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PLAINT

IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION, PUNE

Special Civil Suit No. 818 of 2009

Laxman

Aged 48 years, Occ: Advocate and
Agriculture, residing at village Wadi
Tal: Pansari, Dist: Pune

...Plaintiff

Versus

1. Shankar

Aged about 56 years, Occ: Agriculture
for self and as “karta” of his Hindu
Undivided Family (HUF)

2. Pravin

Aged about 52 years, Occ: Agriculture

3. Mohan

Aged about 48 years, Occ: Agriculture
No. 1 to 3 residing at Pal, Tal: Kanha
Dist: Sandur

4. Asha

Aged about 58 years, Occ: Household
Residing at Perale, Tal: Kanha
Dist: Sandur

5. Mangala

Aged about 50 years, Occ: Household
Residing at Lane No. 8, Raja Nagar,
Kirtipur, Dist: Kirtipur

6. Neha

Aged about 47 years, Occ: Household
Residing at Nimbol, Tal: Pandhre
Dist: Sandur

...Defendants

Suit for specific performance valued at Rs. 59,06,479.20/-

The Plaintiff above named states as under:

1. Description of the land:

All those pieces of agricultural land situated at village Mandwa of Taluka Pansari, District Pune, within the limits of the Registration District of Pune, Sub-Registration Taluka Pansari and Gram Panchayat of village Mandwa, bearing:

- i. Consolidation Block (Gat) No. 2318 (old Survey. No. 14/9) admeasuring “Hectare 1.50 Acre”, assessed at Rs. 4.88 ps and,
- ii. Consolidation Block (Gat) No. 2319 (old Survey. No. 14/4) admeasuring “Hectare 0.24 Acre”, assessed at Rs. 0.70 ps and,
- iii. Consolidation Block (Gat) No. 2320 (old Survey. No. 14/8) admeasuring “Hectare 0.89 Acre”, assessed at Rs. 2.87 ps,

Above three pieces of land are collectively bounded by as follows:

East : Gat No. 35 (old Survey. No. 15) Village Mandwa,

South : Gat No. 310, Village Mandwa,

West: Old Survey. No. 11, Village Mandwa,

North : Old Survey. No. 14/7, Village Mandwa.

iv. Consolidation Block (Gat) No. 34, admeasuring “Hectare 0.69 Acre”, assessed at Rs. 1.03 ps, bounded by as follows:

East : Old Survey No. 14/5, Village Mandwa,

South : Old Survey No. 14/1, Village Mandwa,

West : Old Survey No. 14/3, Village Mandwa,

North : Old Survey No. 13/4, Village Mandwa.

(hereinafter collectively referred to as the “suit land”)

2. The suit land is owned by the Defendants forming a Joint Hindu Family (HUF). The Defendant No. 1 is the “karta” and manager of the said HUF. The Defendant Nos. 2 and 3 are the brothers of Defendant No. 1 and Defendant Nos. 4, 5 and 6 are the sisters of Defendant No. 1. Since many years, the suit land is lying barren and has not been taken under cultivation. All the Defendants are gainfully employed and are residing separately, well away from village Mandwa.
3. For legal necessity as well as repayment of loan availed of by the Defendants for their family needs, the Defendants decided to dispose of the suit land. The Plaintiff hails from village Wadi and also has his agricultural holdings at village Mandki, abutting village Mandwa. The Defendant No. 1 assured the Plaintiff that he is the “karta” and manager of HUF, comprising of Defendants as coparceners and further that for legal necessity, the Defendants decided to sell the suit land.
4. The Defendant No. 1, together with Defendant Nos. 2 and 3, therefore, by an agreement dated 28/03/2007 styled as ‘Visar Pavti’, agreed to sell the suit land to the Plaintiff (hereinafter referred to as the said “Agreement”) for an at the price of Rs. 7,20,000/- (Rupees Seven Lakhs Twenty thousand only) per acre (i.e. Rs. 17,79,060/- per “Hectare 01.00 are”). Subject to measurement of the suit land, the total price estimated was Rs. 59,06,479.20/- (Rupees Fifty-nine lakhs Six thousand Four hundred Seventy-nine and Twenty paise only). The Plaintiff also paid an amount of Rs. 6,00,000/- (Six lakh only) to the Defendant Nos. 1 to 3 in cash on the very date of execution of the said agreement. The balance amount was agreed to be paid by the Plaintiff to the Defendants on and at the time of execution of the conveyance of sale and simultaneous delivery of vacant possession of the suit land to the Plaintiff. There thus, came into existence a concluded contract whereby, the Defendants agreed to sell the suit land to the Plaintiff. The Defendants, hence, are bound in law to sell the suit land to the Plaintiff and/or his nominees and also to execute conveyance of sale in respect of the suit land in favour of the Plaintiff and/or his nominees.
5. Prior to execution of the sale deed, the Defendants also agreed to seek, pray and procure the permissions, if any, under any concerned laws. Accordingly, the Defendants agreed to execute the sale deed of the suit land within a period of One Month from obtaining such permission required, if any, either in the name of the Plaintiff and/or nominees of the Plaintiff.
6. The Defendants also assured the Plaintiff that though the Defendant Nos. 4, 5 and 6 have not signed the said agreement, since the Defendant No. 1 is the “karta” and manager of the HUF, he is entitled to, in law and on facts, to represent all the Defendants. The Defendant No. 1 assured that at the time of execution of the sale deed, the Defendant No. 1 assured that the Defendant Nos. 4 to 6 would remain present and execute the instrument of sale.
7. The Defendant No. 5 thereafter released her right, title and interest and claims in respect of and relating to the suit land, unto and in favour of the Defendant No. 1. Consequently, the Defendant Nos. 1 to 4 and the Defendant No. 6 were required to remain present for the execution of the sale deed in favour of the Plaintiff.
8. It was found that no permission or sanction is required for sale of the suit land by the Defendants to the Plaintiff. Therefore, the Plaintiff prepared and drew the draft of the sale deed, and also affixed stamp duty thereon by franking. The Plaintiff and the Defendant Nos. 1 to 4 and 6 agreed the sale deed would be executed on 29/06/2007. The Defendant Nos. 1 to 3 agreed to remain present together with Defendant Nos. 4 to 6 at the Office of the Sub-Registrar at Pengaon. On the said date however, contrary to the assurances, only the Defendant Nos. 1 to 3 remained present and the Defendant Nos. 4 and 6 were not called by the Defendant Nos. 1 to 3. The Defendant Nos. 1 to 3 evaded to keep Defendant Nos.

4 and 6 present at the time of execution of the sale deed on the said date. The sale deed hence, could not take place and the Defendant Nos. 1 to 3 went back, assuring that they would procure the presence of the Defendant Nos. 4 and 6 for execution of the sale deed and would inform the date to the Plaintiff. Despite repeated reminder from time to time by the Plaintiff, the Defendants evaded coming forward together with Defendant Nos. 4 and 6 to execute the sale deed of the suit land, unto and in favour of the Plaintiff.

9. The Plaintiff therefore states that:

- a. There is a concluded contract between the Plaintiff and the Defendants, thereby the Defendants agreed to sell the suit land to the Plaintiff;
- b. The Plaintiff has paid substantial amount to the Defendant Nos. 1 to 3 on execution of the said agreement dated 28/03/2007;
- c. The Plaintiff is ready and willing to perform his part of the said agreement and has kept the balance amount of consideration ready to paid to the Defendants on execution of the conveyance of the sale of the suit land;
- d. Should this Hon'ble Court direct, the Plaintiff is ready to deposit the said amount in the Court;
- e. The Defendants however, wrongfully refused by conduct to perform their part of the said contract though being bound thereby;
- f. The Plaintiff thus, is entitled, in law so also in equity, to specific performance of the said agreement;
- g. Irreparable loss or injury would be caused to the Plaintiff if specific performance of the said agreement is not granted against the Defendants;
- h. The damages is not an adequate relief in place of specific performance of the said agreement, and the loss and injury which would be caused to the Plaintiff cannot be compensated in terms of money.

10. Alternative and without prejudice to the contention that all the Defendants are bound by the said agreement to execute the sale deed in respect of the suit land unto and in favour of the Plaintiff, the Plaintiff submits that in the event, it is found that the Defendant Nos. 4 and 6 have not been represented in law, the Defendant Nos. 1 to 3 are in any case, bound in law to execute the sale deed of the suit land to the extent of their respective shares, which comes to 66.67%. In the alternative also therefore, the Plaintiff has filed to the present suit against the Defendant Nos. 1 to 3 for specific performance of the said agreement to the extent of 66.67% share in the suit land, unto and in favour of the Plaintiff together with consequential and incidental partition of the suit land by metes and bound.

11. Alternatively further, if this Hon'ble Court comes to the conclusion that relief of specific performance cannot be granted to the Plaintiff for any reason whatsoever, in such event, the Plaintiff is entitled not only to receive the said amount of Rs. 6,00,000/- (Six lakh only) already paid by the Plaintiff to the Defendant Nos. 1 to 3 together with interest thereon @ 18% per annum, but also for the compensation on the basis of the difference of the agreed price and the amount, which the Plaintiff would be eventually required to pay for purchase of similarly located land. To the estimation of the Plaintiff, the price of the similarly located land, would be Rs. 9,90,000/- (Nine lakh ninety thousand only) per "Hectare 1.00 Are" (Rs. 4,00,000/- per acre). The Defendants or concerned of them, are bound in law to pay the compensation of Rs. 6,67,120/- (Rupees Six lakhs Sixty-seven thousand One hundred and Twenty only) to the Plaintiff, being the approximate difference between the agreed price of the suit land and the price the Plaintiff would end up paying purchase of similarly located land. For this alternative claim as well, the Plaintiff has filed the present suit.

12. Particulars of alternative claim :

Amount (Rs.)	Particulars
Rs. 6,00,000.00/-	Refund of the part purchase price already paid by the Plaintiff to the Defendant Nos. 1 to 3 on 28/03/2007.
Rs. 81,000.00/-	Interest on the said amount of Rs. 6,00,000/- @ 18% per annum w.e.f 28/03/2007 till filing of the suit

Rs. 6,67,120.00/-

Compensation being the approximate difference between the price of the suit land agreed between the Plaintiff and the Defendants and the price the Plaintiff would be required to pay for purchase of similarly located land

Rs. 6,74,060.00/-

Total alternative claim of the Plaintiff

13. The Plaintiff also apprehends that the Defendants would create third party interest in respect of the suit land with a view to defeat the rights of the Plaintiff to seek specific performance of the said agreement. The Defendants therefore, are also required to be permanently restrained from creating any third party interest and/or parting with the possession of the suit land or any part thereof, which otherwise would adversely affect the rights of the Plaintiff to seek specific performance of the said agreement.
14. The cause of action for the suit first arose on 28/03/2007 within the jurisdiction of this Hon'ble Court when the Defendant Nos. 1 to 3 representing themselves and also Defendant Nos. 4 to 6 agreed to sell the suit land to the Plaintiff and thereafter, on 29/06/2007 when despite the Plaintiff being ready and willing to perform his part of the contract, the Defendants failed to come forward to execute the sale deed in respect of the suit land, unto and in favour of the Plaintiff within the time stipulated and thereafter on each subsequent day.
15. The suit land is located within the territorial and pecuniary jurisdiction of this Hon'ble Court, so also the cause of action for filing the present suit has arisen within the jurisdiction of this Hon'ble Court. As such, this Hon'ble Court has jurisdiction to entertain, try and decide the present suit.
16. The suit is valued for the purpose of court fee, advocate's fee and jurisdiction of this Hon'ble Court at Rs. 59,06,479.20/- (Rupees Fifty-nine lakhs Six thousand Four hundred Seventy-nine and Twenty paise only) being the higher amount of the claim for specific performance and alternative claim. *Ad valorem* court fee on this higher amount, as per Section 6(xi) of the Bombay Court Fees Act, 1959 has been affixed herewith.
17. It is therefore prayed that:
 - a. The Defendants be ordered to sell the suit land (more particularly described in paragraph 1 of the plaint above and referred to herein as the "suit land"), free from encumbrances to the Plaintiff and/or his nominees;
 - b. Alternatively, in the event this Hon'ble Court concludes that only the Defendant Nos. 1 to 3 are liable for the action in this suit, the Defendant Nos. 1 to 3 be ordered to sell 66.67% (i.e. 2/3rd share) of the suit land to the Plaintiff and/or his nominees, together with consequential directions to partition of the suit and by metes and bounds;
 - c. The Defendants (or Defendant Nos. 1 to 3), to the extent of 66.67% share in the suit land in the alternative, as the case may be, be ordered to execute the conveyance of sale of the suit land (or in the alternative to the extent of 66.67% share therein, as the case may be) in favour of the Plaintiff and/or his nominees;
 - d. The Defendants (or in the alternative, the Defendant Nos. 1 to 3 to the extent of 66.67% share in the suit land, as the case may be) be also ordered to grant and deliver the vacant possession of the suit land (or in the alternative to the extent of 66.67% share therein, as the case may be) to the Plaintiff and/or his nominees;
 - e. Failure on part of the Defendants (or in the alternative, the Defendant Nos. 1 to 3 to the extent of 66.67% share in the suit land, as the case may be) to do so, the same be ordered to be done in favour of the Plaintiff, by appointing an appropriate commissioner;
 - f. In the event of this Hon'ble Court coming to the conclusion that the Plaintiff is not entitled for specific performance of the said agreement dated 28/03/2007 as an alternative relief, the Plaintiff be awarded an amount of Rs. 6,74,060/- (Six lakh seventy-four thousand and sixty only) towards refund of the part purchase price together with interest and the compensation, as particularly mentioned in paragraph 12 of the plaint above, from the Defendants (or the Defendant Nos. 1 to 3, as the case may be) jointly and severally;

- g. The Defendants, their servants, employees or representatives be permanently restrained by permanent injunction from creating or cause to be created any interest relating to the suit land in favour of any third party and/or parting with possession thereof, or any part thereof;
- h. During the pendency of this suit, as prayed for by separate application, the Defendants, their servants, employees or representatives be restrained by temporary injunction from creating or cause to be created any interest relating to the suit land in favour of any third party and/or parting with possession thereof or any part thereof, till the final disposal of the suit;
- i. The cost of the suit may be awarded to the Plaintiff from the Defendants (and/or from the Defendant Nos. 1 to 3, as the case may be);

Any other order deemed fit and proper be passed.

Sd/-
Laxman

VERIFICATION

I, Laxman, the Plaintiff abovenamed, do hereby state and declare on solemn affirmation that the contents of the Plaint above, are true and correct to the best of my knowledge, belief and information and I have verified and signed the same today, here at Pune.

Sd/-
Laxman



WRITTEN STATEMENT
IN THE COURT OF HON'BLE CIVIL JUDGE SENIOR
DIVISION PUNE AT PUNE

Spl. C. S. No. 818/2009

Laxman) Plaintiff

Versus

Shankar & 5 Others) Defendant

Written statement of the Defendant Nos. 1 to 6 herein is as under:-

- 1) That the entire contents in the suit filed by the Plaintiff against these Defendants on the basis of alleged Earnest Receipt for execution of Sale Deed and in the injunction application are totally false and frivolous and the same are denied by these Defendants. In fact, the Defendant Nos. 1 to 3 have not executed the alleged Earnest Receipt in respect of the suit properties in favour of the Plaintiffs in March, 2007. Therefore, any such document does not exist in respect of the alleged transaction of the suit properties by and between the Plaintiff and Defendant Nos. 1 to 3. Therefore, the Plaintiffs could not file any such suit against these Defendants seeking execution of any type of Sale Deed on the basis of transaction or alleged contract, which is not at all exists. In short, there is no cause of action arise for the plaintiff for filing the said suit and injunction application. Further, the plaintiff has not made any contentions in respect of the cause of action for filing said suit. Therefore, prima facie the said suit and injunction application deserve to be dismissed for the want of cause of action. In short, the said suit is not tenable by law and deserves to be dismissed under O. 7 R. 11 (A) of the C.P.C.
- 2) The boundaries and area of the suit property as described in para 1 of the suit are correct. The suit properties were owned and possessed by these Defendants and they are the owners of their respective undivided share in the suit properties since the said lands were allotted to them by the Government. Till date, any partition of the suit properties is not effected by meets and bounds. Further, the Defendant Nos. 1 to 3 have never transferred the same to the Plaintiff or any third person. As the financial condition of the Defendants is good, they did not have any financial difficulties in the year 2008. Therefore, the question of executing the alleged Earnest Receipt by the Defendant Nos. 1 to 3 in favour of the Plaintiff or receiving alleged amount of Rs. 6,00,000/- (Rs. Six lakhs Only) being alleged consideration does not arise. In short, it appears that the Plaintiff has not narrated the facts while filing the present suit before this Hon'ble Court. Therefore, as the Plaintiff has suppressed material facts from this Hon'ble, he has not come with clean hands in this Hon'ble Court.
- 3) In fact the suit properties are located at revenue village Mouje Mandwa, Tal. Pansari, Dist. Pune and the Defendant Nos. 1 to 3 hails from the said village and most of their ancestral properties were acquired by the Government of Maharashtra under the affected zone of the Mandwa Dam which was constructed somewhere in the year 1956-57 and using the funds received in lieu of the same being compensation, the Defendant's father have purchased agricultural lands at village Mouje Pal, Tal. Kanha, Dist. Sandur. Since then, the Defendant Nos. 1 to 3 started residing permanently with their parents at Mouje Pal. However, the Defendants themselves have cultivated and are cultivating the suit properties by visiting village Mouje Mandwa once the water level in the affected zone of the project gets reduced. However, the Defendants have also obtained crops from the area which is being shown as uncultivable on the 7/12 extracts of such lands.
- 4) All the three properties described in para 1 of the suit i.e. Gat No. 2318 Old S. No. 14/9, Gat No. 2319, Old S. No. 14/4 and Gat No. 2320 Old S. No. 14/8 were acquired by the Government of Maharashtra for Mandwa Project. However, as the layout of the wall of said Mandwa Project was changed, the suit properties went outside of the affected zone of the

project. However, Government of Maharashtra has acquired the said properties and get the name viz. "Government of Maharashtra Mandwa Project" recorded on the 7/12 extracts of the suit properties. Though these were the circumstances for the time being in force, he father of the Defendant was cultivating the suit properties during his entire lifetime. After demise of their father, the Defendants were also cultivating the suit properties by visiting the village time to time. The Government of Maharashtra, through Collector, Pune passed order on 29.07.1996 directing that, "an area of 153 Acre 30 Gunthas found as surplus area out of the entire area acquired by the government for the Mandwa project from village Mouje Mandwa, Taluka Pansari District Pune and the same may be restored in the name of its original owners or their heirs by recovering twice of the amount of compensation received by them at the time of acquisition of such lands". Upon payment of such amount to the Government of Maharashtra by the Defendants, the aforementioned properties were restored in the name of the Defendant Nos. 1 to 6 and accordingly Mutation Entry No. 2779 was effected. This is how, these Defendants have become owners of the suit properties. The property described in para 1D also owned and possessed by these Defendants. Apart from these Defendants, nobody has any type of right, title and interest in the said property.

- 5) The entire contents of the para Nos. 2 to 6 of the suit are false and frivolous and denied by these Defendants. The Plaintiff and Defendants do not have relations as far as the suit properties are concerned. Further, the Plaintiffs do not have any rights and title to the suit properties. Further, the Plaintiffs have not executed any alleged Earnest Receipt dated 28.04.2008 in favour of the Defendant Nos. 1 to 3. Alongwith the summons and notice of the suit, the Plaintiff has also sent photocopies of the documents filed by him under Exhibit No. 3. The copy of such alleged Earnest Receipt does not bear date or day of execution. On the other hand, it appears that the stamp of Rs. 100/- purchased by Mr. Kamble on behalf of Plaintiff for the alleged Earnest Receipt on 28/03/2007 from the Stamp Vendor at Fernandez Road, Pune. In fact, the Defendants have never instructed to the Plaintiff for purchasing such alleged stamp paper. Further, there is undivided share of all the Defendants in the suit properties and as per the order dated 19/06/1995, name of all Defendants were recorded to the 7/12 extracts and village records of the suit properties. Therefore, the question of Defendant No. 1 being the Manager of the Joint Family of the Defendants does not arise. As any alleged document viz. Earnest Receipt was not executed by and between the Plaintiff and Defendant Nos. 1 to 3, the questions like fixing rate per acre of the suit properties and payment of alleged consideration or payment of remaining consideration by the Plaintiff to the Defendant at the time of alleged Sale Deed do not arise. Further, question of execution of alleged Sale Deed by the Defendant in favour of the Plaintiff on the basis of alleged Earnest Receipt does not arise.
- 6) In fact, the Defendants were never felt any financial difficulties in March, 2007. Further, the Defendants never decided to transfer the suit properties to the Plaintiff or to any third person. Further, the Defendant Nos. 1 to 3 have never executed alleged Earnest Receipt in favour of the Plaintiff in the month of March, 2007 or the Defendant Nos. 1 to 3 have never accepted an amount of Rs. 6,00,000/- (Rs. Three Lacs Only) bearing earnest amount. The other properties of the Defendants i.e. S. No. 11/2, 11/2, 12/4, 12/5, 13/1, 13/5, 13/6 and 14/6 were owned and possessed by the father of the Defendant Mr. Jagannath. However, said properties were also acquired by Government of Maharashtra for Mandwa project. As the said properties are adjacent to the suit properties and as the layout of wall of Mandwa Project is changed as mentioned hereinabove, these properties remained outside of the affected zone and the father of the Defendants, during his lifetime, has taken all efforts to get those restored, however, he did not get success.
- 7) Defendant's father Mr. Jagannath expired on 14/08/2001. Thereafter, Defendant Nos. 1 to 6 are his legal heirs and there are no other legal heirs. The Defendants started making efforts for getting the aforementioned properties restored and the Defendants decided to take legal action for getting aforementioned properties restored from the Government through their nephew Adv. Dinesh, R/at: Roshni Housing Society, Bokewadi, Pune. Accordingly, they have handed over 7/12 extracts and other documents of the aforementioned properties to Mr. Dinesh. In fact, the Defendants were not knowing the Plaintiff. However, as Mr. Dinesh introduced them to the Plaintiff for the sake of restoring the aforementioned lands from the Government as he is a

senior advocate and very well conversant with the revenue department and allied matters and therefore Adv. Dinesh introduced Plaintiff to the Defendants. At that time, being a lawyer too by profession, the Plaintiff has assured to the Defendants to get restored the aforementioned lands from the Government. Accordingly, in the month of March, 2007 and at the office of Adv. Dinesh, the Plaintiff and Adv. Dinesh has obtained signatures of the Defendant Nos. 1 to 3 on some papers for the sake of court proceedings and thereafter Adv. Dinesh told to Defendant Nos. 1 to 3 that they will get released their lands from the government as soon as possible. As Adv. Dinesh is the nephew of the Defendant, relying on him, the Defendant Nos. 1 to 3 have put their signatures on such papers and have granted their consent to the Plaintiff and gave file of papers to look after the proceedings of the case and also paid some amount for expenses.

