.1 having adduced his evidence in the form of an affidavit, after accepting the written statement by condoning the delay, filed his one more affidavit as further examination-in-chief reiterating the very plaint averments to a large extent once again and by denying the defence version. Thus on two occasions Pw.1 entered witness box to complete his chief and further chief. Of them in his initial examination-in-chief dtd: 3.6.2006 at para-3 regarding the day of watagati Pw.1 stated that it was held on 25.4.2004 and during that sale talks price of the suit property was fixed at Rs.1,20,000/-/-. He further stated that then agreement was written on 21.4.2004. It is not that by slip of sight he mentioned incorrect day of watagati or it was a typing error. Even the Pw.2, who was examined on 20.2.2010 much after the initial examination-in-chief of Pw.1, in para-3 of his chief corroborating the say of said Pw.1 stated that watagati was held on 25.4.2004 and agreement was scribed on 21.4.2004. However as per the Ex.P.1 it was executed on 21.4.2004 and one cannot understand how the agreement preceded the watagati. To resolve this ambiguity when further chief of Pw.1 dtd: 20.12.2006 is gone through, departing from his earlier version once again in para-3 of said further chief Pw.1 stated that watagati was held on 21.4.2004 and on the same day the agreement was written, but in the cross-exam displaying his total ignorance about the crucial suit agreement, in the un numbered second paragraph on page no.6 he could not recollect the day of watagati and even where it was held. On the

other hand Pw.2 replied that it was held on 21.4.2004 that too in the suit property. Let us find out whether atleast there is any truth in the further chief of Pw.1 and the corroboration made by Pw.2 in his cross-exam. For this I refer to the cross-examination of Dw.1. There on page no.9 in the middle portion of para-6 CPH advocate suggested that watagati was held on 20.4.2004 and in the next sentences he suggested that on the following day i.e. on 21.4.2004 the agreement was scribed. So it is evident that at the very initial stage Pw.1 miserably fails to show the meeting of minds of himself and the defendant before they went for execution of Ex.P.1. The cross-examination of Pw.1 reveals that on the date of agreement i.e. on 21.4.2004 at 10 a.m. they had been to the office of Pw.3, but as per Pw.2 at 11 a.m. they assembled there, whereas as per the Pw.3 they came to his office in the noon hours. Even assuming that between 11 a.m. to 1 p.m. they had collected in the office of Pw.3, if the watagati was held on 21.4.2004 itself one cannot imagine that such sale talks would be held in the early morning hours so that they can assemble in the office of Pw.3 on the same day at 11.00 a.m. It is not that CPH advocate by oversight suggested the day of watagati as 20.4.2004 forgetting the further chief of Pw.1. I would show this with the further suggestion of said counsel in the very para-6 of the cross-examination of Dw.1 at the bottom two lines. There it was suggested by the said counsel that on the next day of watagati i.e. on 21.4.2004 the Ex.P.1 was scribed. Thus it is proved beyond shadow of doubt that Pw.1 has miserably failed to establish exactly on which day they sat together to settle the price.

10. Ignoring the said blatant defect if the evidence of Pw.1 is further gone through, it is seen that he was not able to recollect who were present during the said sale talk and surprisingly he answered that he do not know regarding which property the sale talk/watagati was held.

He went on giving evasive replies stating that he has forgotten on which day the agreement was sought to be reduced into writing. He continued to reply that he do not know who gave instructions to write that agreement. But as per the Pw.2 the deceased defendant instructed the Pw.3 to prepare the agreement. So what can be gathered from the evidence of Pw.1 is that he having approached the court seeking the discretionary relief of specific performance could not lay a proper foundation in support of his allegation. According to the Pw.1 during the sale talks his son was also present and that very son counted the notes and gave them to the defendant , but the presence of said son was not stated by the Pw.2. According to him, like in the sale talks, at the time of scribing the Ex.P.1 also only five persons were present viz., Pw.1, deceased defendant, Mr. Sappadle, Dw.2 and himself. This rules out the holding of valid negotiation between them followed by scribing of the suit agreement.