- 8) Under the factual circumstances, the Defendants have received a summons of the suit, notice alongwith photocopies of the documents filed alongwith the suit on 17/01/2008. The Defendant No. 1 was surprised and shocked as the Defendant No. 1 read the contentions of the alleged Earnest Receipt in the compilation of photocopies of the documents sent alongwith the suit and Dinesh and Sumedh has put their signatures on the alleged receipt being witness. In fact, the Defendant Nos. 1 to 3 did not know Sumedh. Further, as the Defendant No. 1 get read over the contents of the suit and injunction application in English from his son, the Defendant for the first time realised that the Plaintiff and Adv. Dinesh has misused their signatures and deceived him. In fact, the Defendants have neither executed the alleged Earnest Receipt in favour of the Plaintiff nor the Defendants have purchased the stamp paper required for it. Despite of such facts, the said suit and injunction application is filed on the basis of fake documents and therefore the same deserve to be dismissed.
- 9) In fact, the Defendant Nos. 1 to 3 never executed the alleged Earnest Receipt in respect of the suit properties in favour of the Plaintiff. Further, the Defendant Nos. 1 to 3 have not put their signatures on the alleged Earnest Receipt. The Defendant never felt any financial difficulties. The Plaintiff and Adv. Dinesh have deceived the Defendants by making false alleged Earnest Receipt without consideration by misusing the signatures of Defendant Nos. 1 to 3 obtained then for the sake of releasing the aforementioned properties from the government and therefore the Plaintiff shall not create any legal rights or title in the suit properties on the basis of the instrument bearing false contentions. Further, the Plaintiff shall not file suit and injunction application against the Defendants on the basis of such alleged deed. Further, as the Defendants have never executed the alleged document in favour of the Plaintiff, the question of fulfilling the obligations as per the contentions of such alleged deed on the part of the Defendants never arises. This suit and injunction application filed merely by taking disadvantage in view of increasing prices of land and thereby this Plaintiff caused physical and mental harassment to these Defendants.
- 10) The contents of Para 7 & 9 are totally false and the same is denied by the defendants. Even if the Defendant No. 5 relinquished the right, title and interest of the undivided share in the suit properties in favour of the other defendants, the plaintiff does not have any right, claim or interest in the suit properties. We, the Defendant No. 1 – 3 never executed the said Agreement to Sale (Visar Pavti) in favour of the plaintiff, hence, no question of obtaining the signatures of Defendant No. 4 – 6 at the time of execution of the Sale Deed arises. In short, the present suit filed on the basis of bogus Agreement to Sale (Visar Pavti) is not true and correct. In fact, the present suit is not filed within the limits of the law, hence, it is liable for dismissal. Plaintiff has no reason to file the present suit. We the Defendant No. 1-4 and 6 deny the execution of the Sale Deed. Also, no question of being present at the office of the Sub Registrar, Pangaon arises. Hence, the plaintiff has no any right to ask for the execution of the Sale Deed repeatedly. The plaintiff have no right to demand anything as described in Para 9 of the present suit filed against us. Prima facie, the suit is liable for dismissal as the abovementioned situation and facts are true and correct.
- 11) The content of Para 10 to Para 16 is not true and correct and the same is denied by us. The plaintiff have no any right to seek compensation from us as we, the Defendant No. 1-3 deny the execution of the said Agreement to Sale (Visar Pavti) dated 28/03/2007 in favour of the plaintiff. Also, the plaintiff have no right to ask the Defendant No. 1-3 to execute the Sale Deed of their undivided share in the properties in favour of the plaintiff. Also, we are not

liable to pay the amounts described in Para 11 of the present suit. Hence, the plaintiff have no right to seek the compensation amount along with the interest as described in Para 12 of the present suit. The particulars described in Para 12 are totally false as we deny the execution of the said Agreement to Sale (Visar Pavti). Hence, plaintiff has no right to seek Third Party Injunction in the suit properties. The contents of Para 14 of the present suit regarding the agreements dated 28/03/2007 is not true. Hence, the court has no right to try the matter on the present suit based on the false content and information.

12) The demands raised by the Plaintiff against the Defendants as described in Para 17 of the present suit are not true and correct. In fact, we the Defendant No. 1 – 3 never executed the said Agreement to Sale (Visar Pavti) in favour of the plaintiff. Hence, the demands raised by the plaintiff against us are totally false. In fact, the Plaintiff have no legal right to demand such things. The plaintiff has defamed us by issuing the paper notice in Daily Khabar newspaper dated 01/02/2008 even if the matter is pending before the court. We are taking separate legal action on the same against the plaintiff. Hence, taking all the above mentioned facts into consideration, the present suit is liable for dismissal with costs.

13) Therefore, the defendants pray that-

- a) The suit be dismissed with costs. The cost of the suit be awarded from plaintiff to defendants.
- b) The Defendant No. 1-3 never executed the said Agreement to Sale (VisarPavati) dated 28/03/2007 in favour of the plaintiff. The plaintiff has filed the present suit by misusing the said bogus document and created financial as well physical trouble and mental agony to us. Therefore, plaintiff be directed to pay the sum of Rs. 1,00,000/- to the defendants to defend the false and frivolous suit.
- c) The defendants be allowed to alter the content of the Written Statement, if required.
- d) Any other order in the interest of justice may also be passed.

Pune. 1)
18/02/2008 2)
Advocate for Defendants 3)
4)
5)
6)

Defendants

VERIFICATION

We, Shankar, Age: 55, Occupation: Farmer, Pravin, Age: 52, Occupation: Farmer, Mohan Age : 48, Occupation: Farmer, all residing at Pal, Tal. Kanha, Dist. Sandur, Asha, Age:59, Occupation: Household worker and farmer, residing at Perale, Tal. Kanha, Dist. Sandur, Smt. Mangala, Age: 57, Occupation: Household worker and farmer, residing at Rajarampuri, 8th lane, Kirtipur, Dist. Kirtipur and Neha, Age: 50, Occupation: Household worker and farmer, residing at Nimbol, Tal. Pandhre, Dist. Sandur, the Defendant No. 1-6, do state on solemn affirmation that whatsoever stated above is true and correct to the best of our knowledge, belief and information in token thereof. We have signed the same.

1) Sd/-
2) Sd/-
3) Sd/-
4) Sd/-
5) Sd/-
6) Sd/-

Defendants

JUDGMENT OF COURT OF FIRST INSTANCE

In the Court of 6th Joint Civil Judge, Senior Division, Pune.

Special Civil Suit No. 818/2008

1) **Laxman,**

Age : 52 years, Occ : Advocate and
Agriculture, R/at : Village Wadi,
Tal : Pansari, Dist : Pune.

...Plaintiff

Versus

1) **Shankar,**

Age: 63 years, Occ: Agriculturalist,
For self and as (Karta) of Hindu
Undivided Family (HUF).

2) **Pravin,**

Age: 56 years, Occ: Agriculturalist,

3) **Mohan,**

Age : 52 years, Occ : Agriculturalist,
Plaintiffs 1 to 3, R/at: Pal, Tal : Kanha, Dist: Sandur.

4) **Asha,**

Age : 62 years Occ : Household,
R/at: Kerale, Tal: Kanha, Dist: Sandur

5) **Mangala,**

Age : 54 years, Occ : Household,
R/at : Lane No. 8, Raja Nagar, Kirtipur.

6) **Neha,**

Age : 51 years, Occ : Household,
R/at: Nimbol, Tal: Pandhre, Dist : Sandur.

...Defendants

Appearance:

- 1) Shri. S. Khan, Advocate for Plaintiff.
- 2) Shri. D. Silva, Advocate for Defendant.

JUDGMENT

(Delivered on: 29/03/2012)

- 1) This is a suit for specific performance of contract, permanent injunction and possession of suit property. Alternatively, Plaintiff claimed refund of earnest amount and partition of suit property.

Plaintiff's case in brief is as follows :

- 2) The agricultural land situated as Village Mandwa, Tal: Pansari, Dist: Pune as stated below:
 - a. Consolidation Block (Gat) No. 2318 (old Survey. No. 14/9) admeasuring "Hectare 1.50 Acre", assessed at Rs. 4.88 ps and,
 - b. Consolidation Block (Gat) No. 2319 (old Survey. No. 14/4) admeasuring "Hectare 0.24 Acre", assessed at Rs. 0.70 ps and,
 - c. Consolidation Block (Gat) No. 2320 (old Survey. No. 14/8) admeasuring "Hectare 0.89 Acre", assessed at Rs. 2.87 ps,

Above three pieces of land are collectively bounded by as follows:

East : Gat No. 35 (old Survey. No. 15) Village Mandwa,

South : Gat No. 310, Village Mandwa,

West : Old Survey. No. 11, Village Mandwa,

North : Old Survey. No. 14/7, Village Mandwa.

- d. Consolidation Block (Gat) No. 34, admeasuring "Hectare 0.69 Acre", assessed at Rs. 1.03 ps, bounded by as follows:
Eas t: Old Survey No. 14/5, Village Mandwa,
South : Old Survey No. 14/1, Village Mandwa,
West : Old Survey No. 14/3, Village Mandwa,
North : Old Survey No. 13/4, Village Mandwa,

are the 'suit properties'. The suit properties are owned and possessed by the Defedants as they are Hindu Undivided Family (HUF) and Defendant No. 1 is the 'karta' and 'manager' of the said HUF. Defendants Nos. 1 to 3 are brothers and Defendants Nos. 4 to 6 are sisters. All the Defendants are residing separately well away from village Mandwa. For legal necessity as well as repayment of loan availed by Defendants for their family needs, Defendants decided to dispose of suit property. The Plaintiff is from village Wadi and has agricultural land at village Mandki adjacent to village Mandwa. Defendant No. 1 being 'karta' and manager of HUF of Defendants Nos. 1 to 6 desired to sell the suit property for legal necessity. Defendants Nos. 1 to 3 therefore agreed to sell the suit property to the Plaintiff and hence, they executed an agreement for sale named and styled as 'Visar Pavti' dated 28/03/2007. It was agreed by the Defendants Nos. 1 to 3 that the prices per acre would be Rs. 7,20,000/- and per hectare it would be Rs. 17,79,060/- and the total price estimated was Rs. 59,06,479.20/-. On that day, the Plaintiff paid an earnest amount of Rs. 6,00,000/- to the Defendants Nos. 1 to 3 in cash. The balance amount was agreed to be paid by the Plaintiff to the Defendants at the time of execution of sale deed and delivery of vacant possession of suit property to the Plaintiff. The sale deed was agreed to be executed within one month of obtaining all permission from the government.

- 3) Defendants Nos. 1 to 3 assured that they will execute the sale deed in favour of Plaintiff and as Defendants Nos. 4 to 6 have not signed the said agreement, hence, they assured that at the time of execution of sale deed, the Defendants Nos. 4 to 6 would remain present and execute instrument of the same. Thereafter, Defendant No. 5 released her right, title and interest in respect of the suit property in favour of Defendant No. 1. Hence, Defendants No. 1 to 4 and Defendant No. 6 were required to remain present for the execution of sale deed in favour of Plaintiff.
- 4) It was found later on that, no such permission or sanction is required for sale of suit land, therefore, Plaintiff prepared and gave the draft of sale deed and also affixed stamp duty for franking and the Plaintiff and Defendants No. 1 to 4 and 6 agreed that, the said sale deed would be executed on 29/06/2007. Defendants Nos. 1 to 3 remained present and they purposefully evaded to execute sale deed on the aforesaid date, hence, the sale deed could not be executed. Defendants Nos. 1 to 3 assured the Plaintiff that they will procure the presence of Defendants Nos. 4 to 6 and would inform the date to the Plaintiff. Despite repeated reminders of the Plaintiff from time to time, Defendants evaded to come forward and execute sale deed in favour of Plaintiff.
- 5) As Plaintiff came to know from the conduct of the Defendants that they failed to perform their part of the obligation and as there is concluded contract between them and as he is ready and willing to perform his part of the agreement and has kept balance amount ready to be paid to the Defendants for execution of sale deed and Defendants breached this contract, hence, this suit with the alternative claims.

Defendants' case in brief as follows :

- 6) Defendants totally denied the claim of the Plaintiff by filing his Written Statement below Exh.28. Defendants admitted that they are having undivided share in the suit property and they are owner and possessor thereof. Initially, the suit properties were acquired by the government for the purpose of Mandwa dam therefore, the boundaries/wall of Mandwa dam was changed and hence, these properties were outside acquisition process, hence, these properties are owned, possessed and cultivated by them.
- 7) Defendants, first time came to know that, when the suit summons was served on them along with suit summons copy of 'Visar Pavti' (Agreement for sale) was provided and from the

copy of said Visar Pavti, Defendants came to know that Plaintiff played fraud on them. Defendants denied that Defendant No. 1 is 'karta' of their family, denied legal necessary, sale for legal necessity and denied execution of so-called 'Visar Pavti'. In fact, Defendants' contention is that, their property situated at Village Mandwa bearing Sr. No. 11/1, 11/2, 12/4, 12/5, 13/1, 13/5, 13/6 and 14/6 were acquired by government for the purpose of Mandwa dam. These properties were required to be released by the government by filing case before concerned revenue authority. Till the death of their father, he tried his level best to release those properties but he could not succeed. Hence, Defendants decided to file necessary case through Adv. Dinesh, who is their nephew. Accordingly, Defendants met Adv. Dinesh but Adv. Dinesh suggested that Plaintiff is a senior advocate and he has knowledge of the revenue department and that is why he introduced the Plaintiff. They were not knowing Plaintiff. Plaintiff assured to the Defendants that, he will release those properties from the government. Hence, Plaintiff and Adv. Dinesh obtained signatures of Defendants Nos. 1 to 3 on stamp paper in March, 2007 in the office of Adv. Dinesh. Defendants relied on Adv. Dinesh as he was their nephew. Hence, Defendants gave consent and documents to Plaintiff along with fees and expenses of Plaintiff and signed. When, summons in 818/2009 was received then the Defendants came to know that Plaintiff and Adv. Dinesh misutilized the signatures of Defendants Nos. 1 to 3 by way of falsely preparing bogus documents termed as 'Visar Pavti' as alleged by the Plaintiff. Defendants never executed any agreement for sale in favour of Plaintiff. Defendants' contention is that the Plaintiff and Adv. Dinesh played fraud on them. Hence, Defendants denied *in toto* about the Plaintiff's claim and prayed for dismissal of this suit.

- 8) Issues were framed by Ld. Predecessor vide Exh.32 and I have recorded by findings thereon along with my reasoning thereon against each of them is as follows :

POINTS	FINDINGS
1. Does Plaintiff prove that Defendants agreed to sell suit land to him?	In the affirmative.
2. Does Plaintiff prove that Defendants refused to execute sale deed in his favour?	In the affirmative.
3. Does Plaintiff prove that he was and is ready and willing to perform his part of the contract?	In the affirmative.
4. Whether in-alternatively Plaintiff is entitled for partition of suit land as prayed?	Does not survive.
5. Whether in-alternatively Plaintiff is entitled for refund of earnest money and compensation as prayed?	Does not survive.
6. Whether Plaintiff is entitled for decree of specific performance of contract?	In the affirmative.
7. What order?	As per final order.

REASONS

- 9) In order to prove his case, the Plaintiff has examined himself at Exh.35 and relied upon the documents, i.e. 7/12 extract of Gat no. 2318, 2319, 2320 and 34 at Exh.46 – 50 respectively and release deed dated 08/04/2007 executed by Defendant No. 5 in favour of Defendant No. 1 at Exh.51.
- 10) Defendants examined Defendant No. 1, as DW-1 at Exh.79.
- 11) Heard both the parties' counsel at length. The examination-in-chief of both parties was in writing and on affidavit, hence, they deposed to the tune of their respective cases. Again, for the sake of brevity, I am not reproducing their entire evidence, but I will discuss that part of evidence which is most relevant for decision of this case.
- 12) I have gone through the pleadings, evidence of both parties, arguments, the documents filed on record and the relevant provisions of law for just decision of this case. Plaintiff relied on the cited case laws which are as follows:
- AIR 1964 SC 658, 1995 (1) MLJ 22 (DB)

- (1990) 1 SCC 731
- 2010 (6) MLJ 653
- 2003 (4) ALL MR 1048
- AIR 1987 SC 2179
- AIR 1999 SC 1441
- 2003 (2) ALL MR 651
- AIR 1970 SC 546, 2005 (2) MLJ 8, 2001 SAR (Civ) 745
- AIR 2001 Bom 364, 2009 (1) MLJ 471
- AIR 2005 Kar 108
- AIR 2012 SC 2826
- AIR 1979 SC 1241

And Defendants relied on the following cited case laws:

- 2008 (5) Maharashtra Law Journal Central Bank v. S. B. & C. Pvt. Ltd.
- 2009 (3) M.H.L.J. Deputy Collector v. Rajendra
- AIR 1998 Kerala High Court 253 Mathew v. Scaria & Others
- 1972 DGLS (Soft) 370 SC R. Ramamurthi Iyer v. Raja V. Rajeeswara Rai
- AIR 2003 SC 1931 Manjunath Anandappa urf Shivappa Hansi v. Tammanassa & Others
- 1990 DGLS (Soft) 203 Mayawanti v. Kaushalya Devi
- AIR 2003 Delhi 15 M/s Mirahul Enterprises & Others v. Mrs. Dinesha Srivastava.

Those case laws are settled propositions of law given in typical facts and circumstances of the case and if their ratio is applicable to the facts and circumstances of this case, I will discuss the same and rely on the same.

AS TO ISSUES NO. 1 AND 2:

- 13) Prior to going through the record, I want to state that relief of specific performance of contract is an equitable relief. Like the other civil cases, the rule of preponderance scale of probability applies while appreciating such cases. Court has to see the conduct of the parties, while granting or refusing such relief. Likewise, the Court has to consider upon whom the obligation to perform the contract was. Likewise, the Plaintiff must stand on his feet and must prove his own case. It is the duty of the Plaintiff to first establish his case and he cannot take advantage of wrongs committed by the Defendants. Plaintiff can rely on the admissions given by the Defendants in his Written Statement. In this case, Defendants are coming with the case of fraud played by the Plaintiff against them. They denied the execution of agreement for sale, in favour of them. In this case, Plaintiff is positively asserting that the agreement for sale was executed by Defendants Nos. 1 to 3 on behalf of all the Defendants in his favour and the same is disputed and denied by the Defendants stating that Plaintiff misutilized the signatures obtained from the Defendants Nos. 1 to 3 on blank paper for one case to be filed by the Plaintiff for releasing their properties as an advocate. Ordinarily, the cases of fraud are to be appreciated and the fraud has to be proved just like in criminal cases. More or less, the fraud has to be proved by the Defendants beyond the yardsticks of preponderance scale of probability and just like proof beyond reasonable doubt. Only on the basis of raising some assumption and suspicion the Defendants cannot prove fraud played by the Plaintiff. When fraud has been pleaded by the Defendants and the agreement for sale is denied by the Defendants, its due execution has to be proved by the Plaintiff. In such circumstances, Plaintiff may prove as per the provisions of the Indian Evidence Act, 1872 and also from the admissions of the Defendants made by them in their Written Statement of cross-examination. In the light of aforesaid principles of law, I am appreciating the pleadings and evidences in the present case.
- 14) In order to prove that there was a valid and concluded agreement for sale in between Plaintiff and Defendants, Defendant No. 1 being 'karta' of the HUF for Defendants Nos. 1 to 6 agreed to sell the suit properties to the Plaintiff, the Plaintiff examined himself below Exh.35 and his examination-in-chief he duly proved the agreement for sale Exh.62 as per the

provisions of Indian Evidence Act. He deposed that, the said agreement was executed by Defendants Nos. 1 to 3 in his favour. He proved its execution and admitted his signature on it and also proved that, two witnesses duly signed and attested it. It is settled law that a document can be proved as primary evidence by producing the document itself before the Court and proving it as per the provisions of the Indian Evidence Act.

- 15) For an agreement for sale, attestation of witnesses is not necessary hence, in such circumstances, even if the said document is not proved by the attesting witness then, it will not be fatal to the Plaintiff's case. Defendant's counsel argued that Plaintiff ought to have examined the two attesting witnesses and the two attesting witnesses are the relatives of the Plaintiff and hence, the document is doubtful. Likewise, the Defendants contended that fraud played by the Plaintiff against them as alleged in his story in brief. So far as the contentions that one of the attesting witnesses shall be required to be examined by the Plaintiff, I want to state that it is necessary to do so and law does contemplate that the attesting witness should be examined. Hence, the Plaintiff through his own evidence duly proved execution of agreement for sale Exh.62 in respect of the suit properties by the Defendants in his favour. Nothing has been brought in the cross-examination to disprove the due execution of agreement for sale. Likewise, the Plaintiff, from his evidence and the said document proved that, the Defendants agreed to sell the suit properties to the Plaintiff on dated 28/03/2007 and thereby Defendants agreed to sell the suit property to the Plaintiff @ Rs. 7,20,000/- per acre and for total consideration of Rs. 59,06,479.20/-. Plaintiff also proved that an amount of Rs. 6,00,000/- was paid as earnest amount to the Defendants in cash and the balance was agreed to be paid at the time of execution of the Conveyance Deed and the delivery of vacant possession of the suit property to the Plaintiff. Defendants also agreed that they will cooperate with the Plaintiff in obtaining permission from the Defendants. Also it is proved by the Plaintiff that, the said sale deed was to be executed within a period of one month from obtaining such permission. From the document Exh.62 and from the evidence of the Plaintiff, it appears that, Defendant No. 1 as the 'karta' and manager of the HUF of Defendants Nos. 1 to 6 assured to the Plaintiff that Defendants Nos. 4 to 6 would remain present at the time of execution of sale deed and accordingly all the Defendants will execute the sale deed in favour of the Plaintiff. Once the agreement for sale is primarily proved by the Plaintiff then the contents therein can be read in evidence. Primarily Plaintiff proved the aforesaid facts but some of these facts are disputed by the Defendants and that I will discuss it in the later part of the judgment.
- 16) Apart from the Plaintiff, Defendants themselves admitted in their Written Statement that Defendants Nos. 1 to 3 had signed on some blank papers and they handed over the papers to the Plaintiff and he misutilized those signatures and brought in existence a false document named and styled as 'Visar Pavti' Exh.62. Here, the Defendants admitted that the so-called 'Visar Pavti' Exh.62 is signed by the Defendants Nos. 1 to 3 but the same is bogus. Once the Defendants admitted their signature on the so-called 'Visar Pavti' Exh.62 and pleaded that fraud is played by the Plaintiff then, they have admitted the execution of agreement for sale Exh.62. At this juncture, I am relying on the case law cited by Plaintiff's counsel below Exh.75 in between *Patna and Others v. M/s Green Rubber Industries and Others, (1990) 1 SC 731* in which the Hon'ble Supreme Court held that

"Contract deed once signed, even without reading the contents become binding on the parties. Maxim 'nudum pactum ex quo non oritur actio' applies."