11. I corroborate the above finding with one more strong piece of evidence. The Ex.P.2 and P.3 are the two RTCs of suit Sy.no.340/2A measuring 4 acre 12 gunta consisting of 2 gunta of karab and they are issued for the years 2002-03 and 2003-04 respectively. The column no.7 of both RTCs show the existence of well and one borewell in the said strip and as per column no.10 and 11 borrowing of loan from land development bank and other financial institutions with a stipulation that permission of the Deputy Commissioner has been taken before alienation. Apart from that the column no.12 (8) & (9) show the growing of sugarcane, maize, turmeric in that land and it is irrigated (Bagayat). This fact has been admitted by Pw.1 without any hesitation. On page no.8 of his cross-exam it was elicited from him that the defendant was growing grape in the said land and it is consisting of one well and borewell with sufficient water in them and because of that there is very good grape yield and in addition to the it the defendant

and his family members are also growing sugarcane, turmeric and other commercial crops and thereby they are getting Rs.1,00,000/- income per acre. He did not deny that the defendant's family is earning handsomely from the said land. However he expressed his ignorance about the borrowing of loan from the PLD bank and other banks. Regarding the fertility and irrigation of said land reiterating the same in the cross-examination of Dw.1 CPH advocate suggested and elicited that after the deceased defendant became owner of the suit survey number they have constructed a house there, got drilled the borewell and they are growing sugarcane, turmeric, grape from the year 2003. So it is indisputably shown that even before the alleged date of suit agreement (21.4.2004) suit survey number land was well developed, fertile and was irrigated. What I mean to say is that the contents of Ex.P.2 and P.3 are fully vindicated by the evidence of Pw.1 and Dw.1. With a certain intention I have given emphasis to this aspect. If at all the Pw.3 had seen the RTC of the suit survey number before he allegedly scribed the agreement as claimed by him that too at the instructions of deceased defendant, he ought not to have mentioned that suit property is a dry land (Jeerayat). Apart from that Pw.1 ought not to have allowed to scribe that the deceased had brought the property for sale for development of his agriculture as the land was already well developed. It is not the case of the Pw.1 that the deceased defendant and his family possessed some other land at some other place requiring them to develop the agriculture there. It is quite unimaginable that a well developed fertile and irrigated land yielding considerable income could be developed further. This aspect goes to the root of Ex.P.1 since it rules out the existence of any legal necessity or pressing need to the deceased defendant to alienate portion of his only land.

12. Now let us turn to the allegation that Pw.1 paid Rs.60,000/- as earnest money to the deceased defendant on the said date of agreement to know whether there is any substance in the said claim atleast? As per the chief of Pw.1 and 2 the amount was paid in the office of Pw.3 and it is also reiterated by Pw.3. The cross-examination of Pw.1 shows that he had collected the said sum of Rs.60,000/- from three sources. The first source is his own savings from the sale proceeds of agricultural produce to the extent of Rs.20,000/- and borrowing of Rs.20,000/- each from his younger daughter and from his son. However he has not examined them to show that they paid money to him so that inturn he can pay the same to the deceased defendant. Whereas the Pw.2 who took a prominent role in the preparation of Ex.P.1 on page no.1 of his cross-exam, with all his precise and accurate memory, stated that the said amount of Rs.60,000/- was brought by the Pw.1 from Shri. Daneshwari Co.Op. Credit Bank on that day. Even with respect to this thing no documentary evidence is placed by the Pw.1 let alone that he is having an account in the said Co.Op. Bank. There is no piece of material to show that he possessed some amount prior to the 21.4.2004 so that he could have gone to purchase the suit property. Instead on page no.9 of his cross-exam in the below paragraph at the beginning three lines Pw.1 admitted that Mane (Pw.2) and Sappadle met him and assured that if he gives some money to them they would get an agreement of sale in his name. This admission totally shatters his case. Therefore I have no other option expect to say that even with regard to passing of earnest money from the hands of Pw.1 to deceased defendant there is no convincing evidence.