Likewise, I also want to quote example no. B of Section 102 of the Indian Evidence Act, as follows:-

102 – On whom burden of proof lies. – The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Example (b) – A sues B for money due on a bond. The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved. Therefore, the burden of proof is on B.

Hence, Defendants once admitted that, they had signed over the document Exh.62 then, the contents therein are binding on them and the Plaintiff also succeeded to prove from the

admission of the Defendants in their Written Statement that, the said agreement was executed by the Defendants in favour of the Plaintiff. So far as the fraud played by the Defendants is concerned, I want to state that they have to prove it, and burden of proof lies on them under Section 102 read with Section 101 of the Indian Evidence Act. Here, I want to point out the conduct of the Defendants in their cross-examination. In their cross-examination, Defendants varied from their pleadings. In his cross-examination, Defendant No. 1 on behalf of all the Defendants deposed that the signature on agreement for sale Exh.62 is not his signature but it is like his signature. Likewise, he deposed that the signature of Defendants Nos. 2 and 3 are also not their signature on Exh.62 but they are like their signatures. In pleadings, Defendants admitted their signature over the agreement for sale and stated that fraud played by the Plaintiff and in evidence varied from his pleadings and deposed that they are not their signatures. It is settled law that where there is admission in pleadings and the admission in evidence, on the same point then, the admission in pleadings stands on higher footing than the admission in evidence. That is why pleadings are said to be the backbone of civil litigation. If, there is variance between pleadings and proof, then the case of the Defendants cannot be accepted to that extent and in this context, Plaintiff's counsel relied on the case between *Vinod Kumar Arora v. Smt. Surjit Kaur*, AIR 1987 SC 2179, in which it is also held that:

“The pleadings of the parties form the foundation of their case and it is not open to them to give up the case set out in the pleadings and propound a new and different case.”

Hence, the Plaintiff primarily discharged his burden of proving the agreement for sale Exh.62 though the contents therein are disputed by the Defendants.

Defence of Defendant regarding fraud played by Plaintiff

- 17) Once the agreement for sale Exh.62 and contents therein are proved by the Plaintiff the burden of proof that the said agreement for sale is fraudulent lies on the Defendants as per Sec. 102 r/w Sec. 101 of the Indian Evidence Act. As discussed above only on the basis of assumption and suspicion fraud cannot be proved. It has to be proved just like as in criminal cases and beyond the proof of preponderance scale of probability.
- 18) Defendants contention is that, some of their properties (as stated in the story of Defendants) were acquired by the government for the purpose of Mandwa dam and during life time of their father, they tried their level best but they could not succeed and hence, they decided to file the case for deletion of entry of Mandwa dam in the revenue record and decided to hand over the case to their nephew, namely Adv. Dinesh. They contended that, Adv. Dinesh introduced them to the Plaintiff as he was dealing in revenue cases and hence, they handed over the said matter to the Plaintiff, and the Plaintiff and Adv. Dinesh obtained their signatures on blank papers and misutilized by preparing the fraudulent agreement for sale Exh.62. As already discussed above, the Defendants admitted their signatures on the agreement for sale Exh.62 in their Written Statement and made a variance in their cross-examination that, it does not bear the signature and hence, the contentions to that effect are not accepted. Plaintiff primarily proved the agreement for sale, and the Defendants admitted their signatures thereof. If we go through the agreement for sale Exh.62, it reveals that, on each and every page there is signature of Defendant No. 1 who acted as 'karta' of their HUF. On the last page of the agreement for sale, there is signature of Defendants Nos. 1 to 3 and even on the Revenue Stamp fixed on the last page. There is signature of Defendant No. 1. No doubt, the agreement for sale does not bear the date 28/03/2007 and the stamp was purchased by the clerk of Plaintiff in the name of Plaintiff, it does not mean that fraud has been played by the Plaintiff. Even if the agreement for sale does not bear the specific date 28/03/2007, and the date column is blank and really if the document was a fraudulent one, then Plaintiff could have mentioned the date as 28/03/2007 in it, instead of keeping it blank but Plaintiff did not do so. From his oral evidence and the admission of the Defendants, that in March, 2007 they signed over some blank papers in the office of Adv. Dinesh, it appears that the said document was executed on date 28/03/2007 and hence, the contentions of the Defendants' counsel cannot be accepted as the date is not mentioned in the agreement for sale, hence, it is a fraud played by the Plaintiff.

- 19) Defendants are literate and Defendant No. 1, on behalf of the Defendants, admitted that he is literate and his brother is also conductor and they never signed on any blank paper without reading it. But, voluntarily, he deposed in his cross-examination that he did so in this case. To this aspect, the contention of the Defendants' counsel was that Defendants trusted their nephew and that is why they signed on blank papers. This contention is not at all acceptable because on one side they are making allegations against their nephew, Adv. Dinesh, and on the other side, Defendant No. 1 on behalf of the Defendants admitted categorically, those admissions I am not reproducing for the purpose of brevity, but from those admissions it is clear that, on every occasion and in every main decision of their life till date, they have been consulting Adv. Dinesh and they are having good relations with Adv. Dinesh till date. Defendants' admission that till date if they want any legal advice, they firstly consult with Adv. Dinesh. If really Adv. Dinesh and Plaintiff played fraud, then why the Defendants are maintaining good relations with Adv. Dinesh till date, is not satisfactorily answered by them and hence, an adverse inference can be drawn that after knowing the contents of the agreement for sale, the literate Defendants did not sign blindly on blank papers on the say of Adv. Dinesh but signed it purposefully accepting the contents therein. Till date, Defendants have not filed any police complaint against either the Plaintiff or Adv. Dinesh in order to show that they cheated them. Likewise, when Defendant in his cross-examination deposed that the signatures on the agreement for sale are not their signatures, then why have they not preferred to examine the said documents from the handwriting experts in order to prove their contentions? Likewise, the Defendants failed to show any cogent evidence that their father was persuading the matter before the revenue authorities and as they could not succeed, hence, they handed over this case to the Plaintiff through their relative, namely Adv. Dinesh. Defendants failed to file any document to show that their father was persuading the matter of deletion of entry of 'Mandwa dam' from the 7/12 extract. Likewise, the Defendants failed to adduce any evidence to show that Plaintiff was their advocate for the purpose of deletion of entry of 'Mandwa dam' from the revenue records. The cumulative effect of the aforesaid discussion is that the Defendant utterly failed to prove the fraud played by the Plaintiff and Adv. Dinesh against them by executing the agreement for sale Exh.62. Likewise, there is variance between pleading and proof by Defendants in regard to fraud and the conduct of the Defendants shows that only in order to oppose this case anyhow, the Defendants have made false plea of fraud. The Defendants are not coming with clean hands and they have failed to prove alleged fraud by the Plaintiff. Hence, the defence of fraud raised by the Defendants is not said to be proved.
- 20) Plaintiff pleaded that Defendant No. 1 being 'karta' for legal necessity of their family and for repayment of their loan, agreed to sell the suit property to him on behalf of all the Defendants. At this relevant juncture, I want to state that as per Article 240 of Book of "Mulla on Hindu Law" 21st edition, 2012, it has been stated that,
"a Karta can be sell their Hindu Undivided Family property for legal necessity, benefit of estate and payment of antecedent debt, to any third party and that transaction is binding on all members of HUF including minor co-partners."
- But the proof of establishing legal necessity is on the Plaintiff. The burden of proof lies on the Plaintiff to prove that Defendant No. 1 is a 'karta' of their HUF agreed to sell the suit property to the Plaintiff. Whether the Defendant No. 1 is a 'karta' is a question of fact and it has to be ascertained from the evidence of the Defendants and their relationship. Generally, the elder male member of the HUF is karta of their family unless contrary is proved. In this case, Defendant No. 1 is the eldest male member of their HUF. No partition had taken place in between Defendants Nos. 1 to 6. Defendants Nos. 1 to 6 combinedly filed their Written Statement on behalf of them, Defendant No. 1 examined himself. In his cross-examination, Defendant No. 1 admitted that he is karta of their HUF. Once this admission is made, and once it is proved that Defendant No. 1 is the eldest male member of their HUF, it is proved by the Plaintiff that Defendant No. 1 is the karta of their HUF.
- 21) So far as the proof of legal necessity is concerned, on certain properties i.e. 7/12 extract, it appears that on some of the suit properties there was outstanding loan of Janaseva Sahakari Bank amounting to Rs. 50,000/-. In his cross-examination, Defendants admitted that they are

residing far away from village Mandwa and they are not personally cultivating the suit properties and there is loan of some banks and cooperative credit societies on the suit property. He admitted that there is loan of one 'Chhatrapati Shivaji Maharaj Bigar Sheti Sahkari Sanstha', loan of Janaseva Sahakari Bank and loan of 'Vividh Vyavasayik Sahkari Patsanstha' on the suit property and the suit properties are their ancestral ones. Hence, from the documents filed on record and from the admissions given by Defendant No. 1 on behalf of all the Defendants, it appears that there was outstanding loan of three banks and cooperative society respectively on the suit properties and as Defendants were not personally cultivating the suit properties, and were residing at village Pal, hence, for legal necessity as well as benefit of estate, they agreed to sell the suit property to the Plaintiff. Hence, the Plaintiff primarily succeeded to prove that Defendant No. 1 as a 'karta' of the HUF for the purpose of legal necessity and family affairs, agreed to sell the suit property to the Plaintiff.

- 22) In this relevant juncture, Defendants' counsel contended that the suit property is around 10 acres then for some few lakhs of rupees why the Defendants will sell their suit property. On the basis of assumption and surmises, the Defendants cannot say so. How much of the legal necessity or whether the legal necessity was for huge amount is not a relevant factor for deciding the legal necessity of the Defendant. It is settled law that if the Plaintiff proves that there was a legal necessity to the Defendants to sell the suit properties, the same is sufficient. The quantum of legal necessity is not a relevant factor for deciding the same. At this relevant juncture, I am relying on the judgment of the Hon'ble Bombay High Court **Subodh Kumar s/o Bhagwandas Gupta and Others v. Bhagwant Namdeorao Mehetre and Others, 2003 (4) ALL MR 1048**, in which the Hon'ble Bombay High Court held that,

"In a joint Hindu family feel, karta as well as joint Hindu family property for legal necessity then, it is not necessary for the Plaintiff to establish quantum of need to the Defendant. The quantum of need cannot be considered vis-à-vis consideration. What law requires is that the need should be established and not necessary to consider the fact that consideration received is in excess of that need."

Hence, my view is forfeited by the ratio given by the Hon'ble Bombay High Court. Hence, Plaintiff proved that Defendants Nos. 1 to 3 and specially Defendant No. 1 as karta of HUF of Defendants Nos. 1 to 6 for legal necessity and family affairs and for benefit of estate agreed to sell the suit property to the Plaintiff.

- 23) In this case, Defendant No. 5 relinquished her right, title and interest in the suit property in favour of Defendant No. 1 and the said 'relinquish deed' was prepared with the help of the Plaintiff. Plaintiff admitted in his cross-examination that, the said relinquish deed was prepared by him for Defendants Nos. 1 and 5. In this context, Defendants' counsel's contention is that, as Plaintiff is an advocate of the Defendants, hence, the said relinquish deed was prepared. This contention of Defendants is not pleaded by them in their Written Statement. The said particulars of fraud and the instances of fraud have to be pleaded in the Written Statement and then, it has to be proved. The same seems to be missing in this case. Moreover, if we go through the agreement for sale Exh.62 and the contents therein it reveals that the Defendant No. 1 agreed that he will obtain the signatures of Defendants Nos. 4 to 6 at the time of execution of sale deed and hence, for that purpose, Defendant No. 5 executed relinquish deed in favour of Defendant No. 1. This fact is pleaded and proved by Plaintiff in his evidence. Contrarily, Defendants did not plead the same, hence, on preponderance scale of probability, the contention of the Plaintiff seems to be more probable and reliable and related to the agreement for sale that in furtherance of the terms mentioned in the agreement for sale, Defendants acted upon and accordingly, Defendant No. 5 executed relinquish deed in favour Defendant No. 1. Hence, the contention of the Defendants seem to be not acceptable. Hence, the said contentions of Defendant No. 1 are not acceptable.
- 24) In view of the aforesaid discussion in the aforesaid paragraphs and as Defendants specifically denied the agreement for sale, pleaded fraud and not proved it and failed to act upon the terms and conditions mentioned in the agreement for sale, hence, expressly and by conduct Defendants refused to perform their part of the contract and breached agreement for sale and likewise, Plaintiff proved the said agreement for sale of the suit property and hence, I answered Issue No. 1 and 2 in the affirmative.

AS TO ISSUE NO. 3 AND 6:

- 25) As these issues are interrelated, hence they are decided simultaneously. Though the contract is denied by the Defendants still it is the duty of the Plaintiff to prove that he is ready and willing to perform his part of contract. The Hon'ble Supreme Court in its various judgments observed the term 'readiness and willingness' to perform the contract and for that purpose, I am reproducing the settled law as follows:-

“There is a distinction between readiness to perform the contract and willingness to perform the contract. By readiness may be meant the capacity of the Plaintiff to perform the contract which includes his financial position to pay the purchase price. For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinized.”

Likewise,

“the factum of readiness and willingness to perform Plaintiff's part of contract is to be adjudged with reference to the conduct of the party and the attending circumstances. The court may infer from the facts and circumstances whether the Plaintiff was ready and willingness to perform his part of the contract.”

Likewise,

“the person who brings the action under the Contract must disclose to the Court that he has not been guilty of breach of contract and that he has fulfilled all the material conditions of the contract and it also ready and willing to perform the other essential conditions of the contract. What the law contemplates is that the Plaintiff must disclose that he has hitherto performed his part of the contract and is ready and willing to perform the essential terms thereof which he has to perform for the enforcement of the contract. All that is required is that the facts pleaded in the plaint and the other averments made therein disclose substantial compliance with the requirement of the law. If the facts pleaded disclose that the plaintiff has performed his part of the contract and if the averments show that he is ready and willing to perform the other conditions of the contract, that would constitute compliance with the requirements of the forms and the statute.”

Overall, the Court has to see that what are the obligations on the Plaintiff and the Defendants respectively, on whom the primary obligation to perform the contract lies, who has breached the said contract, whether the party bringing the suit is ready and willing to perform the contract. Likewise, if the primary obligations to perform the contract were on the Defendants and if they failed to perform those primary obligations then, in that event, it cannot be said that Plaintiff is at fault. Same happened in the present case.

- 26) In the present case, if we go through the terms and conditions and condition of the agreement for sale Exh.62, it reveals that the Plaintiff paid part of the consideration, i.e. earnest amount to the Defendants and thereafter certain obligations were casted on the Defendants to be performed by them and after performance of the same, it was the duty of the Plaintiff to pay the balance consideration to the Defendants at the time of execution of sale deed and handing over the possession. In this case, the Defendant No. 1 represented the Plaintiff that he is karta of their HUF and after acceptance of the earnest amount, it was his duty to obtain the signatures of his sisters, i.e. Defendants Nos. 4 to 6 or make them available at the time of execution of registration of the sale deed. Accordingly, from the evidence of the Plaintiff and the documents filed by the Plaintiff at Exh.51 and 52, Defendants started acting upon his obligations and that is why he obtained relinquish deed of Defendant No. 5 he can execute and register the sale deed. After the acceptance of the earnest amount it was the duty of the Defendant No. 1 to either obtain such relinquish deed or else so that he will be in a position to give signatures of his sisters for the purpose of execution of sale deed of such property in favour of Plaintiff. But, it appears that the oral evidence of Plaintiff that, thereafter despite of various requests the Defendants were avoided to execute the sale deed and were not taking steps so as to obtain the signatures of Defendants Nos. 4 to 6 for execution of sale deed. The term 'willingness' has to be ascertained from the conduct of the parties. The Plaintiff was willing to perform his part of contract and that is why he was making oral requests. He succeeded partially to the extent of relinquishment of Defendant

No. 5's share in favour of Defendant No. 1 for said transaction but later on it appears from the conduct of the Defendants that they were avoiding to act further.

- 27) Plaintiff has led positive evidence that, he was willing to perform his part of the contract and the primary obligation to perform the contract was on the Defendants. Whereas, from the conduct of the Defendants, it appears that they contended case of fraud against the Plaintiff but they utterly failed to prove the same. Hence, it appears from the conduct of the Defendants that they were never willing to perform their part of obligation as per the agreement for sale. Hence, on preponderance scale of probability, it appears from the overall conduct of the Plaintiff as compared to the overall conduct of the Defendants, as discussed above that, the Plaintiff was willing to perform his part of the contract but the primary burden to prove the contract was on the Defendants but by their conduct they failed to perform their part of the obligation. Hence, the Defendants were not willing to perform his part of the contract. It is proved that the Plaintiff was willing to perform his part of contract. In this case, the Defendants' counsel contended that, no notice has been given by the Plaintiff to them for performance of their contract and hence, he contended that Plaintiff is not willing to perform his part of contract. In this context, I want to state that giving notice is not a mandate to prove readiness and willingness for performance of the contract. Notice is not a statutory obligation on the Plaintiff in order to show his willingness and readiness to perform the contract. The Court can from the facts, evidence, certain circumstances and the conduct of the parties, gather who was ready and willing to perform the contract. As I have already discussed above, the primary obligation to perform the contract was on the Defendants and he by conduct refused to do so and hence, even if notice was not given to the Defendants to perform his part of obligation, it will not be fatal to the Plaintiff's case. Notices are given in order to show the conduct of the parties. They are helpful to the parties to establish their case but at the same time it is not a rule of statute. Hence, even if notice is not given to the Defendants, it will not show that the Plaintiff is not willing to perform his part of the contract.
- 28) In this case, the Plaintiff pleaded and deposed that, on dated 29/06/2007 he prepared the draft sale deed, affixed stamp by franking it and Defendants Nos. 1 to 4 and 6 agreed to execute the sale deed on 29/06/2007 and agreed to remain present before the Sub-Registrar, Pangaon on that day. But, only Defendants Nos. 1 to 3 remained present and Defendants Nos. 4 and 6 were not called and hence, the sale deed could not take place. Plaintiff did so because he came to know that no such permission is required for execution of sale deed. In this context, the Defendants' counsel cross-examined the Plaintiff at length. In cross-examination, the Plaintiff admitted that he had not filed a copy of the said prepared sale deed affixed with stamp of franking. In short, Plaintiff failed to prove the incident dated 29/06/2007. Now, whether it means that the Plaintiff was not willing to perform his part of the contract, in this context, when I gave thorough thought to the facts until proved and the conduct of the Defendants, I want to state that the obligation to perform their part of the contract was on the Defendants. Unless the Defendants Nos. 1 to 3 or the Defendant No. 1, as agreed below Exh.62 obtained the signatures of Defendants Nos. 4 to 6, either by relinquishment deed in their favour or else. The burden or the obligation was not on the Plaintiff to perform his part of obligation. Hence, even if the incident dated 29/06/2007 is not proved by the Plaintiff still the obligation was not on the Plaintiff to perform his part of the contract until the Defendants gave their signatures for execution of sale deed in favour of the Plaintiff. In such circumstances, where the obligation to perform the contract was on the Defendants and even if such instance is not proved by the Plaintiff, it does not mean that he is not ready and willing to perform his part of the contract.
- 29) Now, so far as the fact of readiness to perform the contract is concerned, I want to state that 'readiness' means capacity to perform the contract including the financial capacity of the Plaintiff for the same. In this context, the Defendants' counsel argued at length that, the Plaintiff is not ready to perform his part of the contract and he has no capacity to pay the balance consideration. He was harping on the point that, there was no sufficient cash available in the bank account of the Plaintiff to pay the balance consideration and he has not deposited any amount of balance consideration in the Court. Overall, he denied his capacity and prayed of dismissal of this suit. In order to discharge his liability of showing that he was

ready to perform his part of the contract, Plaintiff has filed his copy of income tax return along with audited balance sheet which he has submitted to the Income Tax Department from time to time. Likewise, he has filed a Certificate from Chartered Accountant relating to bank balance and income tax receipts at Exh.63. Defendants' counsel when cross-examined the Plaintiff, brought on record that, the Plaintiff started his practice as advocate from the year 1998. He brought on record that Plaintiff is having 50 – 60 acres of ancestral agricultural land. Likewise, each member of the family was having separate holding. Each holder of his family was earning around 3 – 5 lakhs per annum. He has brought on record that he is income tax payer and his wife is a doctor since the year 2000 and his brother is a civil contractor. He brought on record that per acre of his land yields 40 – 50 tonnes of sugarcane. Likewise, he brought on record that his father-in-law's annual income is around 10 lakhs per annum. Likewise, if we go through the income tax returns and the audited balance sheets of the Plaintiff, it reveals that in the financial year 2008-2009, Plaintiff has shown his total income to be Rs. 7 lakhs per annum. He has paid tax of Rs. 1,68,924/-. If we go through the balance sheet of the Plaintiff, it reveals that his capital account is around Rs. 40,28,000/- as on 31/03/2008. His cash in hand was around Rs. 5,00,000/- and his bank balance is around Rs. 13,000/-. Likewise, he was having two flats, one at Ulhasnagar and one at Raturang and also one plot at Ulhasnagar. He also one flat at Kalewadi. Likewise, he has shown that present transaction and the earnest amount so given in his income tax return and his audited balance sheet. Likewise, he has filed income tax return for the year 2009-2010, 2010-2011 and also audited balance sheet which shows that day by day his capital account is increasing. Likewise, in his cross-examination, the Defendants' counsel himself brought on record that since past several years, he is engaged in purchasing of some immovable properties. Hence, overall, it appears from the evidence and the documents filed by the Plaintiff that he was having sufficient financial capacity to perform his part of the contract. The contention of the Defendants that on the said date of filing of the suit, there was no cash amount lying with the Plaintiff and there was no bank balance of the Plaintiff and hence, Plaintiff has no capacity to perform his part of the contract, is not acceptable. What law says is that, it is not necessary that Plaintiff should necessarily have sufficient bank balance or cash balance at the relevant time for arriving at the conclusion that he has always been ready to perform his part of the contract. It is enough to show that he can generate amount of consideration and has the capacity to do so, i.e. sufficient to show his readiness. Readiness should not equated with actual cash balance and bank balance at the relevant time, but it implies the capacity of the Plaintiff to generate the balance consideration for the purpose of fulfilment of his part of obligation. Hence, from the aforesaid material brought by the Plaintiff on record and from the aforesaid admission given by the Plaintiff, it appears that the Plaintiff is an advocate, is earning from his profession. He is also earning from his ancestral agricultural land, his family is joint and that is why his brother is witness to the agreement for sale and is always ready and willing to perform the contract. They have 50 acres of joint family holding land and each member is earning Rs. 3 – 4 lakhs per annum and his wife is a doctor, hence, she can also help the Plaintiff, and his father-in-law can also help him and moreover, Plaintiff is earning around Rs. 7 – 8 lakhs per annum and his capital as on the date of agreement for sale is around Rs. 20 lakhs. Today, his capital is around Rs. 25 lakhs and he is regularly dealing in purchasing properties as he has two flats and one flat of his own from which he obtained loan thereof. Hence, an inference can be drawn that the Plaintiff has sufficient capacity to pay the balance consideration amount to the Defendants and hence, it can be said that Plaintiff is ready and willing to perform his part of the contract and hence, the contention of the Defendants seems to be not tenable that he did not have cash and bank balance on that relevant date and hence, he is not ready and willing to perform his part of the contract.