13. Even for the sake of argument if it is held that there was watagati between Pw.1 and deceased defendant and it was followed by execution of Ex.P.1 and further that this Pw.1 paid Rs.60,000/- to the

deceased defendant as an earnest money, the next question that lingers in anybody's mind would be that, why a long period of one year was fixed for performance of remaining part of the contract? In the Ex.P.1 it is not stated why such considerable duration was given to the executant to execute the final deed. There is no recital that such long period was provided for the purpose of obtaining requisite permission from the government, if any in the matter or that defendant would keep the records ready for execution of sale-deed by clearing the loan transactions with the earnest money received by him. Moreover with receipt of such meagre sum of Rs.60,000/- all the loans borrowed from different banks could not have been repaid. Infact the total sum of different loans described in column no.11 of the RTC exceed the alleged sale-consideration so there was no question of clearing all those loans and making the land free from encumbrance. If at all this Pw.1 had really transacted to purchase suit property he could not have agreed for long period of one year for execution of sale-deed, rather he ought to have insisted a shorter period to complete the sale transaction by reciting regarding the loans borrowed in the agreement of sale. On the other hand on page no.8 and beginning lines of page no.9 the way Pw.1 answered in his cross-exam would show that though he saw the RTC of the suit land he did not enquire how the defendant got that property nor he made attempt to ascertain the title of his vendor. But the diary entries no.5981, 9638, 1830 and 1890 produced by the Dw.1 at Ex.D.16(a) to 16(d) show that the originally Sy.no.340/2 was a big land and after partition amongst the sons and daughter of Kondiba Mane suit Sy.no.340/2A (4 acre) fell to the share of deceased defendant, 3 acre 15 gunta in Sy.no.340/2B fell to the share of his brother-Ganapati, another 3 acre 30 gunta in Sy.no.340/2C fell to the share of Smt.Sushilabai Annasab Saluanke and 5 acre 4 gunta in Sy.no.350/2D fell to the share of Narayan Kondiba Salunke. So it is evident that it is not the self acquired and absolute property of the said

defendant. One cannot accept that a man with little prudence would proceed to purchase an immovable property without knowing or ascertaining the title of his vendor. If there was a real and genuine transaction between the Pw.1 and the defendant, he ought to have obtained consent signatures of Dw.1 and other sons and daughter of the deceased. It is not that suit property was granted to the defendant straight away to hold that it was his self-acquired property and he was the absolute owner of it.

14. During the argument referring to the hosts of decisions and submitting that Pw.1 is totally an illiterate and innocent villager, CPH advocate earnestly appealed that such an innocent and illiterate man cannot be expected to cheat the defendant or forge the signatures of others, when he himself cannot put his own signature. He also took me the cross-examination of Dw.1 and vehemently argued that the defendant had pressing need as he was maintaining a huge family consisting of five sons and three daughters, therefore he had brought the suit property for sale. He also invited my attention to the opinion of the hand writing expert/Cw.1 to prove the authenticity of signature of the defendant and Dw.2 on the suit agreement. I have gone through the decisions reported at 2012 STPL(LE) 46490 SC (Prakash Chandra vs. Narayan), 2014 STPL (LE) 48718 SC (Sanjay Kumar vs. State of Bihar & Anr), 2014 STPL(LE) 49583 SC (K.Prakash vs. B.R.Sampath Kumar), 2014 STPL(LE) 49658 SC (Zarina Siddiqui vs. A.Ramalingam Alias R. Amarnathan), 2014 STPL(LE) 48640 SC (Biswanath Ghosh (Dead) By LRs. and others vs. Govinda Ghosh Alias Gobindha Chandra Ghosh and others), AIR 2008 SC 1601 (Ramakrishna Pillai & Anr. Vs. Muhammed Kunju & Ors.), AIR 2008 SC 1786 (Balakrishna and another vs. Bhagawandas dead by LRs and others), AIR 2008 SC 2050 (Rameshwar Prasad dead by LRs. vs. Basintilal), AIR 2000 S.C. 191 (Manzoor Ahmed Magray vs. Gulam Hassan Aram and