- 30) In this context, Plaintiff's counsel rightly relied on the case law of *Nilkanth Dhondiba v. Umabai w/o Anant*, AIR 1970 SC 546, 2005 (2) MLJ 8 in which the Hon'ble Supreme Court held that

“it is not necessary for the purchaser to produce the money and vouch a concluded scheme for financing the transaction. Only thing is that, he has to show that he has capacity to perform the contract and generate money.”

Hence, my view is fortified from the aforesaid landmark ratio of the Hon'ble Supreme Court.

- 31) So far as the case laws cited by the Defendants' counsel are concerned, he cited case law *Central Bank of India v. Sion Bakers and Confectioners Pvt. Ltd.*, 2005 (5) Mh. L. J. 772 and the other case law of *Deputy Collector v. Rajendra Vassudev Deshpabhu*, 2009 (3) Mh. L. J. 530 in which the Hon'ble High Court held that, admission is the best form of evidence of facts admitted and they require no further proof. This is a settled law and is applicable to the Plaintiff's case as the Defendant has admitted so many things in favour of the Plaintiff. It is not adversely affecting the Plaintiff's case as nothing adverse has been admitted by the Plaintiff so as to favour the Defendants' case.
- 32) Likewise, the case law of *Mathew v. Scaria & Another*, AIR 1998 Kerala 253 is regarding the fact that if Plaintiff is neither pleading nor specifically mentioning that he is ready and willing to perform his part of the contract then, in such circumstances, suit fails. Likewise, he also relied on *Manjunath Anandappa urf Shivappa Hansi v. Tammanasa & Others*, AIR 2003 SC 1391 regarding the same ratio. But, in this case, the Plaintiff averred specifically that he is ready and willing to perform his part of the contract and has proved the same. Hence, the ratio of this case will not be helpful to the Defendants. The rest of the case laws, i.e. *Mayawanti v. Kaushalya Devi*, 1990 DGLS (Soft.) 203 is regarding valid and binding contract between parties and the same has been proved by the Plaintiff and hence, it is not helpful for the Defendant. Likewise, the case of *M/s Mirahul Enterprises & Others v. Mrs. Dinesha Srivastava*, AIR 2003 Delhi 15 is regarding the fact that the Plaintiff must prove beyond doubt, existence of valid and enforceable contract. The same has been proved in this case by the Plaintiff and hence, this is going to support the case of the Plaintiff and not the Defendant.
- 33) In this case, the plea of fraud has been taken by the Defendants in their Written Statement. The conduct of the Defendants is also a relevant factor to decide in whose favour equity lies. It is settled law that, where plea of fraud is raised by Defendants by stating that he had signed the contract without knowledge and its contents or their signatures are misutilised, and if the Defendants are found to be literate and where the fraud is not said to be proved by the Defendants, and where the obligations to perform the contract was on the Defendants, and he failed to perform it, in such circumstances, equity lies in favour of the Plaintiff and the Plaintiff is entitled for specific performance of the contract in his favour.
- 34) Likewise, where the case of fraud is not proved by the Defendants and the Plaintiff has proved his readiness and willingness to the part of his contract, no hardship to the Defendants is specifically pleaded by the Defendants if specific performance is granted and where time is the essence of the contract is neither pleaded nor proved by the Defendants, in such circumstances, the Court will not exercise its discretion to refuse the relief of specific performance of the contract in favour of the Plaintiff. Hence, considering the aforesaid discussion in the aforesaid paragraphs, I answer Issue Nos. 3 and 6 in the affirmative.
- AS TO ISSUE NOS. 4 AND 5:**
- 35) Plaintiff ultimately claimed for earnest amount and for compensation but as relief of specific performance is granted to the Plaintiff hence, these issues do not survive.
- AS TO ISSUE NOS. 7:**
- 36) As the Plaintiff is entitled for specific performance of the contract in his favour and as Plaintiff has also claimed for possession and permanent injunction, I am of the view that at the time of specific performance of the contract, possession is included in the said relief and the Plaintiff is also entitled for possession of the suit property. The issue of possession and permanent injunction was not framed by my Learned predecessor, though claimed by the Plaintiff, Defendants are aware about those reliefs. Though issue regarding the same were not framed but while granting main relief, the ancillary and protective reliefs can be granted in the interest of justice in order to avoid multiplicity of suits and in order to avoid further mischief or hardship to the Plaintiff. Likewise, when Plaintiff is entitled for specific performance of contract and if permanent injunction restraining the Defendants cannot be granted and looking to the conduct of the Defendants, if, he may succeed to sell the suit property to someone else then, more complications and multiplicities may arise. In such circumstances, compensation in money would not be adequate relief to the Plaintiff and there will be no standard to measure the actual damages to the Plaintiff, hence, in such circumstances, Plaintiff is entitled for specific performance of contract of the suit property along with possession and permanent injunction as prayed for. As Plaintiff has proved his case and due to the fault of

the Defendants, he filed this suit. Hence, the cost of this suit is saddled on the Defendants and I proceed to pass the following order.

ORDER

1. The suit is decreed with costs.
2. Defendants Nos. 1 to 6 do hereby executed registered sale deed of the suit properties mentioned in Paragraph no. 1 (One) of the plaint in favour of Plaintiff and thereby Plaintiff is directed to deposit balance consideration amount of Rs. 53,06,479.20/- (Rupees Fifty-three lakh Six thousand Four hundred Seventy-nine and Twenty paise only) within two months of this order. If the Defendants Nos. 1 to 6 do not execute sale deed of the suit property in favour of the Plaintiff then, the Plaintiff can take assistance of the Court for executing sale deed in his favour. Thereafter, the Defendants Nos. 1 to 6 do hand over the peaceful and vacant possession of the suit property in favour of the Plaintiff.
3. Defendants Nos. 1 to 6, their servants, agents, family members or anybody acting on behalf of the Defendants etc. are hereby permanently restrained from creating third-party interests in respect of the suit property.
4. Defendants do bear their own cost of this suit and do pay the cost of the suit to the Plaintiff.
5. Decree be drawn up accordingly.

Sd/-
M. Shetty

6th Jt. Civil Judge, Sr. Dvn., Pune.

Pune :

Date : 29th March, 2012.

In the Court of 6th Jt. Civil Judge, Senior Division, Pune.

Special Civil Suit No. 818/2009

Laxman

V/s

Shankar & Others

OPERATIVE ORDER

1. The suit is hereby decreed with costs.
2. Defendants Nos. 1 to 6 do hereby executed registered sale deed of the suit properties mentioned in Paragraph no. 1 (One) of the plaint in favour of Plaintiff and thereby Plaintiff is directed to deposit balance consideration amount of Rs. 53,06,479.20/- (Rupees Fifty-three lakh Six thousand Four hundred Seventy-nine and Twenty paise only) within two months of this order. If the Defendants Nos. 1 to 6 do not execute sale deed of the suit property in favour of the Plaintiff then, the Plaintiff can take assistance of the Court for executing sale deed in his favour. Thereafter, the Defendants Nos. 1 to 6 do hand over the peaceful and vacant possession of the suit property in favour of the Plaintiff.
3. Defendants Nos. 1 to 6, their servants, agents, family members or anybody acting on behalf of the Defendants etc. are hereby permanently restrained from creating third-party interests in respect of the suit property.
4. Defendants do bear their own cost of this suit and do pay the cost of the suit to the Plaintiff.
5. Decree be drawn up accordingly.

Sd/-

M. Shetty

Pune :

Date : 29th March, 2012.

6th Jt. Civil Judge, Sr. Dvn., Pune.

APPEAL MEMO BEFORE DISTRICT COURT, PUNE
IN THE HON'BLE DISTRICT COURT, PUNE
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. ____ OF 2013

In the matter of Section 96 and Order 41 of the
Code of Civil Procedure, 1908;

AND

In the matter of Judgment and Decree dated 29/03/
2012 passed by the 6^h Joint Civil Judge, Senior
Division, Pune in Special Civil Suit No. 818/2009;

AND

In the matter of direction to the Appellants to execute
Registered Sale offered in favour of the Respondent,
and not to create third party interest in respect of suit
property.

1) Shankar,

Age : 63 years, Occ: Agriculturalist,
For self and as (Karta) of Hindu
Undivided Family (HUF).

2) Pravin,

Age : 56 years, Occ: Agriculturalist,

3) Mohan,

Age : 52 years, Occ: Agriculturalist,
Plaintiffs 1 to 3, R/at: Pal, Tal: Kanha, Dis t: Sandur.

4) Asha,

Age : 62 years Occ: Household,
R/at: Kerale, Tal: Kanha, Dist: Sandur

5) Mangala,

Age : 54 years, Occ: Household,
R/at: Lane No. 8, Raja Nagar, Kirtipur.

6) Neha,

Age: 51 years, Occ: Household,
R/at: Nimbol, Tal: Pandhre, Dist: Sandur.

...Appellants

(Originally, Defendants)

Versus

1) Laxman,

Age : 52 years, Occ: Advocate and
Agriculture, R/at: Village Wadi,
Tal : Pansari, Dist: Pune.

...Respondent

(Originally, Plaintiff)

MEMORANDUM OF APPEAL

- 1) Being aggrieved and dissatisfied by the Judgment and Decree dated 29/03/2012, passed by the Ld. 6^h Joint Civil Judge, Senior Division, Pune in Special Civil Suit No. 818 of 2009, the Appellants beg to approach this Hon'ble Court under Section 96 and Order 41 of the Code of Civil Procedure, 1908 on the following amongst other grounds which taken without prejudice to each other:

GROUNDS

- A. The suit is solely based on untenable grounds, devoid of any merits.
- B. The Ld. Judge is blindly relied upon certain bland and unverified statements made in the Plaint without any supporting evidence to be taken as a premise for issues to be framed as such.
- C. That the Plaintiff urged in the Plaint that the Defendants' family is a Hindu Undivided Family (HUF) with Defendant No. 1 as the 'karta' whereas the Defendant stoutly controverted the said averment stating that the 7/12 extract shows separate names and holdings of land acreage against their respective names as per entry dated 19/06/1995.
- D. The first being that the Plaintiff's contention that Defendants constitute a Hindu Undivided Family (HUF) with Defendant No. 1 as a 'karta' of the family, which is contrary to the evidence on record.
- E. That this important factum goes to the root of the entire dispute and the Ld. Judge did not frame any issue in that respect.
- F. The Ld. Judge has totally ignored the abovementioned important and significant controversy which ought to have decided in the first place before binding the other Defendants as being members of the HUF including unsigned Defendants Nos. 3 to 6, who are unmarried sisters.
- G. The Ld. Judge grossly failed to appreciate that the burden of proof wholly and squarely falls on the persons who alleged HUF to prove by direct and/or indirect evidence, if any, to show that the Head of the family is the 'karta' of an HUF.
- H. The Ld. Judge ought to have framed this as a preliminary issue and/or a primer and basic issue on which the entire Judgment and Order has wholly relied.
- I. The Ld. Trial Judge has failed to an/or has ignored the genesis of the case in as much as that the Plaintiff has failed to prove by independent and cogent evidence that all the Defendants unanimously decided to sell the land.
- J. The Ld. Trial Judge's approach to the core issue of the intention of selling all of their lands enblock by the Defendants would render them landless for repaying a debt of Rs. 50,000/- for allegedly satisfying the legal necessity.
- K. That the Ld. Judge wholly ignored the contentious issue that the legal necessity of satisfying a debt of Rs. 50,000/- cannot justify selling off the entire lands of the Defendants of 35 acres thereby rendering them landless.
- L. The Ld. Judge ought to have appreciated the fact that the Plaintiff's contention that the Defendants had to satisfy a debt of Rs. 50,000/- is an eyewash and ought to have rejected it as unlawful and fastidious as well as unrealistic.
- M. The Ld. Judge finding that the quantum of debt has no bearing with the legal necessity of the Defendants is unrealistic and untenable.
- N. That the contentions raised by the Defendants that the Plaintiff did not take any efforts and action to put the Defendants to the terms of the alleged agreement for sale by either noticing on the Defendants anytime before and/or after the period mentioned in the agreement demonstrate a conspiracy that the alleged agreement for sale was obtained by deceit.
- O. That the Ld. Judge ought to have considered that the Defendants' contention that in collusion with the nephew Dinesh, Advocate, the Plaintiff himself an Advocate prepared a bogus document taking undue advantage of the villager Defendants and hence, it cannot be a contract under Section 10 of the Indian Contract Act, 1872.
- P. The Ld. Judge ought to have noted and seriously considered the case of the Defendants as the transaction is bogus in as much as the payment by an Advocate senior enough was made by cash and that too of Rs. 3 lakh at the time of agreement for sale with no witness.
- Q. That the entries in the Plaintiff's account during the evidence showed entries of cash on 26/06/2007 in the name of one Sumedh for Rs. 1,64,000/- as loan for his engineering business and on 29/05/2006 to Mohini but no entry regarding Rs. 3 lakh withdrawn as on 28/02/2006, which is the date of alleged payment on the date of agreement for sale.

- R. The Ld. Judge for best of the reasons failed to even mention an important as well as significant issue regarding absence of any date on the agreement for sale, that is on 28/03/2007.
- S. The aforementioned fact only endorses that there was never any agreement for sale on 28/03/2007.
- T. The Ld. Judge with utmost respect has never even bothered to note the absence of date on execution of Visar Pavti nor any mention of the said fact which speaks volumes of a one sided appreciation of evidence, detrimental to the present Appellant.
- U. The Ld. Judge also did not appreciate that is absence of a date on the agreement for sale, it is sham and since the document is not registered and not on record, the Plaintiff loses his right of specific performance of contract as the document is without any identity of the period and date. The document is inexecutable.
- V. That any document of a transfer of immovable property above Rs. 20,000/- (Rupees Twenty thousand only) is inexecutable and/or hit by the provisions of the Income Tax Act in as much as no agreement of an immovable property can be entered without it being registered under the said provisions.
- W. That on the allegedly day of the sale deed, there is no evidence to show that the Plaintiff has received the scroll no. for being on list of the transactions of that day from the Registrar or any such evidence which would show his presence or the presence of the present Appellant Nos. 1 to 3 as alleged by him, which goes to show that there was no such date fixed. There is nothing g to demonstrate that Plaintiff had intimated in writing any time by notice or otherwise to execute a sale deed which strengthens the doubt that this agreement was a bogus and prepared document.
- X. The Ld. Judge ought to have seen through the entire game when it is amply clear that the Defendant Nos. 3 to 6 are totally independent as being married and would not constitute constituents of a joint family property as such.
- Y. The Ld. Judge did not find it proper to frame an issue regarding the allegations of the Defendants that the document is bogus ad prepared by taking the signatures of the Defendant Nos. 1 to 3 by deceit, whilst only discussing the averments of fraud, played by the Plaintiff.
- Z. The Ld. Judge has committed gross errors in fact and law and has mis-appreciated the evidence on the record and came to a perverse finding of facts as well as law.
- 2) The Appellants crave leave to add, amend, alter and/or delete any of the aforesaid grounds as and when necessary.
- 3) The Appellants have not filed any other appeal, application against the impugned judgment and decree in any other court nor in the Hon'ble Apex Court.

LIMITATION

- 4) The impugned judgment and decree is dated 29/03/2012. The Appellants filed application for certified copies on 02/04/2012, certified copies were ready and delivered to the Appellants on 10/04/2012. Hence, excluding the days required for obtaining certified copies, the first appeal filed today is within limitation.

VALUATION

- 5) The Respondent has filed Special Civil Suit for specific performance of agreement for sale. The suit was valued at Rs. 59,06,479.20/- for court fees and jurisdiction. The suit is decreed with cost. Hence, required court fees are affixed to Appeal Memo.
- 6) The Appellants have not received any caveat notice in present first appeal till today.

Pune

Dated this 15th day of May, 2012

Sd/-

Advocate for the Appellants

JUDGMENT OF COURT OF FIRST APPEAL

Presented on: 18/05/2012 Registered on: 19/11/2014 Decided on: 28/01/2016

Civil Appeal No.: 201/2014

IN THE COURT OF DISTRICT JUDGE, PUNE.

(Presided over by: J. Deshpande)

Civil Appeal No. 201/2014

- 1) **Shankar,**
Age : 63 years, Occ: Agriculturalist,
For self and as (Karta) of Hindu
Undivided Family (HUF).
- 2) **Pravin,**
Age : 56 years, Occ: Agriculturalist,
- 3) **Mohan,**
Age : 52 years, Occ: Agriculturalist,
Plaintiffs 1 to 3, R/at: Pal, Tal: Kanha, Dist : Sandur.
- 4) **Asha,**
Age : 62 years Occ: Household,
R/at: Kerale, Tal: Kanha, Dist: Sandur
- 5) **Mangala,**
Age : 54 years, Occ: Household,
R/at: Lane No. 8, Raja Nagar, Kirtipur.
- 6) **Neha,**
Age: 51 years, Occ: Household,
R/at: Nimbol, Tal: Pandhre, Dist: Sandur.

...Appellants

(Originally, Defendants)

Versus

- 1) **Laxman,**
Age : 52 years, Occ: Advocate and
Agriculture, R/at: Village Wadi,
Tal : Pansari, Dist : Pune.

...Respondent

(Originally, Plaintiff)

Appearance :

- 1) Shri. D. Silva, Advocate for Appellant.
- 2) Shri. S. Khan, Advocate for Respondent.

JUDGMENT

(Delivered on: 28/01/2016)

- 1) Challenge in this appeal is given to the judgment and decree in Special Civil Suit No. 818/2009 dated 29/03/2012 passed by 6th Joint Civil Judge (Senior Division), Pune ("trial Court" for short). Defendants are appellants whereas Plaintiff is the respondent. However, the parties to the appeal are hereinafter referred as per their original status in suit.
- 2) Briefly stated factual matrix necessary for adjudication of the present appeal is as under:

The suit is for the specific performance of contract, perpetual injunction and possession. Subject-matter of the suit are following properties, viz.:-

- * Block No. 2318 (old Sy. No. 14/9) admeasuring 1H 5R,
- * Block No. 2319 (old Sy. No. 14/4) admeasuring 0H 24R,
- * Plot No. 2320 (old Sy. No. 14/8) admeasuring 0H 89R,

All bounded by to the East Gat No. 35 (old Sy. No. 15), to the West Old Sy. No. 11, to the South Gat No. 310, to the North Old Sy. No. 14/7 of Village Mandwa and;

- * Consolidated Block No. 34, admeasuring 0H 69R bounded by to the East: Old Sy. No. 14/5, to the West Old Sy. No. 14/3, to the South Old Sy. No. 14/1, to the North Old Sy. No. 13/4 of Village Mandwa, Tal: Pansari, Dist: Pune, as designated in para 1 of the Plaintiff.

The above properties are hereinafter referred to as suit lands for brevity. Suit lands are owned and possessed by Defendant's family. Defendant No. 1 is the karta of their family.

- 3) On 28/03/2007, by executing an agreement to sale, the Defendants Nos. 1 to 3 agreed to sale the suit lands @ Rs. 7,20,000/- per hectare, total comes to Rs. 59,06,479.20/-. The Plaintiff has paid an amount of Rs. 6,00,000/- towards earnest money and rest was agreed to be paid at the time of sale deed and delivery of possession. The sale deed was to be executed within one month from availing possession from the government. It was also agreed to have measurement of suit lands and deletion of entry pertaining to Mandwa dam from revenue record. Defendants Nos. 1 to 3 had assured that the sale deed could be signed by Defendants Nos. 4 to 6.
- 4) The Plaintiff alleges that later on, it was noticed that no such permission was required for alienation of suit lands. Therefore, he arranged for the sale deed on 29/06/2007. The Defendants Nos. 1 to 3 were only present at the office of Sub-Registrar. They did not invite the Defendants Nos. 4 to 6. They did not invite the Defendants Nos. 4 to 6. Therefore, the sale deed could not be executed.
- 5) The Plaintiff alleges that he was ready and willing to perform its part to the contract since beginning. But the Defendants have avoided to perform their part. Hence, he sought specific performance.
- 6) By filing Written Statement, the Defendants denied the suit claim, except execution of agreement. The Defendants contend that there was no necessity to have agreement to sale since the suit lands were being acquired for Mandwa dam. They accused Adv. Dinesh, their nephew, for committing fraud upon them. According to them, Adv. Dinesh obtained their signatures for the purpose of de-reservation of suit lands from acquisition. Believing in his words, they signed some papers, which he later on converted into agreement. For, they sought dismissal.
- 7) Upon above facts, he learned trial Court was pleased to frame requisite issues at Exh.32. After appreciating the evidence led by both the parties, he was pleased to pass the decree of specific performance of contract and injunction. The said decree is impugned herein.
- 8) Upon those facts, following points together with my finding arise for determination:

POINTS	FINDINGS
1. Whether the Defendants have proved alleged fraud upon them?	No.
2. Whether the Plaintiff has proved that the Defendants agreed to sale suit lands for the total consideration of Rs. 59,06,479.20/-?	Yes.
3. Whether the Plaintiff was ready and willing to perform his part of contract?	Yes.
4. Whether Defendants have avoided to perform their part of the contract?	Yes.
5. Whether under the given facts and circumstances impugned decree is sustainable?	Yes.

6. Whether an interference under Order 41 of CPC is warranted in the impugned decree? No.
7. What order? As per final order.

REASONS

AS TO POINT NO.1:-

- 9) The learned counsel for the Defendants has submitted that the learned trial Court has erred in appreciating factual scenario and arrived at unsustainable conclusion warranting interference by this Court.
- 10) On the contrary, the learned counsel for the Plaintiff has justified the impugned decree and submitted that the Defendants have failed to prove the alleged fraud committed by Adv. Dinesh, though the burden was shifted upon them. Thus, no interference in the impugned decree is warranted.
- 11) In order to prove the suit claim, the Plaintiff has relied upon his own testimony and documentary evidence placed on record. In rebuttal, the Defendants have relied upon the version of Defendant No. 1. At the relevant time, the documentary evidence would be commented upon.
- 12) Before dwelling upon the version of the Plaintiff and Defendant No. 1, it would be apposite make mention here that the Defendants have not denied execution of the agreement but according to them certain fraud was played by their nephew Adv. Dinesh under the garb of de-reservation of said lands from acquisition for 'Mandwa dam'. Based on this cryptic pleading, Defendants are ventured to prove alleged fraud.
- 13) The question of special pleading as required under Order 6 Rule 4 of CPC is of vital importance. In ***Union Bank of India v. Avinash P. Bhonsale*, 1991 Mh. L. J. 1004 = 1991 (2) Mah. L. R. 858**, this Court held that it is necessary under Order VI, Rule 4 of CPC that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the form aforesaid, particulars with and items if necessary shall be stated in the pleading. The particulars of fraud are required to be stated in order to verify whether the evidence led by the concerned party is in keeping with such particulars.

In ***Bishnudeo Narain and Another v. Seogeni Rai and Others*, AIR 1951 SC 280**, the Apex Court has held that in cases of alleged fraud, party must set out full particulars. It is observed in Para 25 as under:

“25 – It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in 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, and the same applies to undue influence and coercion. Order 6 Rule 4 CPC.”

- 14) On going through the pleadings of Defendant qua alleged fraud, it is observed that the particulars of fraud and misrepresentation are not set out. The Defendants have made only general allegations that Adv. Dinesh misrepresented them.
- 15) The Defendants have examined Defendant No. 1 for and on behalf of them. On going through his testimony it is conspicuous that he has reiterated the defence vis-à-vis. He wanted to emphasise on the say of Adv. Dinesh, Defendants signed some papers and thereafter said Adv. Dinesh has converted it into Exh.62, agreement to sale. What this witness has stated cannot be gospel of truth, since he has to withstand the test of cross-examination. It is germane to note that in cross-examination, this witness has unequivocally admitted that till date the Defendants have visiting terms with Adv. Dinesh and whenever required they are availing his legal advice.

- 16) On one hand the Defendants accused Adv. Dinesh, while on another, none of them had lodged complain about misconduct either to Bar Council of Maharashtra and Goa or police authorities.
- 17) Secondly, Defendants Nos. 1 to 3 are admittedly educated one. They signed each paper at Exh.62. In cross-examination, DW-1 has admitted that he is looking after the affairs of the family. This admission strengthens the case of the Plaintiff that this witness is 'karta' of the family.
- 18) In Para 18, DW-1 has further admitted that he has purchased some land at Pal. There was charge of loan availed from the bank, credit society and patsanstha upon the suit land and land purchased at Pal. This admission also strengthens the plea of the Plaintiff that there was certain necessity to enter into an agreement for sale.
- 19) The conduct of witness too plays material role in appreciation of the worth of the testimony. Though the Defendants have admitted execution of Exh.62 in their WS, but when this witness was confronted with his signature, in Para 20, he has summersaulted. It is in ignorance of admitted facts. When he was questioned about the signature of rest Defendants, he hesitated to admit and reply, he answered they are similar to signature of Defendant. Reason is obvious.
- 20) In view of the above, I come to the conclusion that even after liberal construction of pleading, the plea of alleged misrepresentation under the garb of de-reservation of landed property by Adv. Dinesh (who is not a party to the proceeding) and played so-called fraud with the assistance of the Plaintiff etc., are vaguely pleaded sans particulars as contemplated under Order 6 Rule 4 of CPC. If such vague plea is allowed to be considered then, it would be difficult to expect appropriate reply thereto. It will also give freedom to the concerned party to adduce any kind of vague evidence sans particulars about alleged fraud. In fact, Defendants could not have allowed to lead evidence to substantiate vague plea of fraud. Accordingly, I endorse my findings against Point No. 1 in negative.

POINTS NO. 2 TO 7:-

- 21) As has been observed earlier, there is no dispute about execution of agreement Exh.62. In Para 5 to 9 of WS, the Defendants have not specifically denied its execution. Also, they have not disputed their signature on Exh.62 dated 28/03/2007. As has been observed while deciding Point No. 1, the Defendants have failed to prove commission of fraud at the hands of Adv. Dinesh. None of the Defendants ever noticed Adv. Dinesh in that regard, lodging criminal complaint or redressing grievance to Bar Council of Maharashtra, remained far away.
- 22) On going through testimony of the Plaintiff Exh.35 it is conspicuous that since the Defendants were in need of finance, they agreed to sale the suit land @ Rs. 7,20,000/- per hectare, total Rs. 59,06,479.20/-. In performing his part performance, the Plaintiff has paid earnest amount of Rs. 6,00,000/- on the very day.
- 23) In view of Section 16(c) of Specific Relief Act, the Plaintiff has pleaded that he was always ready and willing to perform his remaining part of contract.
- 24) Time and again the Hon'ble Apex Court has ruled the term 'readiness' and 'willingness'. There is distinction between readiness to perform contract and willingness to perform the same. Former means the capacity of Plaintiff to perform to contract inclusive of his financial position to pay the consideration.
- 25) For determining his willingness to perform his part of the contract, the conduct has to be properly scrutinized. While execution of agreement, the Plaintiff has paid earnest money of Rs. 6,00,000/-. Thus, he has proved the former ingredients of Section 16(c) while proving the later. Further evidence of the Plaintiff discloses that financial capacity was so sound and he could pay or arrange to pay remaining part of the consideration. For, he has placed on record copies of income tax return 47 to 51, bank account statement Exh.63 to 66, certificate Exh.38 to 45. They do reveal that the Plaintiff has income tax of Rs. 1,68,924/- for the year 2007-2008. The balance sheet of the Plaintiff reveals that his capital is Rs. 40,28,000/- as on 31/02/1999 and cash in hand was Rs. 5,00,000/-, bank balance was Rs. 13,000/-.

- 26) The Plaintiff has two flats, one at Ulhasnagar and another at Rautbaug, Pune. Income tax return finds some place about payment of earnest money of Rs. 6,00,000/-. Thus, financial transactions at the hands of Plaintiff are reflecting in his income tax return and they unambiguously are sufficient to infer that the Plaintiff could arrange for payment of remaining amount of consideration within short notice.
- 27) In view of the above, it is held that the Plaintiff was always *ready and willing* to perform his part of the contract.
- 28) The learned counsel for the Defendant has vehemently submitted that the suit property is ancestral one. Thus, all the parties are not signatories to the agreement to sale. The said submission could not appeal to my judicial conscience, because the Defendants could not take undue advantage of their own erring. The factum of legal necessity cannot be adjudicated in a suit for specific performance of contract.
- 29) On re-appreciation of evidence, I come to the conclusion that the trial Court has rightly appreciated the evidence and passed impugned decree. Thus, the findings arrived at by the learned trial Court suffer from no illegality and warranting interference therein under Order 41 of CPC. Accordingly, I endorse my findings against the points. In the result, the appeal bears no substantive merit. Hence, I pass the following order.

ORDER

1. Appeal stands dismissed with costs.
2. Impugned judgment and decree in Special Civil Suit No. 818/2009 dated 29/03/2012 passed by 6th Joint Civil Judge (Senior Division), Pune, stands confirmed.
3. Decree be drawn up accordingly.

Pune :

Date : January 28, 2016.

(J. Deshpande)

District Judge – 10, Pune.



EXAMINATION-IN-CHIEF & CROSS-EXAMINATION
(PLAINTIFF)

AFFIDAVIT

IN THE COURT OF CIVIL JUDGE, SENIOR DIVISION, PUNE

Special Civil Suit No. 818 of 2009

Laxman

...Plaintiff

V/s

Shankar & 5 Others

...Defendants

AFFIDAVIT

(Examination-in-chief on affidavit, under Order 18, Rule 4(1) of the Code of Civil Procedure, 1908)

I, **Laxman**, aged 49 years, Occ: Advocate and agriculture, R/at: Village Wadi, Tal: Pansari, Dist: Pune, do hereby state on solemn affirmation as follows:

1. I am the Plaintiff in the suit. I hail from village Wadi of Taluka Pansari, District Pune, where my family residence and family agricultural land is located. While pursuing the tilling of agricultural land, I completed my law and am also enrolled as an advocate with the Bar Council of Maharashtra. I have been also practising as advocate in Pune.
2. I and my family members also purchased some pieces of agricultural land at village Mandki of Taluka Pansari, District Pune, where presently we have primarily planted orchards and sugarcane. I have filed certified copies of record of rights contained in 8A extracts and VF No. 7/7A/12 of our family agricultural land at village Wadi so also village Mandki.
3. The village Mandwa is located between village Wadi and village Mandki. I am acquainted with Shankar, the Defendant No. 1 since we used to meet and exchange pleasantries with each other from time to time while visiting our respective pieces of land. The Defendant No. 1 is the director of Vividh Karyakari Sahakari Sanstha Maryadit. He is well versed with various transactions and has knowledge about documentation thereof. I am also acquainted with Pravin, the Defendant No. 2 and Mohan, the Defendant No. 3, as brothers of Shankar.
4. I know that the pieces of agricultural land bearing Gat No. 2318, 2319, 2320 and 34, all situated at village Mandwa, are owned by the Defendants. These pieces of land are described with particulars as to their respective area, assessment, boundaries and other matters, in para 1 of the Plaint, which are hereinafter collectively referred to as the "suit land". The description of the suit land as given in the plaint is correct.
5. The Defendants also hold rights to other pieces of agricultural land bearing Survey No. 11/1, 11/2, 12/4, 12/5/ 13/5/ 13/6, 14/5 situated at village Mandwa of Taluka Pansari, District Pune. These are not the subject matter of the present suit, but I have also filed another suit for specific performance of the contract dated 28/03/2007 against the Defendants in this Hon'ble Court, bearing Special Civil Suit No. 272 of 2008, as the Defendants failed to sell the same to me despite having agreed to do so. The said suit is pending. Since it is the subject-matter of a separate suit, I have not commented on its contents, contentions and prayers made therein.
6. About two to three months before 28/03/2007, the Defendant No. 1 offered to sell the suit land so also the other pieces of land to me. After a number of meetings took place between me and the Defendant No. 1 at village Mandwa, so also at Pune in presence of Adv. Dinesh representing the Defendants and who is learnt to be their nephew.

7. During the said meetings and discussion, it transpired that the Defendant No. 1 is the “karta” and manager of the joint Hindu family comprising of the Defendant Nos. 1 to 3. The Defendant Nos. 4 to 6 are the sisters of the Defendant Nos. 1 to 3. Since many years, the suit land is lying barren and has not been take under cultivation. All the Defendants are gainfully employed and are residing separately, well away from village Mandwa. For legal necessity as well as repayment of loan availed of by the Defendants for their family needs, they decided to dispose of the suit land. The Defendant No. 1 assured the Plaintiff that he is the “karta” and manager of the HUF, comprising of Defendants as co-parceners and further that for legal necessity, the Defendants desired to sell the suit land.
8. To ascertain the title and particulars, by certified copies of the record of rights comprising the village form no. 7/7A/12 from the Talathi of village Mandwa and Tehsildar of Taluka Pansari. On the basis of the said documents and the information supplied to me by the Defendant No. 1, I prepared the draft of the agreement to sell in Marathi language, styled as “Visar Pavti”. During the discussion about 4 days before 28/03/2007 at Pune, between e on the one hand and the Defendant No. 1 and his Adv. Dinesh on the other, the said draft was read over and approved with minor corrections by the Defendant No. 1 and his said advocate.
9. Thereafter, on 28/03/2007, I caused purchasing of non-judicial stamp paper of Rs. 100/- through my clerk Mr. Kamble and took the print out of the said agreement (so also other agreement separately, which the subject matter of the other suit as mentioned above). On the evening of 28/03/2007 at the office/residence of the said advocate Dinesh, the final print was again read by Adv. Dinesh and the Defendant Nos. 1 to 3, in my presence and in presence of my younger brother Sumedh. After approval of the said final print by them, I paid an amount of Rs. 6,00,000/- (Rupees Six lakhs only) in cash to the Defendant Nos. 1 to 3. I had cash-in-hand available with me, duly reflected in the books of accounts. Accordingly, I paid the aforesaid amount of Rs. 6,00,000/- in cash to the Defendant Nos. 1 to 3. The Defendant Nos. 1 to 3 counted and thereafter accepted the said amount from me. the Defendant Nos. 1 to 3 thereafter executed and signed the said agreement in presence of myself, my brother Sumedh and Adv. Dinesh. Thereafter, I executed and signed the said agreement. Adv. Dinesh and my brother Sumedh also signed the said agreement as witnesses in presence of myself and the Defendant Nos. 1 to 3.
10. The original agreement to sell dated 28/03/2007 is filed on the record of this suit. The said agreement is the subject matter of the suit. It bears and I identify the signatures of the Defendant No. 1 on each of the page at the bottom thereof, so also the signatures of the Defendant Nos. 1 to 3, myself and the witnesses on the last page thereof. The contents of the agreement are true and correct.
11. By the said agreement dated 28/03/2007, the Defendants for themselves and their HUF, agreed to sell the suit land to me, for and at the price of Rs. 7,20,000/- (Rupees Seven lakhs Twenty thousand only) per acre. Subject to the measurement of the suit land, the total price estimated was Rs. 59,06,479.20/- (Rupees Fifty-nine lakhs Six thousand Four hundred Seventy-nine and Twenty paise only). In view of payment of part purchase price, I agreed to pay the balance amount to the Defendants on and at the time of execution of the conveyance of sale and simultaneous delivery of vacant possession of the suit land to me.
12. There thus, came into existence a concluded contract whereby, the Defendants agreed to sell the suit land to me. the Defendants hence are bound in law to sell the suit land to the Plaintiff and/or his nominees and also to execute the conveyance of sale in respect of the suit land in favour of the Plaintiff and/or his nominees.
13. Prior to execution of the sale deed, the Defendants also agreed to seek, pray and procure the permissions, if any, under any concerned laws. Accordingly, the Defendants agreed to execute the sale deed of the suit land within a period of One Month from obtaining such permission required, if any, in my favour and/or in favour of my nominees.
14. The Defendants also assured the Plaintiff that though the Defendant Nos. 4 to 6 did not sign the said agreement, since the Defendant No. 1 is the “karta” and manager of the HUF, he is entitled to in law and on facts to represent all the Defendants. The Defendant No. 1 assured

that at the time of execution of the sale deed, the Defendant Nos. 4 to 6 would remain present and execute the instrument of sale.

15. The Defendant No. 1 told me that his sister, the Defendant No. 5 is going to Bengaluru and she had decided to release and relinquish her rights to the suit land. He called for my help in drawing the instrument of release. Accordingly, I prepared the draft and relivered the same to the Defendant No. 1. My brother Sumedh happened to be in Saswad on 08/04/2007. The Defendant No. 1 had requested my brother to attest the said instrument of release as a witness. The Defendant No. 5 accordingly, released her right, title, interest and claims in respect of and relating to the suit land, unto and in favour of the Defendant No. 1 by two separate instruments of release both dated 08/04/2007.
16. Consequently, the Defendant Nos. 1 to 4 and the Defendant No. 6 were required to remain present for the execution of the sale deed of the suit land.
17. It was found that no permission or sanction is required for sale of the suit land by the Defendants to me. therefore, the Plaintiff prepared the draft of the sale deed, and also affixed stamp duty thereon by franking. The date of execution of the sale deed was decided to be on 29/06/2007. The Defendant Nos. 1 to 3 agreed to remain present together with Defendant Nos. 4 to 6 at the office of the Sub-Registrar at Pansari. The Defendant No. 1 insisted the payment of the price in cash. I, together with my brother Sumedh and my colleague Adv. Arpit went to the Pansari Registration Office with the amount of Rs. 54,00,000/- (Rupees Fifty-four lakhs only) in cash for being paid to the Defendants. I had collected cash of Rs. 7,10,000/- (Rupees Seven lakhs Ten thousand only) from my wife and there was cash-in-hand of Rs. 20,00,000/- (Rupees Twenty lakhs only) in my books and available with me. I had collected an amount of Rs. 20,00,000/- (Rupees Twenty lakhs only) from my father who has under his cultivating a large family agricultural land cultivating cash crops since many years. I borrowed an amount of Rs. 10,00,000/- (Rupees Ten lakhs only) from my father-in-law. He has a large cultivation under him and is a person with means. Since however, the transaction did not take place despite my waiting for a couple of weeks, I returned the amount borrowed from my father and father-in-law in the month of July, 2007.
18. On the said date, however, contrary to the assurances, only the Defendant Nos. 1 to 3 remained present and the Defendant Nos. 4 to 6 were not called by the Defendant Nos. 1 to 3. The Defendant Nos. 1 to 3 evaded to keep Defendant Nos. 4 to 6 present at the time of execution of the sale deed on the said date. The sale deed hence, could not take place and the Defendant Nos. 1 to 3 went back assuring that they would procure the presence of the Defendant Nos. 4 to 6 for execution of the sale deed and would inform the date to me. despite my repeated reminders from time to time, the Defendants evaded coming forward together with the Defendant Nos. 4 to 6 to execute the sale deed of the suit land in my favour. I have refunded the money taken from my father and my father-in-law.
19. I therefore, maintain that:
 - a. There is a concluded contract between me and the Defendants, thereby the Defendants agreed to sell the suit land to me;
 - b. I paid substantial amount to the Defendant Nos. 1 to 3 on execution of the said agreement dated 28/03/2007;
 - c. I have always been ready and willing to perform my part of the said agreement, and has kept the balance amount of consideration ready to be paid to the Defendants on execution of the conveyance of the sale of the suit land and I am ready to deposit the said amount in the court, if so called upon by this Hon'ble Court;
 - d. The Defendants however, wrongfully refused by conduct to perform their part of the said contract though being bound thereby;
 - e. I am therefore, entitled in law as also in equity to specific performance of the said agreement;
 - f. Irreparable loss or injury would be caused to me, if specific performance of the said agreement is not granted against the Defendants;

- g. Damages are not an adequate relief in place of specific performance of the said agreement, and the loss and injury which would be caused to me cannot be compensated in terms of money.
20. Alternatively and without prejudice to the contention that all the Defendants are bound by the said agreement to execute the said sale deed, the Plaintiff submits that in the event, it is found that the Defendant Nos. 4 to 6 have not been represented in law, the Defendant Nos. 1 to 3 are, in any case, bound in law to execute the said deed of the suit land to the extent of their respective shares, which comes to 66.67%. In the alternative also therefore, I have filed the present suit against the Defendant Nos. 1 to 3 for specific performance of the said agreement to the extent of 66.67% share in the suit land together with consequential and incidental partition of the suit land by metes and bound.
21. Alternatively further, if this Hon'ble Court comes to the conclusion that relief of specific performance cannot be granted to the Plaintiff for any reason whatsoever, in such event, the Plaintiff is entitled not only to receive the said amount of Rs. 6,00,000/- (Six lakh only) already paid by the Plaintiff to the Defendant Nos. 1 to 3 together with interest thereon @ 18% per annum, but also for the compensation on the basis of the difference of the agreed price and the amount, which the Plaintiff would be eventually required to pay for purchase of similarly located land. To the estimation of the Plaintiff, the price of the similarly located land, would be Rs. 9,90,000/- (Nine lakh ninety thousand only) per "Hectare 1.00 Are" (Rs. 4,00,000/- per acre). The Defendants or concerned of them, are bound in law to pay the compensation of Rs. 6,67,120/- (Rupees Six lakhs Sixty-seven thousand One hundred and Twenty only) to the Plaintiff, being the approximate difference between the agreed price of the suit land and the price the Plaintiff would end up paying purchase of similarly located land. For this alternative claim as well, the Plaintiff has filed the present suit.
22. I have alternatively prayed for refund of Rs. 6,00,000/- (Rupees Six lakhs only) paid on 28/03/2007 to the Defendant Nos. 1 to 3 towards part purchase price and interest of Rs. 81,000/- (Rupees Eighty-one thousand only) thereon @ 18% per annum interest with effect from 28/03/2007 till the filing of the suit and compensation of Rs. 6,67,120/- (Rupees Six lakhs Sixty-seven thousand One hundred and Twenty only) being the approximate difference the price of the suit land agreed between me and the Defendants and the price which I would be required to pay for purchase of similarly located land.
23. As the Defendants evaded to execute the sale deed of the suit land in my favour, I have filed the present suit for specific performance of the said agreement. Notice of *lis pendens* is registered by me in the Office of the concerned Sub-Registrar.
24. The statements made by the Defendants in their Written Statement that there did not take place any transaction in May, 2007 and that the Defendants did not execute any agreement are false. It is denied that the Defendants did not decide to dispose of the suit land. It is also denied that the Defendants did not execute the agreement in my favour. It is also denied that the Defendants did not accept the amount of Rs. 6,00,000/- from me. It is also denied that the Defendants used to take crop in the suit land, though the 7/12 extract did not show so. It is also false that the Defendants did not execute the agreement dated 28/03/2007 in my favour. I also deny that the Defendant No. 1 is not the manager of the HUF.
25. It is false that Adv. Dinesh introduced me to the Defendants. I reiterate that Adv. Dinesh is relative and advocate of the Defendants. Except face acquaintance, I never met the said advocate. It is only after the suit transaction was decided that the Defendants took me to the said advocate. It is false that I and the said advocate obtained signatures of the Defendants for the court work relating to reclaiming of the pieces of land yet to be reclaimed from the State of Maharashtra. It is false that the Defendants signed some papers for the work of reclaiming of the lands and not for the suit transaction. It is denied that the Defendants do not know Sumedh, who signed as a witness. It is denied that I and Adv. Dinesh misused the signatures of and deceived the Defendants. It is also false that the Defendants came to know about this misuse only after reading of contents of injunction application. It is also denied that the Defendants did not sign the agreement. It is also false that the Defendants did not have any financial necessity. This was told and confirmed to me by the Defendant No. 1 himself.

It is denied that the suit agreement is bogus, without consideration and has been brought into existence by misuse of signatures of Defendants. It is denied that the suit agreement is false or bogus. It is denied that I have no concern with the suit land. The case made out by the Defendants in the Written Statement is false.