others) WITH (Mohammad Yosuf Magray vs. Ghulam Hussan Aram and others), AIR 2006 KAR 273 (Manasa Housing Co-Operative Society Ltd. vs. Marikellaiah & Ors.), AIR 2006 SC 145 (P.C.Varghese vs. Devaki Amma Balambika Devi and others), AIR 2006 SC 970 (Most Etwari Devi & ors. vs. Most. Parvati Devi), AIR 2007 (NOC) 429 (KAR)(Andanur Rajashekar vs. Vasavi Industrial Enterprises & Ors.), ILR 2006 KAR 4654 (Yallappa vs. Durgappa), ILR 2008 KAR 672 (Smt. Mariam George vs. Smt. S.Jeswina), ILR 2007 KAR 1625 (P.S.Ramakrishna Reddy vs. M.K.Bhagyalakshmi and another), ILR 2002 KAR 3603 (Sangappa vs. State of Karnataka , by its Secretary, Revenue Dept. and others), 2007(3) KCCR SN 109 (Nevy D'Souza and others vs. Karnataka Appellate Tribunal, Bangalore and others), 2001 (2) Kar.L.J. 367 (Smt. P.Aswathamma and others vs. Hotel Sathyaprakash, Bangalroe), ILR 1998 KAR SN 92, 2012 STPL (LE) 46865 SC (Ajay Kumar Parmar vs. State of Rajasthan) and ILR 2008 KAR 1840 (Parappa and others vs. Bhimappa and another) and relied by the learned counsel. Having gone through them I would say that a case cannot be built in the vacuum by taking aid of the decisions of Hon'ble High Court and Supreme Court. Every case has to be decided on the basis of pleadings and evidence made available in it. If the pleadings and evidence set up by a party, more particularly by the plaintiff on whom the initial burden lies, are unacceptable, no ratio decidendi would come to the help of such litigant. It is often said that plaintiff has stand or fall on the strength or weakness of his own case and he cannot imagine to succeed on the weakness of the defendant. To quote some decisions on the point I may lay my hand on the decisions reported at 2004(1) KCCR 662 (B) (K. Gopala Reddy (deceased) by LRs. vs. Suryanarayana and others), AIR 1979 CALCUTTA 50 (D) (M/s. Roy and Co. and another vs. Sm. Nani Bala Dey and others). So in that background if the entire evidence of Pw.1 to 3 is gone through in the context of the pleadings set forth by the Pw.1, certainly without any hesitation one can say that

their chief and cross-examination are more than sufficient to throw this case overboard. In his cross-exam Pw.1 was not able to say the suit survey number, its extent and not even the proper boundaries of it viz., the property which he agreed to purchase despite having claimed that he had gone to the said land twice. He was not able to answer in which denomination notes he paid Rs.60,000/- earnest money and who instructed to scribe the crucial suit agreement. Then without enquiring the source of title of defendant he allegedly proceeded to purchase the suit land. Last but not least as admitted by him at the end of para-9 of his cross-exam the suit agreement contains a recital regarding delivery of possession and he also issued legal notice stating that he is in possession of the suit property by virtue of that agreement, but infact the defendant and his family members are still cultivating the entire suit survey number land and it was conceded during the cross-exam of Dw.1 by putting suggestions to that effect. Perhaps for the said reason he did not produce copy of the legal notice nor made attempts to get open the returned registered postal envelope, which is marked as Ex.P.4 so definitely an adverse inference has to be drawn against him for non production of copy of the legal notice.