26. I have hence, prayed that:

- a. The Defendants be ordered to sell the suit land (more particularly described in Para 1 of the Plaintiff), free from all encumbrances to me and/or my nominees;
- b. Alternatively, in the event that this Hon'ble Court concludes that only the Defendant Nos. 1 to 3 are liable for the action in this suit, the said Defendants be order to sell 66.67% share out of the suit land to me and/or my nominees, together with consequential and incidental partition of the suit land by metes and bound;
- c. The Defendants, (or the Defendant Nos. 1 to 3, to the extent of 66.67% share in the suit land in the alternative, as the case may be), be ordered to execute the conveyance of sale of the suit land (or in the alternative, to the extent of 66.67% share) in my favour and/or my nominees;
- d. The Defendants (or the Defendant Nos. 1 to 3, to the extent of 66.67% share in the suit land in the alternative, as the case may be), be also ordered to grant and deliver the vacant possession of the suit land (or in the alternative, to the extent of 66.67% share) in my favour and/or my nominees;
- e. Failure on part of the Defendants (or the Defendant Nos. 1 to 3, to the extent of 66.67% share in the suit land in the alternative, as the case may be) to do so, the same be ordered to be done in my favour, by appointing an appropriate commissioner;
- f. In the event of this Hon'ble Court coming to the conclusion that I am not entitled for specific performance of the said agreement dated 28/03/2007, as an alternative relief, the Plaintiff be awarded Rs. 12,67,120/- (Rupees Twelve lakhs Sixty-seven thousand One hundred and Twenty rupees only) towards refund of the part purchase price together with interest and the compensation, as particularly mentioned in Para 12 of the Plaintiff, from the Defendants (or the Defendant Nos. 1 to 3, , as the case may be) jointly and severally;
- g. The Defendants, their servants, employees or representatives be permanently restrained by permanent injunction from creating or cause to be created any interest relating to the suit land in favour of any third party and/or parting with possession thereof, or any part thereof;
- h. The cost of the suit be awarded to the Plaintiff from the Defendants (or the Defendant Nos. 1 to 3, as the case may be);
- i. Any order deemed fit and proper may be passed.

The above contents are true and correct to the best of my knowledge, belief and information and I have sworn this affidavit today here at Pune.

Pune

05/02/2010

Sd/-

Laxman (Plaintiff)

Sd/-

Adv. S. Khan

Witness name: Laxman

Cross-examination of Plaintiff by Adv. D. Silva

1. I started working as an advocate in the chamber of Adv. J. Bose in the year 1988. I have always worked as an advocate. I hail from village Wadi. Village Mandwa is situated at a distance of 6 – 7 kilometres from village Wadi. Similarly, village Mandki is situated at a distance of 4 – 5 kilometres from village Mandwa. Our ancestral property is situated in village Wadi. Our ancestral property includes 50 – 60 acres of land. The said farmland is in the name of all of our family members. My family includes my father, my mother, three brothers including myself and my two sisters. Every individual from the family has his/her independent holding. Every member of the family has to his/her account 3 – 4 acres of ancestral land. Out of the said 50 – 60 acres of land, 10 – 12 acres of land has been shown as “Potkharab” in a different Gat number. From our ancestral land, every holder has roughly Rs. 3.5 – 4 lakh to his/her name. From our ancestral land, every holder has roughly 3 – 4 acres “bagayat” land to his/her name. It is correct to say that from the 3 – 4 acres land to every holder, it is always sugarcane crop that is being grown. It is not correct to say that every member of our family is a taxpayer. It is true to say that I am the sole income tax payer from my family. It is not true to say that apart from me, my other family members do not have other sources of income. My younger brother, Sumedh works as a civil contractor. I cannot tell how much my brother, Sumedh earns annually as a civil contractor. Apart from my brother, Sumedh and me, none of my family members have any source of income other than agriculture. It is correct to say that by “income from agriculture”, I mean agriculture done over our ancestral land. The average crop yielded from the sugarcane farming is roughly 30 – 40 tonnes.
2. My father-in-law’s full name is Gopal, r/o Wai. His annual income is roughly Rs. 7 lakh. He is not a taxpayer. He is an agriculturalist. His family consists of himself, his wife, son and daughter-in-law. It is correct to say that the fact that I brought Rs. 5 lakh from my father-in-law was not mentioned by me in the plaint. I do not have any documentary proof that I borrowed Rs. 5 lakh from my father-in-law. Similarly, I do not have documentary proof that I took Rs. 10 lakh from my father. I do not have documentary proof to show that my father had Rs. 10 lakh in his possession the day I took Rs. 10 lakh from him. My wife is a taxpayer. I do not have documentary proof that my wife gave me Rs. 3,55,000/-. My wife has been a taxpayer since the last 5 – 6 years. I cannot say for sure that my wife paid income tax on the Rs. 3,55,000/- which she gave me. My wife manages her own finances. I have not seen any document or proof showing that my wife paid income tax in the year 2008-09. My wife’s source of income is the practice of medicine. She has been practicing medicine since the year 2000.
3. It is correct to say that Defendant Nos. 1 to 6 have not lived in village Mandwa since 1960. I know Defendant Nos. 1 to 3 since the year 2000. Defendant Nos. 1 to 3 reside at Pal, Tal: Kanha, Dist: Sandur. I do not know that a dam was constructed in village Mandwa around the years 1958-59. I do not know that a lot of lands from village Mandwa have been included in the water-submerged area of the dam. It is not correct to say that the properties mentioned in the plaint were included as a part of Mandwa dam. I do not know that the properties mentioned in the plaint were excluded from land acquisition. I do not know that the Government of Maharashtra issued a “Rajpatra” on 11/06/1995 about the suit properties and other properties in village Mandwa. It is not correct to say that in the 7/12 extract of the suit properties, there is a record of these properties being included as a part of Mandwa dam. I have not seen the 7/12 extracts and Mutation extracts of the suit property between the years 1960 – 2006. I have seen the 7/12 extract of the suit property of the year 2007.
4. I did not feel that I should check 30-year old records of the suit property before buying it. I have personally seen the suit properties. Defendant No. 1 gave me the 7/12 extract of the suit property for the year 2007. 7/12 extracts, being public documents, can be availed by anyone. I do not know that the partition of the suit property happened during the lifetime of the father of Defendant Nos. 1 to 3. I do not know whether or not Defendant Nos. 1 to 3

own any lands in their village Pal. I have not seen any record of any lands owned by Defendant Nos. 1 to 3 in village Pal. I have seen the 7/12 extracts and Mutation extracts of all the properties owned by Defendant Nos. 1 to 6 in village Mandwa. It is not correct to say that after the death of Jagannath, the names of Defendant Nos. 1 to 6 were recorded as heirs. It is not correct to say that I saw the recording of the names of Defendant Nos. 1 to 6 on all their properties in village Mandwa. It is correct to say that in the 7/12 extracts, the names of Defendant Nos. 1 to 6 has been recorded as owner in Exh.47 to Exh.50. I have not seen this mutation entry. I have no objection to the recording made in Exh.47 to Exh.50. Before executing the agreement for sale (Exh.62), I have seen the 7/12 extract of the suit property. Defendant Nos. 1 to 6 have undivided share in the suit property. Shankar's name has been recorded as 'karta' in Exh.47 to Exh.50.

5. There is no date of execution mentioned on Exh.62. Mr. Kamble is the clerk in our office. It is correct to say that many times the clerk buys stamps for our office work. For Exh.62, Mr. Kamble had bought the stamps in my name. Before executing the agreement for sale, I did not issue a public notice to ascertain if the suit property was unreleased, because I did think that was necessary. Similarly, after making agreement for sale, I did not issue public notice to invite objections. After the agreement for sale was exhibited at Exh.62, I did not make a search report of the past 30 years concerning the suit property, because I did not think that was necessary. When a client comes to me with business on a sales/purchase transaction, I advise him whether or not to do a search after considering the documents and the client. I cannot exactly tell how many times I have conducted property searches till date.
6. Between March, 2007 and 29/06/2007, I did not send any written notice to Defendant Nos. 1 to 3 to execute the sale deed. Between 29/06/2007 and 06/01/2008, I did not send any notice about Defendant Nos. 1 to 3 executing the sale deed. It is not correct to say that on 29/06/2007, it first came to my knowledge that Defendant Nos. 1 to 3 will not execute sale deed. I have proof that on 29/06/2007, I was present in the office of Assistant Sub-Registrar, Pansari. I have not adduced this proof in the present plaint. It is not correct to say that I was not present in the office of Assistant Sub-Registrar, Pansari on 29/06/2007. I did not give any written notice to Defendant Nos. 1 to 3 about being present in the office of Assistant Sub-Registrar, Pansari on 29/06/2007, because I did not feel that was necessary. It is not correct to say that because Defendant Nos. 1 to 3 had not executed document Exh.62, I did not instruct them to be present on 29/06/2007.
7. On 29/06/2007 at Duyyam Nibandhak Kendra, the documents of purchase deed were ready with stamp franking. Before the registration of the documents an "Input form" has to be filled. I had not filled the requisite input form, because of which re I had not enrolled for the registration procedure. The witness himself states that, I was waiting for all the defendants except Defendant no. 1 to 3. Input Form has signature of both the buyer and seller.. I did not think that I and the Defendant No. 1 to 3 should sign and file. It is not correct to say that as the Defendant Nos. 1 to 3 were not present I was not able to take signature on input form. It is not correct to say that to pay the registration fee demand draft should be drawn in the name of registrar. On 28/06/2007 franking was done in the present document. Present franking was done by the Bank of Rajasthan. The document on which the franking was done, that same document is not with me. Not a single copy is available with me. To prove that the franking of herein mentioned documents was done. I don't have any documentary evidence as to it. The witness himself states that, I have evidence as to it. I have not filed any evidence as to that effect in the present suit. I had paid amount in cash to get the franking done in the Bank of Rajasthan. If you pay the amount in cash you get a counterfile receipt from the bank. I don't have the receipt as of today. The witness himself states that, I have filed it for the refund. If any stamp is given for refund, we get a return receipt for the same. I have such said receipt. The same is not filed before the court in the present suit. I do not have any documentary evidence to prove that Defendant no. 1-3 were present near Pangaon on 29/06/2007. On 29/06/2007, I was present with my colleague Adv. Arpit and brother Sumedh in Duyyam Nibandhak Karyalaya, Pansari. My colleague Arpit is present in the court today. It is not true to say that, while preparing documents its butter copy has to be kept ready. It is true to say that, the butter copy was not ready with the herein mentioned

documents prepared by me. It is not true to say that, as I have already said, neither of the copies were prepared by me on 29/06/2007 and as said, I was not present in Pangaon. It is not true to say that, just to show that I was ready and willing, I have written the so called contention on 29/06/2007 and I have given any evidence as to it. It is not true to say that, I along with the Defendant no.1 – 3, having no transaction between us, Defendant no. 1-3 were not present on 29/06/2007.

8. It is correct to say that I drafted the agreement for sale. I know all the terms and conditions of the said agreement for sale. According to Clause 4(c) of the agreement for sale, Exh.62, the permission granted by Sub-Divisional Officer, Bhore was for 'holding below ceiling limit'. This ceiling limit was for the purpose for rehabilitation and the said rehabilitation was of 'Gunjawani Prakalp'. I enquired with the concerned government officers about the inclusion of the present properties in the said Gunjawani Prakalp. I did not obtain any certificate from the government office of such enquiry. Before preparing agreement for sale, Exh.62, I had not made the aforementioned enquiry. The said Clause 4(c) of the agreement for sale, Exh.62, was inserted by me in it after perusing the Form 8A of the Defendants' village. It is not correct to say that if a particular land is to be taken for rehabilitation, then entries to that effect are made in the 7/12 extract and 8A extract of that land. It is correct to say that the words "for Gunjawani Prakalp" are recorded on the 7/12 extract and 8A extract of the suit property. Apart from the agreement for sale, I have documentary proof to show that I had paid Rs. 3 lakh. As indicated in my income tax statement, that is also proof that I had paid Rs. 3 lakh. I wish to say that an entry to the effect that I withdrew Rs. 3 lakh from my wife's account is proof of this. I am stating that I withdrew Rs. 1,46,000/- from my wife's account. My wife herself did not withdraw the said Rs. 1,46,000/-. She did not issue any bearer cheque of the sum of Rs. 1,46,000/- in my name. My brother, Sumedh, is not a party to the agreement for sale as "buyer". It is correct to say that the entry to the effect that an amount of Rs. 1,46,000/- was withdrawn from my wife's bank account on 28/03/2007 is in the name of my brother, Sumedh. I no longer remember whether my brother, Sumedh, withdrew the said money via withdrawal slip or cheque. It is not correct to say that my wife gave Rs. 1,46,000/- to my brother, Sumedh, for the purposes of his contractor business. It is not correct to say that I did not receive the said Rs. 1,46,000/- on 28/03/2007. It is not correct to say that I do not have documentary proof to show that my wife gave me Rs. 1,46,000/- on 28/03/2007. It is not correct to say that on 28/03/2007, I did not have Rs. 3 lakh cash available with me. It is not correct to say that I did not give Rs. 3 lakh to the Defendant Nos. 1 to 3 on 28/03/2007. It is not correct to say that Defendant Nos. 1 to 3 had not decided to sell the suit property at the rate of Rs. 7,20,000/- per acre as mentioned in the agreement for sale, Exh.62. As per Exh.62, before me, Mr. Kumar and Mr. Verma had offered to purchase the suit property. I do not know the full name of Mr. Kumar but I know that he is a resident of village Mandwa. Before making the agreement for sale, Exh.62, I never tried to contact Mr. Kumar. I do not know the full name of Mr. Verma but I know that he is a resident of village Mandwa. Before making the agreement for sale, Exh.62, I never tried to contact Mr. Verma. It is not correct to say that because I never contacted Mr. Kumar or Mr. Verma, I do not know what their offer was for the suit property. It is not correct to say that because Defendant Nos. 1 to 3 never wanted to sell their suit property, the question of Mr. Kumar and Mr. Verma having made offers does not arise. It is not correct to say that just because my offer should look higher, I entered text to that effect in the agreement for sale. I have no idea of the family composition and thus, the shares of defendants 1 to 3. Likewise, I also have no idea regarding the number of sisters of the Defendant Nos. 1 to 3. I have tried earlier to gather information regarding the shares in the defendant's family. Defendant No. 1 himself has four shares in his family, including husband, his wife and two children. I may not be sure about the shares in the families of Defendant Nos. 2 and 3. However, Defendant No. 4 has four shares in his families, including husband, wife and two children. Defendant No. 5, himself has two shares, including himself and a son. Defendant No. 6 has five shares, including husband, wife, two daughters and a son. It is not appropriate to claim that the shareholders of Defendant Nos. 1 to 3 and further, Defendant Nos. 4 to 6 had no intention of selling me the disputed property. It will be inappropriate to say that the Defendant Nos. 1 to 3 never signed an agreement to sale and

thus, never gave me the right over the sale deed. It is inappropriate to say that because the Defendant Nos. 1 to 3 did not issue an earnest receipt, the sale deed was not drafted such that the property must be bestowed upon the buyer within the period of one month from sale. Adv. Dinesh stays in Bokewadi, Pune. I stay in Sarkar Nagar, Pune. It is not true that ever since I started practicing advocacy I know Adv. Dinesh. It won't be right to say that Adv. Dinesh brought defendants 1 to 3 to me and that I know Adv. Dinesh since ten to fifteen years. This would not be appropriate to say that Adv. Dinesh brought defendants 1 to 3 to me to help their properties be removed from governance.

9. It is not correct to say that Defendant Nos. 1 to 3 were introduced to me by Mr. Dinesh. It is not correct to say that Defendant Nos. 1 to 3 and Adv. Dinesh visited my office 3 to 4 times. It is not correct to say that, I advised Defendant No. 1 to 3 at that time, that I would free your land from the government and not to worry.

It is not correct to say that to free their land from the Government / State Defendant Nos. 1 to 3 gave me their case. It is not correct to say that, I accordingly prepared revenue case. It is not true to say that, at that time I took signatures of Defendants No.1 to Defendants No.3 on their vakilpatra, case or another document. It is not correct to say that, I misused their signatures and forged documents of vistarpatra. It is correct to say that because Sumedh is my brother and Adv. Dinesh is my friend I took their signatures on Vistarpatra. It is not correct to say that the documents on which my brother Sumedh and Adv. Dinesh along with Defendants Nos. 1 to 3 have signed were not read to Defendants Nos. 1 to 3 by me.

It is not correct to say that as advocates of defendants 1 to 3, they trusted us and we signed the documents. It is not correct to say that any information relating to vistarpatra was not given to Defendant Nos. 1 to 3. I have no documentary evidence to show that on 28/03/2007, Defendant Nos. 1 to 3 signed in my office.

It is correct to say that except the last page of vistarpavti there are no signs of Defendant Nos. 2 and 3 on any pages. It is not correct to say that Defendant Nos. 1 to 3 has not given any duly signed agreement of sale to me. I have agreement to sale dated 28/03/2007 with me.

Question- Can you present the document dated 28/03/2007 before the Hon'ble court?

Answer- I have already filed the same as Exhibit no.62.

It is not correct to say that, I, my brother and Adv. Dinesh have committed a fraud by wrongly forging the copy of Exhibit No.62. It is not correct to say that I have committed a breach of trust with respect to Defendant no.1 to 3. It is not correct to say that no sale transaction was ever intended to be executed between Defendant No.1 to 3 with respect to the said suit property. It is not correct to say that, the bogus documents have been presented to wrongly obtain the said suit property.

Further Cross Examination on affidavit of the plaintiff by Adv. D. Silva

10. It is correct to say that, the amount of rs.3lacs as stated in the agreement to sale (Exhibit No.62) has been reflected in my income tax returns. It is correct to say that according to the income tax rules, I cannot enter into a transaction involving an exchange of cash in excess of Rs.20 thousand and hence carry out the transactions involving an exchange of more than Rs.20,000/- via cheque. It is correct to say that, the income tax returns of the financial year in which the said transaction was executed, reflects the entry of the said transaction and the income tax returns of the successive years too reflect the said transaction. It is not correct to say that, the entry of Rs 3 lakhs has been done by me in my income tax returns as an evidence of the agreement to sale and that the income tax returns of the respective year reflects an amount of Rs.5 lacs as a remaining amount possessed by me. It is not correct to say that I did not possess an amount of Rs.27 lacs with me in the accounting year 2008/2009. I have the requisite documents stating that I possessed an amount of Rs.27 lacs and that I have submitted the concerned documents before the Hon'ble court. Mr. V. Kamble is working in my office for last 4 to 5 years. It is correct to say Kamble does various tasks like purchasing stamps, getting the documents franked which is not only done by Bank of

Rajasthan but also by other banks. Mr. Chander Sharma is not my cousin's cousin. He is from my village. According to the information given by Shankar and Mangala, I have prepared the release deed. To register the release deed, I did not go to Pangaon personally. It is not correct to say that I have made the release deed available to the defendant Shankar as he is my client. Before preparing release deed, Shankar, on Sunday, had meeting in Mandwa village. Defendant No.1 gave me information regarding release deed at Mandwa Village. It is not correct to say that I made documents of release deed, after coming to my office in Pune and I gave release deed to Defendant No. 1 for registration. It is not correct to say that I gave defendant No. 1 those documents in my office in Pune. It is not correct to say that Defendant No. 1 took the aforesaid documents for registration from me. Defendant No. 1 told me to deliver the release deed to Adv. Dinesh. I had already told to Defendant No. 1 that Adv. Dinesh is their Advocate and they should prepare the documents from him. It is correct to say that Defendant No. 1 told me at that time that I should only prepare the documents and send them. It is not correct to say that, Defendant No. 1 believed me which is why he asked me to prepare the release deed. I know that Adv. Dinesh gave the release deed to Defendant No. 1 on 08/04/2007 to Defendant No. 1. Similarly Defendant No.1 had already given me information about sending the documents on the same day. Adv. Dinesh practices in Pune. He gave me the information that the release deed has been delivered to Defendant No. 1 on the phone itself. It is not correct to say that I told Defendant No. 1 that his cousin Suraj stays in Pangaon and make registration with the help of them. It is not correct to say that release deed has been registered through Adv. Suraj at Pansari. I don't know that in the documents as to release deed, Suraj introduced as himself as the representative of the party. It is correct to say that certified copies of the release deed were given to me by Adv. Suraj. (Witness was asked to see release deed). Adv. Suraj has signed on release deed giving it statement identification. Witness No. 1 mentioned in the release deed, Mr. Sumedh is my brother and he knows Adv. Suraj and I do not know Witness No. 2 Mr. Chaudhary. I have no idea whether Witness No. 2 Mr. Chaudhary mentioned in the release deed knows Adv. Suraj or not. This is true that, I'm the advocate for Defendant No. 2 and he made the release deed and gave it to my cousin brother Suraj for registration. I have no relationship with the release deed.

11. Defendant No. 1 to 3 bear the loan of Bank of Maharashtra Branch Mandwa. That loan is approximately more than Rupees One Lakh. I have not asked for any letter from Bank of Maharashtra regarding the loan undertaken by Defendant Nos. 1 to 3. This is true that in the year 2001, the children of Defendant Nos. 1 to 3 were adults. This is true that the Children of Defendant Nos. 1 to 3 went for work. This is not true that the Children of Defendant No. 1 to 3 got married during the year 2001 -2. This is not true that Defendant No. 1 to 3 did not undergo any financial issues during the year 2008. I have no idea that for the rehabilitation of Mandwa Dam, Defendant No. 1 to 3 had started their farming/cultivation in Village Pal, Taluka – Kanha, District – Sandur. I have no idea that Defendant Nos. 1 to 3 received the farmland in the Village Pal from the year 1935 and that they have been cultivating Sugarcane Produce over there. I had no idea that Defendant No. 1 to 3 received excessive income from the Sugarcane land Produce. This is not true that due to the excessive income Defendant No. 1 to 3 had decided to sell the land in dispute in the year 2008. This is not true that due to the issues relating to the land disputes, no meeting was held in Pune.
12. On this date of filing the claim, I had the cash of Rs. 27,00,000/- and I can show that accordingly. On the date of filing the claim, I have no papers to show that I had Rs. 27,00,000/- in cash. I do not have any other application other than this claim and it is that I'm ready to pay Rs. 27,00,000/- to the court in cash. Witness himself states that and I have mentioned that in the claim. I have not deposited Rs. 27,00,000/- in the court because the court did not order me to do so. This is not true that I did not give such application and hence such order was not passed. It is not correct to say that, as I have not made the application to pay the money the order was so not passed. It is not correct to say that on date of filing the suit I had had Rs. 27,00,000/-. It is not true to say that the sale transaction about claims was not decided between Defendant No.1 to 3 and I did not deposit Rs. 27,00,000/- in Court.

13. In paragraph ten of the claim, the share of Defendant Nos. 1 to 3 i.e. 66.37 % according to stake kept aside by self. In prayer of paragraph ten of the claim, Defendant Nos. 1 to 3 did not send any notice for sale deed about their 66.37 % share in claim means.

Witness voluntarily states that, I do not really need it. I did not think that, according to the alternative prayer of the Defendant Nos. 1 to 3, 66.37% of Share amount in the claim for the contract should be deposited in Court. Witness voluntarily states that, about that I have demanded in claim. It is true to say that, the signatures of the Defendant No.1 done in the office of Adv. Dinesh.

Question – Were the papers which were signed by Defendant Nos. 1 to 3 at the office of Dinesh that papers were given to you by Adv. Dinesh?

Answer – Dinesh gave me papers of dissolving.

It is not true to say that Defendant No. 1 to 3 gave me Rs. 25,000/- for case. It is not true to say that, I did not meet Defendant No. 1 to 3 from handing over the signed documents to me until the summons/notice are received by Defendant No.1 to 3. It is not true to say that, there is no recognition between Defendants and my brother Sumedh.

14. It is not correct to say that, in my evidence affidavit, exhibit No.35, I lied that I have given dissidence receipt to Defendant No. 1 to 3 for reading after that it was finalised. It is not correct to say that, in my evidence affidavit, exhibit No.35, I lied that, on 28/03/2007, final receipt made in Adv. Dinesh's office and Defendant No. 1 to 3 read that and after reading Defendant No. 1 to 3 signed that final document in presence of me and my brother Sumedh. It is not correct to say that, I made fake receipt in litigation because Virgao and Wadigao are nearby villages. It is not correct to say that, Defendant No. 1 to 3 did not decide to sale claims. It is not correct to say that, Defendant No. 1 to 3 are residing far away in Pal village so I made fake dissidence receipt. It is not correct to say that, I am not related to ---claims. It is not correct to say that, I have filed fake suit on basis of fake dissidence receipt. It is not correct to say that, I am giving testimony for gaining of claims.

There is no re-examination.

EXAMINATION-IN-CHIEF AND CROSS-EXAMINATION

(DEFENDANT)

IN THE COURT OF CIVIL JUDGE SENIOR DIVISION, PUNE

Spl. Civil Suit No. 818/2009

Laxman Plaintiff

VS

Shankar & Others Defendants

Affidavit (Examination in Chief)

I, Shankar, age 59 years, occupation- farmer, residing at Pal, Tal. Kanha, Dist. Sandur, through witness no. 1, Defendant No. 1 himself along with Defendant Nos. 2 – 6 in the aforesaid suit state that,

- 1) We, the Defendants, totally deny the claim of the Plaintiff in the civil suit filed by him against us. There are no legal grounds to file the aforesaid suit. We, the Defendants, have never executed or provided any agreement or document termed as “Visar Pavati” (Agreement to Sale) in the favour of the Plaintiff. The content in the plaint is misleading & false. The contention by Plaintiff is not sufficient to file the aforesaid suit to seek justice. Hence, prima facie, the present suit is liable for dismissal. The Plaintiff has not provided the exact situation about the suit property to the court. We, the Defendants contend that, the plaintiff is not allowed to file the present suit with the help of false information and the said Power of Attorney. Hence prima facie, the present suit is liable for dismissal.
- 2) In the present suit, Defendant Nos. 2 and 3 are my real brothers and Defendant no. 4 to 6 are my real sisters. Therefore, I am filing this Affidavit for Examination in Chief on behalf of myself and others. We, the Defendants have never decided to sale the suit property to the Plaintiff. Also, we the Defendant Nos. 1 – 3 have never communicated to the plaintiff regarding the sale of the suit property. We have not provided or executed any agreement to sale with the plaintiff regarding the suit property. Also, we have not accepted any amount or benefit by cash or by cheque from the plaintiff. We have not executed any Agreement to sale (Visar Pavati) with the plaintiff, dated 28/03/2007, so we deny the contention of the plaintiff in the said suit. Hence the question of the sale of the suit property at the rate of Rs. 7,20,000/- per Acre does not arise. Plaintiff does not have any right on the said suit property according to the so called Agreement to Sale (Visar Pavati) as we, the Defendant no.1-3 have not executed the so called Agreement to Sale (Visar Pavati) in the favour of Plaintiff. Hence in accordance with the aforesaid Agreement to Sale (Visar Pavati), the present suit filed by the plaintiff for the specific performance is liable for dismissal. Plaintiff does not have any such legal right. In short, there is no such Agreement between the Plaintiff and us, the Defendant Nos. 1 – 3.
- 3) We the Defendants own and possess the undivided share of the said suit property after the release of the said property from the Government. We, the Defendant no. 1-3 have not decided to sell or transfer the suit property to the plaintiff or any other person. We, the Defendants were never in a financial crisis in 2008, hence no question of the execution of the Agreement to Sale (Visar Pavati) arises. Also, no question of accepting Rs. 3 Lakh from the Plaintiff arises as we have not executed the said agreement. Also, I am not the Karta of the Hindu Undivided Family. Defendant no.4-6 are married and they are living with their respective families. Hence no question of the Defendant no.4-6 being members of the Hindu Undivided Family arises.
- 4) We the Defendant Nos. 1 – 3 are originally from Village Mouje Mandwa, Tal. Pansari, Dist. Pune. The suit properties were ancestral properties. Initially the suit properties were acquired by the State Government of Maharashtra for the purpose of Mandwa Dam. Further our parents (mother & father) purchased an agricultural land situated at Mouje Pal, Tal. Kanha, Dist. Sandur by utilising the compensation money received from the State Government of Maharashtra. Since then we, the Defendant Nos. 1 – 3 along with our parents started residing permanently at Mouje Pal, Tal. Kanha, Dist. Sandur. After that, the boundaries/area of the Mandwa Dam was changed and hence the suit properties were outside the acquisition

area and the process, hence the suit properties were required to be released by the State Government of Maharashtra. Till the death of our father, he tried his level best to release the suit properties, but he could not succeed. Some of the area of the suit properties is shown as 'uncultivated' on the 7/12 extract even after cultivating the area continuously by our father and us, the Defendant Nos. 1 – 3.

- 5) As mentioned in the para 1 of the present suit, the suit properties bearing its Gat No. 2318 (Old S. No. 14/9), Gat No. 2319 (Old S. No. 14/4), and Gat No. 2320 (Old S. No. 14/8) were initially acquired by the State Government of Maharashtra for the purpose of Mandwa Dam. Later, the boundaries/wall of the Mandwa Dam was changed and hence the properties were outside the acquisition process. But after acquisition process, the State Government of Maharashtra made the entries on the 7/12 extract of the suit properties as 'Mandwa Dam'. Even In this case, the suit properties were in possession of our father till his death. After his death, we the defendant no. 1-3 came back and possessed the aforesaid suit properties. Further, The State Government of Maharashtra released the order dated 19/06/1995 through The Collector of Pune stating, "The excess properties acquired for the purpose of Mandwa Dam at Tal. Pansari, Dist. Pune admeasuring about 153 Acres 30 Gunthe shall be returned to the original owners or their legal heirs after compounding the double amount of the compensation paid at the time of the acquisition of the properties". Today, we have filed the copy of the abovementioned order separately at Serial No. 1. The said order is signed by the Hon. Collector, Pune. The content of the said order is true and correct and shall be used as evidence and same be marked with the separate exhibit in the present suit. In accordance with the said order, after the payment made to the State Government of Maharashtra, the suit properties were transferred in the name of defendant no. 1-6 and entries were made in the land records in the Ferfar No. 2779. Therefore, the suit properties were acquired and owned by the defendants legally. Also, the property mentioned in the para 1D of the present suit is owned and possessed by the defendants. There were no any third party interest or claim was created other than defendants in regards with the suit properties.
- 6) We the defendants deny the claim of the plaintiff. Also, we the defendant no. 1-3 never provided or executed the said Agreement to Sale (Visar Pavati) dated 28/03/2007 in favour of the plaintiff as mentioned in the present suit. The plaintiff sent the summons and notice copy of the present suit to us. Also, the photocopies of the relevant documents filed by the plaintiff along with Exhibit No. 3 were served. The photocopy of the Agreement to Sale (Visar Pavati) is filed at Exhibit No. 3/1. The said Agreement does not bear the exact day or date. It is seen that the stamp of Rs. 100/- attached to the Agreement is purchased by Mr. Kamble on behalf of the plaintiff from the Revenue Stamp Seller situated at North Point Road, Pune dated 28/03/2007. We the defendants never asked or instructed the plaintiff to purchase the said stamp. I the defendant no. 1 deny that I am a Karta of the HUF. We the defendants have undivided share in the suit properties and same were entered on the 7/12 extract in accordance with the order dated 19/07/1996 as the owner and possessor of the properties. Hence, no question of being a Karta of HUF arises. We deny the execution of the said Agreement to Sale (Visar Pavati) between the plaintiff and defendant no. 1-3. Therefore, no question of deciding per acre rate of the suit properties or accepting the said earnest money or accepting the balance amount at the time of execution of the agreement arises. Also the question of the execution of the Sale Deed of the suit properties in favour of plaintiff in accordance with the said Agreement to Sale (Visar Pavati) arises.
- 7) In reality, we the Defendant Nos. 1 – 3 never had a financial crisis in March, 2007. Also, we never decided to sell or transfer the suit properties to any third party. Neither we executed any Agreement to Sale (Visar Pavati) in the favour of Plaintiff nor accepted Rs. 6,00,000/- from Plaintiff as earnest money. The other properties bearing its nos. S.No. 11/1, 11/2, 12/4, 12/5, 13/1, 13/5, 13/6 & 14/6 were owned and possessed by our father Mr. Jagannath. Above mentioned properties were acquired by the State Government of Maharashtra for the purpose of Mandwa Dam. These properties were adjacent to the suit properties. As mentioned above, the boundaries/wall of the Mandwa Dam was changed, hence the properties were outside the acquisition process. Till death of our father, he tried his level best to release the suit properties from the government but he could not succeed.

- 8) Since the death of our father Mr. Jagannath, on 14/08/2001, we the Defendant Nos. 1 – 6 are the only legal heirs of our father. To release the above mentioned properties from the Government, we decided to file necessary case through our nephew Adv. Dinesh, residing at Roshni Housing Society, Bokewadi, Pune. Hence, we provided the necessary documents & 7/12 extracts of the above mentioned properties to Adv. Dinesh. We, the Defendant Nos. 1 – 3 were not knowing the Plaintiff. Adv. Dinesh suggested that the plaintiff is a senior advocate and he has knowledge of the Revenue Department and that's why he introduced the Plaintiff. Plaintiff assured to us that, he will release those properties from the Government. Hence Plaintiff and Adv. Dinesh obtained signatures of us, Defendant Nos. 1 – 3 on some documents in the office of Adv. Dinesh. Plaintiff and Adv. Dinesh assured us that "they will release those properties from the Government as early as possible". We relied on Adv. Dinesh as he is our nephew. Hence, we the Defendant Nos. 1 – 3 signed those documents and gave consent and other documents to Plaintiff along with fees and expenses.
- 9) Even after the above mentioned facts are true and correct, we the Defendants received summons and notice along with the relevant documents on 17/02/2009 at Mouje Pal. We were surprised after going through the copy of the said Agreement to Sale (Visar Pavati). We came to know that Adv. Dinesh and Mr. Sumedh signed as witnesses in the said Agreement to Sale (Visar Pavati). We, the Defendant Nos. 1 – 3 do not know Mr. Sumedh. Also, I have gone through the copy of the suit and summons with the help of my son as the matter of those documents in English.
- 10) We the Defendant Nos. 1 – 3 neither executed the said Agreement to Sale (Visar Pavati) nor signed any agreement in favour of the plaintiff. We never faced a financial crisis. We signed the documents just to file necessary cases to release the suit properties from the Government and the plaintiff played fraud on us by misutilising those signatures and created the bogus Agreement to Sale (Visar Pavati). By use of this bogus document, plaintiff have no right to create any legal right or claim in the suit properties. Also, the plaintiff shall not file the suit against us on the basis of the bogus Agreement to Sale (Visar Pavati). We, the defendants never executed the said Agreement to Sale (Visar Pavati) in favour of the plaintiff. Hence, we have no binding to the terms of the said Agreement to Sale (Visar Pavati). As the market rate of the lands are upraised, the plaintiff has filed the present suit by misusing the same and have created a financial as well as physical trouble and mental agony to us. Hence, it is necessary to seek the compensation from the plaintiff for us i.e. defendants.
- 11) Even if the Defendant No. 5 relinquished the right, title and interest in the undivided share of the suit properties in favour of the other defendants, there is no any connection or right of the plaintiff were created in the same. We the Defendant Nos. 1 – 3 deny the execution of the said Agreement to Sale (Visar Pavati) in favour of the plaintiff. Hence, we deny the contention of obtaining the signatures of the Defendant No. 4-6 at the time of the execution of the Sale Deed. In short, the suit filed on the basis of the said bogus Agreement to Sale (Visar Pavati) is completely false and not correct. Hence, the present suit is liable for the dismissal as it is not filed within the provisions of the law. Plaintiff has no reason and necessity to file the present suit. Hence, no question of the execution of the Sale Deed dated 29/06/2007 along with the payment of the Stamp Duty arises. We, the Defendant No. 1-4 and 6 deny the execution of the Sale Deed. Also, no question of being present at the office of the Sub Registrar, Pangaon arises. Hence, the plaintiff has no right to ask for the execution of the Sale Deed repeatedly. The plaintiff has no any right to demand anything as described in the Para 9 of the present suit filed against us. Prima facie, the present suit is liable for the dismissal as the abovementioned situation and facts are true and correct.
- 12) The plaintiff has no right to seek compensation from us as we, the Defendant Nos. 1 – 3 deny the execution of the said Agreement to Sale (Visar Pavati) dated 28/03/2007 in favour of the plaintiff. Also, the plaintiff has no right to ask the Defendant No. 1-3 to execute the Sale Deed in favour of the plaintiff. Also, we are not liable to pay any amount to the plaintiff as described in the Para 11 off the present suit. Plaintiff have no right to seek the compensation amount along with the interest as described in the Para 12 of the present suit. The particulars described in the Para 12 regarding the amounts payable to the plaintiff are totally false and not correct as we deny the execution of the said Agreement to Sale (Visar

Pavati). Hence, plaintiff have no right to seek Third Party Injunction in the suit properties. The content of the Para 14 of the present suit regarding the agreements dated 28/03/2007 and 29/06/2007 are not true at all. Hence, the court has no right to try the matter on the present suit based on the false content and information.

- 13) In fact, we, the Defendant No. 1-3 never executed the said Agreement to Sale (Visar Pavati) in favour of the plaintiff. Hence, the demands raised by the plaintiff against us are totally false. In fact, the plaintiff has no legal right to demand such things. Plaintiff have defamed us by issuing the Paper Notice in Daily Khabar newspaper dated 01/03/2009 even if the matter is pending before the court. The content of the paper notice is totally fraud and frivolous and not accepted by us. We have issued the reply to the said paper notice through our Advocate on 11/03/2009 in Daily Khabar newspaper. The same paper notice reply has been filed at Exhibit No. 74. The content of the paper notice reply is true and correct. On 11/03/2009, we have replied to the said paper notice issued by the plaintiff in detail. The copy of the same has been filed at Exhibit No. 76. The content of the said notice reply is true and correct and the same has been signed by our Advocate and I recognize that signature. Also, the acknowledgement of the Registered Post (RPAD) of the said notice reply is signed by Adv. Firodia, the Advocate for Plaintiff, is filed at Exhibit No. 75 in the present suit.
- 14) We, the Defendant No. 1-3 contend that, the abovementioned facts are true and correct. We never executed the said Agreement to Sale (Visar Pavati) on 28/03/2007 in favour of the plaintiff. Also, there is no such transaction or deal between us and the plaintiff regarding the suit properties. Hence, the plaintiff has no legal right to file the suit against us on the basis of the said Agreement to Sale (Visar Pavati). Hence, prima facie, the suit filed by the plaintiff against us is liable for the dismissal.

The content of this Affidavit (Examination in Chief) is true and correct to the best of my knowledge and belief. I have signed this today at Pune.

Pune.

Date- 14/01/2011

Affiant know the Affiant.

Advocate

Spl. C.S. No. 818/2009

Defendant No.1:- Shankar

On Oath, Date- 18/07/2011

Cross Examination on Behalf of the Plaintiff by Adv. S. Khan

1) In this matter I will not take any additional witnesses. My grandfather was Ramchandra and he was staying in the village named Pali and died in the same village. Ramchandra had three sons namely Vishnu, the second son was Jagannath and the third was Balidan. Vishnu was adopted into the family of Mr. P. K. Shinde. Vishnu had five sons. Deepak is one of the sons of Vishnu. Adv. Dinesh is the son of Deepak. Adv. Dinesh is my nephew. Vishnu, Jagannath and Balidan lived in harmony until their death and their respective legal heirs also have good relations with each other. It is not correct to say that the legal heirs of the three brothers trusted each other. All the legal heir of the three brothers used to attend each other's wedding and having their names on Wedding Invitations and the custom of treating with respect is duly followed even today. It is not correct to say that my wife's grandmother and Adv. Dinesh's grandmother were siblings. My wife and the wife of Adv. Dinesh are in family relation. It is not correct to say that Adv. Dinesh is related to me as my wife's sister's husband. It is not correct to say that, our lands in Pali are ancestral properties. The witness himself states that these lands were bought. I have two sons namely Dev and Kamal. My son Dev is employed at Kirtipur and My son Kamal is employed in Cotton Pharmacy at Pune. Kamal got married in the year 2011. Kamal's wife's maiden (paternal) surname is Kakde. Adv. Dinesh's sister has been married into the Kakde family at Nimbut. Kamal's mother in law is from Jadhav family located at Mandwa. I don't know that Dhumal is the relative of Juvekar. I don't know that Juvekar and the plaintiff Kakde are relatives of each other. I don't know that sister of Kamal's mother in law is the sister of the plaintiff. It is correct to say that Adv. Dinesh and his wife had a role to play in arranging Kamal's marriage. It is not correct to say that, I arranged the aforesaid's marriage by believing Adv. Dinesh and his wife. By putting Adv. Dinesh's name in Kamal's wedding invitation I gave him the honour by maintaining brotherly tradition. Kamal went to reside at Prabhat Society, Pune after the marriage. Adv. Dinesh resides in Roshni Housing Society, both the abovementioned societies are very near to each other. The flat of my son in Prabhat Society is rented. I don't know that the discussion relating to the renting of flat, agreement, and other things were done by Adv. Dinesh. I don't know that Kamal and his wife frequently visits Adv. Dinesh's house. It is not correct to say that the relation between me and Adv. Dinesh are of trust. Adv. Dinesh is practicing in Pune from 20-25 years as a legal consultant. Even today my family and Adv. Dinesh family has cordial relation and visit each other. Witness himself states that he visits them regarding the matters relating to work. Whenever Dinesh comes to Pali we often happen to meet each other. Adv. Dinesh and I have a farm at Pali. I often take his guidance whenever I am in need. There is no reason for me to complain against Adv. Dinesh to the Police Station or to the Bar Council. It is not correct to say that, Adv. Dinesh has never breached my trust.

(Office hours has come to an end thus the cross examination is adjourned)

Pune.

Date:- 18/07/2011

(J. Deshpande)

6thAddl Civil Judge,____, Pune

Further Cross Examination on Behalf of the Plaintiff by Adv. S. Khan

- 2) I have studied till 11th standard with the old syllabus. Then I was working at the old toll booth Mulund. My work was taking the money and giving them the receipts. I can read and write Marathi. I sign in English. I am the Chairman at Vividh Karyakari Sanstha, Pal (Written Statement was given to the Witness). I had signed after reading the matter in the Written Statement.

Question – My Shapatpatra Exh.79 was signed after reading. Do you read the paper before signing on it?

Answer – I often sign without even reading the paper.

Witness states that everyone in our family is literate. My brother has studied till 10th standard. He works as conductor at Patan Depot, his work is to collect money give passengers the tickets and to check if any person travels without a ticket. My brother also has signed reading the written statement.

Question – Does your brother Mohan, sign the paper only after reading it?

Answer – He signs without reading it, if I had asked him to sign.

- 3) I am the eldest amongst the Defendant Nos. 1 to 3.

Question – Do you look after each and every transactions of the Family?

Answer – Yes I do, Witness himself states that, he takes some responsibilities, and give the rest to others. It is not correct to say that, for Defendant Nos. 1 to 6, I am the one who visits everywhere and looks after the hospitality. We the defendant no. 1 to 6 do not live in Mandwa.

- 4) From the claimed land one road goes to Ghode Udan and other goes to Mandki. I don't know that the Plaintiff has an agriculture land on the same road. I don't know that the Plaintiff travels from the same route. I don't know that the plaintiff travels from the road of claimed land from a long time. Mandwa and Wadi villages are very close to each other. I don't know that the name of the Plaintiff's brother is Sumedh. I don't know that Sumedh socialises in Mandwa village. Vishal Pande is my brother in law. Vishal Pande has fought Zilha Parishad Elections. I have no idea if Sumedh and my brother in law Vishal Pande are old friends. It is not correct to say that we have known each other because my village Mandwa and plaintiff's village Wadi are close to each other. It is not correct to say that, my brother and the plaintiff knew each other. I don't know that my brother and plaintiff used to meet. Pali to Mandwa is approximately 100 kms from each other. As we all brothers reside at Pali as the farm and the Bull Shed is in Pali. Our Father had bought agriculture land in Gat. No 4. is what I say, and reference to that has been given in the paragraph four of the affidavit, I don't exactly remember but the new Gat number are 240, 237, 256 and 283. We have four Gat. No. in Pali village. The witness himself states that, he doesn't exactly remember if the Gat No. are four or five.

Question – The Lands were bought by your father at Pali village, Can you tell me the name of the person from whom they were bought?

Answer – No, I may not be able to tell you the name. I may not be able to tell you the year when they were bought by my father.

Question – Do you have the Sale Deed for the four lands?

Answer – I will have to check

Witness states that, they may not be available with us. It is not correct to say that, The lands in Pali were owned by Vishnu and Balidan. I don't know if the lands were transfer by Vishnu and Balidan in the name of my father. My father had bought the lands in Pali as said above but to show that I have no proof other than my words. I don't know whether, S.No. 84/2's old Gat No. was 235 and new Gat no. was 237 and this land was owned by Vishnu. I don't know whether S. No. 85/2's old Gat No. was 238 and new Gat no. was 240 and this land was owned by Vishnu. I don't know whether S. No.90/2+3's old Gat No. was 254 and new Gat no. was 256 and this land was owned by Balidan. I don't know whether S. No.91/2 sold Gat No. was 254 and new Gat no. was 256 similarly S. No 103's

old Gat No. 254 and new Gat No. was 256 this land was owned by Balidan. The lands in Pali are as mentioned above. It is not correct to say that I am lying about the lands in Pali Village were owned by my father's hardship. It is not correct to say that these lands were not bought by my father and even after knowing this I am lying that they were bought by his hardships.