15. Further the fact that as admitted by the Pw.2 he has participated in 4 to 5 such agreements of sale show that as rightly contended by the defendant the said witness and Sappadle are the kingpins and they induced this Pw.1 to bring a false and vexatious suit with the help of a concocted document. I support this finding with the opinion of the hand writing expert. The report submitted by the said expert is marked as Ex.C.2 and in the said report recording his final opinion about the disputed signatures of deceased defendant marked as Q.1 and Q.2 on the Ex.P.1 the said expert opined that there is a failure attempt to disguise the admitted signatures marked as Ex.A.1 and A.2 on the written statement at page no.4 and 5. Then with reference to

the disputed signature of Dw.2 marked as Q.3 on the Ex.P.1 having compared with the admitted signature on the vakalat marked as A.3 he stated that the author of Q.3 and A.3 is one and the same. Here I must say that accepting of the commission report by the court do not mean that the opinion recorded by him is final and conclusive. Still it is open to the court to analyze his opinion like evidence of other witnesses. In this background if the Q.1, Q.2 are compared with the admitted signatures of deceased defendant as found in the written statement definitely one can say that some one has tried to imitate his signatures that is why on the Ex.P.1 the writings are feeble and reveal the imitation ex-facie. Whereas the signatures of the deceased defendant on the written statement are more clear and writings are normal. My this finding is corroborated by the reckless answers of the Pw.1. Merely on the reason that Pw.1 is an illiterate person court cannot throwaway all the norms and rules of evidence and lean in his favour. In other words whether a litigant is literate or illiterate he has to stand the test of cross-examination. Instead numerous admissions conceded by him would totally negate the execution of agreement and rather prove the contention of the deceased defendant.

16. I further substantiate the said finding with one more strong reason. In the cross-examination of Pw.1 and in the cross-examination of Dw.1 it is brought on record that the deceased defendant has constructed a farmhouse in the suit survey number and was residing there with his family and after his death his LRs. i.e. present defendants are residing there. When that is the case can it be imagined that he would have agreed to sell away the **head portion** of the entire land by retaining only **tail** of it. When I make this observation it is not without any substance. To elaborate little more on this I refer to the boundaries described in the agreement of sale as well as in para-1 of the plaint. The said boundaries show that suit survey

number land is having road towards northern side and towards east and west lands of others are situating. As per the contents of Ex.P.1 the defendant agreed to sell the **northern** 2 acre by retaining the southern portion. There is no recital in the Ex.P.1 that defendant retained right of ingress and egress to approach the northern road. Further there is no recital in which portion of the land residential farmhouse is situating. Since no man of ordinary prudence would sell the whole land abutting to the road and thereby retain the hind portion to lock himself without any access to main road. So as I said earlier it is one more reason to doubt the genuine execution of Ex.P.1.

17. When Pw.1 could not say who instructed to prepare his examination-in-chief and rather say that Sappadle instructed his counsel to issue legal notice as well as to prepare the plaint and further that he cannot say what kind of instructions they gave to his counsel etc., would indicate that he was only used as a puppet by the Pw.2 and the said Sappadle. This finding corroborates and probablise the defense version that Ex.P.1 is a sheer concoction of said alleged attestors to dupe the Pw.1 as well as the defendant. So viewed from any angle I do not find any substance in the plaint allegation that the deceased defendant brought the suit property for sale and negotiating with Pw.1 settled the price and by receiving earnest money of Rs.60,000/-executed the agreement of sale.

18. Before I wind up my discussion I want to place it on record that issue no.4 is incorrectly framed. It is not the contention of deceased defendant that plaintiff obtained his signature by playing fraud on him. Infact it is his allegation that Sappadle and Mane (Pw.2) or some other person forged his signature and of his son and have concocted the agreement. Having understood the said defence Pw.1 went for trial and also got appointed the court commissioner to negate the said

defence, so the incorrect framing of issue no.4 has not misled the parties nor vitiated the trial. Hence in the light of the discussion made above I answer issue no.1 and 2 in the negative and issue no.4 in the affirmative.

19. **Issue No.3:-** At the cost of repetition I say that having committed number of misdeeds before coming to the court Pw.1 continued the same even during the trial. Though he took lot of interest in exhibiting the suit agreement, RTCs of the suit land, returned postal envelope and postal window receipt at Ex.P.1 to P.5 intentionally and deliberately he did not get exhibit copy of the legal notice nor requested the court to open the Ex.P.4 and get mark the copy of the notice contained in it. In the absence of such an attempt his allegation that he issued legal notice calling upon the defendant to execute the registered sale-deed within a stipulated time at his expenses etc., cannot be accepted. A civil litigation cannot be fought in vacuum, always courts insist for evidence especially in cases like this the documentary evidence. As I said earlier since one more falsehood was set up in the legal notice stating that he is in possession of the suit property it appears that Pw.1 felt it convenient not to exhibit the same as it would go against his interest. The admission of Dw.1 that they have received notice is of no consequence when it is very contention of the Pw.1 that said notice returned as not claimed and it is marked as Ex.P.4. This is only an additional reason and it does not mean that he has proved the suit agreement. In other words when he has miserably failed to prove the valid execution of the agreement his contention that he was always ready and willing to perform his part of the contract is liable to be rejected, accordingly I answer this issue in the negative.

20. **Issue No.5:-** Defendants have not produced any evidence to show that without prior permission of the competent authority they

could not have alienated the suit property. Moreover in view of the findings on issue no.1 to 4 findings on this issue loses its significance, hence I answer this issue in the negative.

21. **Issue No.6:-** As plaintiff has not only failed to prove the valid execution of the agreement even he has failed to prove the passing of part consideration also, so there is no question of enforcing such a hallow and concocted document or granting of an alternate relief of refund of alleged earnest money. On the other hand for using the court as a means of oppression, as held in the decision reported at AIR 1987 SC 2328 (Parakunnan Veetill Joseph's Son Mathew vs. Nedumbara Kuruvila's son and others) and for unnecessarily dragging the defendant to the court and for making him to spend and his LRs. and also for having subjected them to suffer mentally with this vexatious suit this Pw.1 is liable to compensate them. In the decision reported AIR 2012 S.C. 2010 (G) (A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam) Hon'ble Supreme Court held that whenever false claims are set up court must ensure that such unscrupulous litigant is not permitted to derive any benefit by abusing judicial process and while dismissing such claims realistic costs have been imposed against such persons. Therefore holding that it is one such false and vexatious claim, I prefer to dismiss it not only with costs even with compensatory costs of Rs.3,000/-. Accordingly I answer this issue in the negative.

22. **Issue No.7:-** In the result, I make the following:

ORDER

Suit is dismissed with costs and
compensatory cost of Rs.3,000/-.

Draw decree.

(Dictated to the Stenographer, transcribed and computerized by him, script corrected and signed by me on this the 21st day of January, 2015)

(Ron Vasudev)
Prl. Senior Civil Judge Athani.

ANNEXURE

Witnesses examined on behalf of Plaintiff

PW.1: Sadashiv Tippanna Honawad
PW.2: Dattu Yashwant Mane
PW.3: Kiran Panditrao Kulkarni

Documents marked on behalf of Plaintiff.

Ex.P.1 : Agreement of sale
Ex.P.2, 3 : RTC extract
Ex.P.4 : Postal cover
Ex.P.5 : Postal receipt
Ex.P.5 to 7: RTC extracts.

Witness examined on behalf of Defendant:

DW.1 : Tukaram Baburao Salunke
DW.2 : Vittal Baburao Salunke
DW.3 : Siddu Pundalik Jadhav.

Documents marked on behalf of Defendant:

Ex.D.1 to 15 : PLD Bank receipts
Ex.D.16 : Mutation entries
Ex.D.16(a) to (d): Mutation entries

Witness examined on behalf of Court commissioner :

CW.1 : Phaneendra B.N.

Documents marked on behalf of Court Commissioner:

Ex.C.1 : Commission warrant
Ex.C.2 : Commission report

Prl. Senior Civil Judge Athani.