Question – You being residing in the Pali village, farming, looking after the bulls and their shed it was not possible for you to look after the disputed land situated in Mandwa village?

Answer – We used to look towards these lands by giving it on rent.

It is not correct to say that, it was not possible for us to take crops, therefore we thought of selling those lands. It is not correct to say that to suffice our legal needs and to repay our debts we decided to sale the disputed suit property. The lands in Mandwa Village and Pali village are under the bank's debt. It is not correct to say that, to repay our debt we too had decided to sell the land situated in Mandwa Village. It is not correct to say that, we had talks with Mr. Kumar and others but that could not be successful. It is not correct to say that two three months before 28/03/2007, I met the plaintiff at Mandwa Village. It is not correct to say that I gave the plaintiff (7/12) record of rights, 8A and told him that I have to sell the land. It is not correct to say that, I had discussion about the sale of the land with the plaintiff. It is not correct to say that I told him that Dinesh is my nephew and he is an Advocate. I have had no meeting with Dinesh. I had a meeting with Dinesh at his residence in Pune. The witness himself states that, the meeting held at Pune was to get back the land under the land acquisition by the Government. It is not correct to say that, we had to sell the disputed land to the plaintiff thus Adv. Dinesh was representing us.

Date:- 05/08/2011

7thAddl Civil Judge, Pune

Further Cross Examination by Adv. S. Khan

- 5) These lands have debts from Banks and Co-operative Societies. We have taken a loan from 'Chhatrapati Shivaji Maharaj Bigar Sheti Sahkari Sanstha', loan of Janaseva Sahakari Bank and loan of 'Vividh Vyavasayik Sahkari Patsanstha'. All these lands are ancestral in nature. The lands shown on Exhibit No. 47 to Exhibit No.49 of the claimed lands are ours and the matter on it is true. It is not correct to say that the entries shown in Exhibit No. 47 to 49 are similar to the entries shown 10 to 15 years ago. It is correct to say that, meeting held at Pune was regarding the land acquisition. Entries shown on Exhibit No. 47 to 49 are similar to the entries shown on record of rights (7/12) after 2002. Exhibit No. 47 to 49 were recorded as (Fallow) (* !). It is not correct to say that, the lands were fallow as they were recorded as fallow. Witness himself states that some land were fallow. There were no reasons to complain as to what was there on Record of rights. I have never complained as to the entries on Exhibit no 47 to 49 were incorrect. The entries were correct so I had never complained. Again the witness states that, we had not complained about the entries of our names. It is not correct to say that we were not cultivating the land and they were not given on rent so the lands were called as Fallow in the record of rights. It was a burden on Claim land. It is not correct to say that, the Claim Land was fallow and there was no income form the land similarly those lands were under debt so we had those lands on sale. I have still not submitted the order of Collector given on 19/07/1996 in the court.

Date- 15/08/2011

6thAddl Civil Judge, Pune

Further Cross Examination by Adv. S. Khan

- 6) Claim suit properties are under the ownership and in possession of the defendant owner. (Documents of Exhibit No. 62 and signature on the first page has been shown to witness.) Witness said that, signature is similar to mine but it's not mine. (Similarly signatures on the other pages and signature on the last page naming Shankar has been shown to witness.) Witness said that, signatures are similar to mine but it's not mine. Signatures of Pravin and Mohan bearing on the last page of Exh. No. 62 are not of my brother. (The witness has been asked about the signatures on the Exh. No. 21 i.e. Vakalatnama.) Signatures on the Exh. No. 21 are of me and my brother's. And the signatures of Defendant 1 to 3 on the

Exh. No. 62 are not mentioned in our written statement. It is not correct to say that, Exh. No. 62 contains signatures of Defendant No. 1 to 3. I don't know whether Exh. No. 62 bears the signature of plaintiff. I couldn't recognise it. Similarly, I couldn't recognise whether Exh. No. 62 bears the signature of Adv. Dinesh and Sumedh. It is not correct to say that Exh. No. 62 bears my signature and I made them in front of witnesses. It is not correct to say that Exh. No. 62 bears the signatures of me and my brothers, and still I'm stating that signatures are similar and not genuine. It is not correct to say that information contains in Exh. No. 62 is true and correct. It is not correct to say that we defendants agree to sale claim suit property to plaintiff for Rs. 7,20,000/- per Acre which is Exh. No. 62. It is not correct to say that we received Rs. 6,00,000/- cash from plaintiff as a part of agreement to sale and plaintiff agreed to pay the remaining amount at the time of sake deed. It is not correct to say that we had agreed to plaintiff that, for sale deed of claim suit property we will bring the signatures of family members and sisters. It is not correct to say that, we agreed to plaintiff to give the say reply relating to the property, to Sub Divisional Officer, Bhor. It is not correct to say that, we did not made compliance accordingly. It is not correct to say that we agreed to give vacant possession agreement of claim suit property to the plaintiff or the person appointed by the plaintiff at the time of registration. It is not correct to say that plaintiff agreed to pay stamp duty and registration fees by himself.

Question – Are you stating this in front of the Hon'ble Court for first time that Exh. No. 62 did not bear the signatures of Defendant Nos. 1 to 3?

Answer – Yes, I'm stating it for first time.

It is not correct to say that, Exh. No. 62 bears our signatures hence we agreed that till today. I did not file any written complaint regarding the contains of Exh. No. 62. It is not correct to say that, as I agree to the contains of Exh.No.62, I did not complaint about it.

Question – Did you signed Exh. No. 62 on 28.04.2008 at the office of Adv. Dinesh?

Answer – We made signatures at the office of Adv. Dinesh, but not these signatures. I did not remember the date of the signatures.

It is not correct to say that Exh. No. 62 bears the signatures which are made by me at the office of Adv. Dinesh.

Question – Whether on 28.04.2008 you and your two brothers had come from Pali to visit the office of Adv Dinesh?

Answer – I visited the office of Adv. Dinesh but I don't remember the date. I came from Pali in afternoon whereas my brothers came in the evening.

It is not true to say that plaintiff's brother Sumedh was also present in the office of Adv. Dinesh.

It is not true to say that on the basis of information and documents given by me, the advance receipt draft in Exhibit 62 was prepared.

It is not true to say that draft of Exhb 62 was read by me and my brother.

I don't know whether the content of the document in Exhibit-62 was read by Adv Dinesh

It is not correct to say that I received Rs. 6,00,000 from the plaintiff and that my conductor brother, Mohan has counted them. It is not true to say that Exh. 62 has been signed accordingly.

- 7) Mangala is my sister. It is not true to say that, in 2007-2008, her son was in Bangalore. It is not true to say that, at that time I told the plaintiff that my sister Kusum (Defendant No. 5) will waive her right to claim ownership in the said property.

It is true to say that I told the plaintiff of the relinquishment deed.

The witness thinks and deposes that he told Adv. Dinesh to draft the relinquishment/ release deed.

It is not true to say that as per my say plaintiff drafted the present relinquishment deed.

Again, after thinking the witness deposes that the plaintiff has prepared and given the relinquishment deed.

The release/relinquishment deed bears signature of myself and my sister. It is correct to say that release deed was signed by me and my sisters in front of witnesses. Witnesses himself tells that, the witnesses were brought by the advocate himself. As witnesses, the release deed mentions Sumedh and Mr. Chaudhary. I myself says that, I don't recognise them. (The second on Exh. No. 52 was given to witness to see.) Exh. No. 52 contains the signatures of me and my sister. It is correct to say that Exh. No. 52 was signed by me in front of witnesses.

Question – Did Sumedh and Mr. Chaudhary sign as witnesses?

Answer – I don't recognise any of the two witnesses or their names.

I don't have any complaint about Exh. No. 51 and Exh.No. 52. It is correct to say that my sister Mangala Defendant No. 5 waive her right in my relinquishment deed according to Exh No. 51 and Exh. No. 52.

- 8) It is correct to say that, the claim suit property mentioned in second claim of Special Civil Suit No. 918/2009 owned by us and we have its independent easement right. My father died in year 2006. Claim suit properties were in the possession of my father during his lifetime.
- 9) Question: - Did you realise you need not require the permission of any government office for the sale of aforesaid claim suit property?

Answer: - It is not correct to say that.

My brother Mohan is working as conductor in Patan Depot. I don't know that, he made an application relating to sale deed of claim suit property on date 29/06/2007. I don't know that, my brother Madhav took leave from job on date 29/06/2007 and 30/06/2007. it is not correct to say that, date 29/06/2007 was fixed to make sale deed of claim suit property to plaintiff. It is not correct to say that, it was agreed by the Defendant No. 1 to 3 and 4 and 6 to be present at the office of Duyyam Nibandhak Haweli, Pansari at correct to say that, we told plaintiff to give all the amount in cash. It is not correct to say that, on date 29/06/2007 plaintiff, Adv. Arpit and brother of plaintiff Sumedh, were present with the cash amount of Rs. 27,00,000/- at Sub Registrar Office. It is not correct to say that, on date 29/06/2007 we Defendant No. 1 to 3 were present at Sub registrar Office, Pengaon and Defendant Nos. 4 and 6 were not present. It is not correct to say that, we Defendant Nos. 1 to 3 intentionally made Defendant No. 4 and 6 not to be present because of which sale deed could not be made in favour of plaintiff. It is not correct to say that at that time we Defendant No. 1 to 3 told the plaintiff that, we will have made Defendant No. 4 and 6 to be present and inform you the date of sale deed. It is not correct to say that, plaintiff remind us related to that. It is not correct to say that, we just avoid to make sale deed in favour of plaintiff.

(On the oral request of lawyer of plaintiff cross is adjourned.)

After hearing.....

Pune

(J. Deshpande)

Date: - 06/09/2011

7th Additional Civil Judge, Pune.

Further Cross Examination on Behalf of the Plaintiff by Adv. S. Khan

- 10) I have never given the plaintiff General Power of Attorney. It is not correct to say that, in the paragraph No.1 stated in my Chief Examination the reference made to the General Power of Attorney is not correct. I have not given any evidence as to other property holdings of Defendant namely Survey No. 11/1, 11/2, 12/4, 12/5, 13/1, 13/5 and 14/6 that have been acquired in in the Mandwa Dam. The same is in my possession. It is not correct to say that the evidence of the lands of Survey No. 11/1, 11/2 , 12/4 ,12/5 ,13/1, 13/5, 13/6 and 14/6 being acquired in the Mandwa Dam is not in my possession. The records of efforts made by my father to take back those lands and the actions taken by by and where they were taken until he was alive are not in my admissions/affidavit and my Written Statement. It is not correct to state that, the aforementioned lands were not acquired by the government for the construction of the Mandwa Dam that no action was taken, but statements have been made

to mislead the court by stating that efforts were made to take back the lands. It is not correct to say, I am making such statements to mislead the court. It is not correct to say that, I have not told the plaintiff anything relating to releasing the property from the government or filing a suit. It is not correct to say that, because the land was not acquired there was no reason for the court to take any action. It is not correct to say that for not making the sale as per the contract, false and made up statements were made to the plaintiff.

11) It did not occur to me to inform and give information to Dinesh about the forgery. It is not correct to say that, I have falsely made claims so as to restrict him from abiding to the terms of the agreement.

12) It is not correct to say that, there was no reason to sign on any other document apart from earnest money. I don't know whether the financial condition of the plaintiff is good or not. It is not correct to say that, I have not given any amount anywhere to the plaintiff. The disputed is our family's property and I am its manager/karta. Question: Does your brother Pravin the Defendant No. 2 sign on a paper only after reading it ? Answer: He trusts me. He signs a document after I tell him to do so. It is not true to say that, there was a concluded contract signed between Plaintiff No. 3 and Defendant No.1 in Exh.62, therefore I am responsible for the Sale deed between the plaintiff and his nominee. It is not true that, the plaintiff was and is ready and willing to perform his part of the contract. It is not true to say that, I am not ready to sign a Sale deed without any reason. It is not true to say that, if the Sale deed is not made in accordance with the earnest amount the plaintiff will suffer irreparable losses. It is not correct to say that, the valuation of the property in question was 4 Lakh at the time of filing of the suit. It is not correct to say that, the plaintiff is entitled to the solution request in the paragraph 12. It is not correct to say that, the plaintiff has not hidden anything from the court. It is not true to say that, the cause of filing this suit by the plaintiff was my rejection to sign the Sale deed. It is not true to say that, as per exhibit no.62 the Defendants Nos. 1 to 3 have made a sale deed of the property in dispute in favour of the plaintiff. It is not correct to say that, the contract in exhibit no.62 is true and legal. It is not correct to say that, the Plaintiff or Adv. Dinesh have never breached our trust. It is not correct to say that, as per the paragraph 7 of my statement of oath/affidavit, because no case was to be filed no amount was paid to the plaintiff. It is not correct to say that, I was lying that, the plaintiff was told to look after the proceedings of the case and a file was given to him along with some money. It is not true to say that, I was lying that, from the beginning my financial condition was good. It is correct to say that, we have kept a record of the crops we have been buying. It is not correct to say that, I was lying that my father and I and the Defendants Nos. 1 to 3 in the 7/12 extract have shown the land in the case to be barren even if they were being cultivated.

It is not correct to say that, the contents of the paragraphs of my affidavit (except the above three lines, the amount was paid of the aforesaid land) are not true (rather than denying each and every sentence the court has permitted to deny the entire part in a concise manner to save time). It is not correct that, the entire contents of the paragraph 9 of my affidavit are false (rather than denying each and every sentence the court has permitted to deny the entire part in a concise manner to save time). It is not correct to say that the entire contents of the paragraph 10 of my affidavit are false (rather than denying each and every sentence the court has permitted to deny the entire part in a concise manner to save time). It is not correct that, I am lying that, "the plaintiff have mischievously on 01/02/2008 in the newspaper 'Daily Khabar' have published a notice of filing a suit and thus have in a way defamed the defendants. The entire contents of the notice in the newspaper are false and we do not agree to it" It is not correct to say that, the plaintiff on 01/02/2008 in the notice published in the newspaper 'Daily Khabar' is in any way in consonance with reality. It is not correct to say that, the reply given to the above notice is not true. It is not correct to say that, the plaintiff is entitled to the requests made in the prayer clause. It is not correct to say that, I have given a false Chief Examination statement and have deliberately given a false testimony.



RELEVANT DOCUMENTS

Exh. 62

EARNEST RECEIPT

[Stamp paper of Rs. 100/-]

MAHARASHTRA

AZ 721662

No. 2336 Rs. 100/-

Date : 28/03/2007

Name: Laxman

[Square Seal of Dy. Treasury]

Address Wadi, Dist. Pune

Through Kamble Sign :

Dhere, 27/2, S. R. Complex,

G. K. Colony, Pune. (Stamp Vendor)

EARNEST RECEIPT

This Earnest Receipt is hereby made and executed in the month of Chaitra Year i.e. on this Day of March, 2007....

Sd/-

Mr. Laxman,

Age about 45 years, Occ. : Advocate and Agriculture,

R/at : Wadi, Taluka Pansari, District Pune

. **Purchaser**

By

1. Mr. Shankar

Age about Years, Occ. : Agriculture,
For himself and being Manager and Head of the Joint Family

2. Mr. Pravin

Age about Years, Occ. : Agriculture,

3. Mr. Mohan

Age about Years, Occ. : Agriculture,
All R/at: Pali, Taluka Kanha, District Sandur
This Earnest Receipt is being executed that –

. **Vendors**

1. Description of the property : All that piece and parcel of properties within the limits of and situated at village Mandwa, Taluka Pansari, District Pune bearing–

Sr. No.	Gat No.	Area Hec. Ares	Assessment Rs. Ps.
1.	34	0.69	1.03
2.	2318	1.50	4.88
3.	2319	0.24	0.70
4.	2320	0.89	2.87
	3.32		

Thus the properties without retaining anything in it are hereinafter for the sake of convenience referred to as 'said property'.

Sd/-

2. The said properties are owned and possessed by the Vendors and except vendors, nobody has any type of right, title and interest in the said properties.

3. After assuring that the title of the said properties is clean, clear and free from encumbrances and as the same are to be sold to meet with the legal financial necessities of the joint family, the Purchaser came to know about it. The Purchaser has offered to the Vendor a sum of Rs. 7,20,000/- (Rupees Seven Lakhs Twenty thousand only) per Acre as the consideration of the said property for purchasing the same and as the Vendors found the said rate to be reasonable as per the current market rate and higher as compared to the other offers received by the Vendors, the Vendors have agreed to sale the said property to the Purchaser and are executing the present Earnest Receipt in favour of the Purchaser in confirmation of the same.
4. The terms and conditions agreed between them are as under :-
 - a. By assuring the title of the said property being clean, clear and free from encumbrances, the Vendors have agreed to sale said property to the Purchaser for and against a consideration of Rs. 7,20,000/- (Rupees Seven Lakhs Twenty thousand only) per acre and being part of the same, have paid Rs. 6,00,000/- (Rs. Six lakhs only) in cash. The Vendors have received the same. The Vendors do not have any complaint in that regard. Separate receipt is not required. After due calculations, the Purchaser has agreed to pay balance amount at the time of execution of Sale Deed.
 - b. The Vendors have agreed to obtain signatures of their family members and sisters for the Sale Deed of the said property.
 - c. The permission of Hon'ble Sub-Division Officer, Bhore is required for sale of the said property. The Vendors have agreed to file all applications, affidavits and give statements for obtaining such permission.
 - d. The Vendors have agreed to handover the vacant and actual possession of said property to the Purchaser or their nominee at the time of Sale Deed or as and when demanded by the Purchaser.
 - e. Within 1 month from the date of obtaining permission for sale of the said property, the Vendors have agreed and admitted to execute Sale Deed of the said property in favour of the Purchaser or any person as suggested by him.
 - f. The Purchaser has agreed to bear all expenses viz. stamp duty, registration fees etc. in respect of the Sale Deed of the said property.

Thus, the said Earnest Receipt is being executed as per our will, wish and conscience as on date mentioned hereinabove.

Sd/- [Signed Revenue Stamp]

1. Shnkar

For himself and being Manager and Head of Joint Family

Sd/-

2. Pravin

Sd/-

3. Mohan

VENDORS

Sd/-

Mr. Laxman

WITNESSES :-

Sd/-

Adv. Dinesh
Ulhasnagar, Pune

Sd/-
(Sumedh)



Exh. 47

VILLAGE FORM VII				
Record of Rights				
(Adhikar Abhilekh Patrak)				
(Rules 3,4,5 and 7 of the maharashtra Land Revenue Record and Registers (Preparation and Maintenance) Rules, 1971				
Village : Mandwa			Taluka Pansari	
Survey No.	Hissa No.	Tenure	Name of the occupant	Khata No.
14/9	2318	Occupant Class	Shankar Pravin Mohan Asha Mangala Neha (2779)	Other rights : Boundary and survey marks
Cultivable area		H. A.		
-----		1-47		

Total		1-47		
Pot-Kharab		0-03		

Class (a)				
Class (b)				
Total		1-50		
Assessment		4-88		
Judi or special Assessment				

VILLAGE FORM XII

Register of Crops

(Rule 29 of the Maharashtra Land Revenue Record of Rights and Registers)

(Preparation and Maintenance) Rules, 1971

Year	Season	Details of cropped area										Land not available for Cultivation		Source of Irrigation	Remarks
		Mixed crops area						Pure crops area							
		Code No. of Mixture	Irrigated	Unirrigated	Constituent crops with			Name of crops	Irrigated	Unirrigated	Nature	Area			
					Name of Crop	Irrigated	Unirrigated								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
2007-08	Kharip											0-47 (PK)			

Exh. 48

VILLAGE FORM VII				
Record of Rights				
(Adhikar Abhilekh Patrak)				
(Rules 3,4,5 and 7 of the maharashtra Land Revenue Record and Registers (Preparation and Maintenance) Rules, 1971				
Village : Mandwa			Taluka Pansari	
Survey No.	Hissa No.	Tenure	Name of the occupant	Khata No.
14/9	2319	Occupant Class	Shankar Pravin Mohan Asha Mangala Neha (2779)	Other rights : Boundary and survey marks
Cultivable area		H. A.		
-----		0-24		

Total		0-24		
Pot-Kharab				

Class (a)				

Class (b)				
Total		0-24		
Assessment		0-70		
Judi or special Assessment				

VILLAGE FORM XII															
Register of Crops															
(Rule 29 of the Maharashtra Land Revenue Record of Rights and Registers) (Prepartation and Maintenance) Rules, 1971															
Year	Season	Details of cropped area										Land not available for Cultivation		Source of Irrigation	Ramrks
		Mixed crops area					Pure crops area								
		Code No.of Mixture	Irrigated	Unirrigated	Constituent crops with			Name of crops	Irrigated	Unirrigated	Nature	Area			
					Name of Crop	Irrigated	Unirrigated								
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	
2008-07	Kharip											0-24 (PK)			

Exh. 49

VILLAGE FORM VII														
Record of Rights														
(Adhikar Abhilekh Patrak)														
(Rules 3,4,5 and 7 of the maharashtra Land Revenue Record and Registers (Preparation and Maintenance) Rules, 1971														
Village : Mandwa							Taluka Pansari							
Survey No.	Hissa No.	Tenure			Name of the occupant				Khata No.					
14/9	2320	Occupant Class			Shankar Pravin Mohan Asha Mangala Neha (2779)				Other rights : Boundary and survey marks					
		Cultivable area	H. A.											
		-----	0-88											

		Total	0-88											
		Pot-Kharab	0-01											

		Class (a)												
		Class (b)												
		Total	0-89											
		Assessment	2-87											
		Judi or special Assessment												

VILLAGE FORM XII														
Register of Crops														
(Rule 29 of the Maharashtra Land Revenue Record of Rights and Registers) (Prepartation and Maintenance) Rules, 1971														
Year	Season	Details of cropped area									Land not available for Cultivation		Source of Irrigation	Ramrks
		Mixed crops area					Pure crops area				Nature	Area		
		Code No.of Mixture	Irraigated	Unirrigated	Constituent crops with		Name of crops	Irrigated	Unirrigated					
Name of Corp	Irrigated	Unirrigated	Name of crops	Irrigated	Unirrigated	Nature	Area	Source of Irrigation	Ramrks					
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
2006-07												0-88 (PK)		

Exh. 50

VILLAGE FORM VII				
Record of Rights				
(Adhikar Abhilekh Patrak)				
(Rules 3,4,5 and 7 of the maharashtra Land Revenue Record and Registers (Preparation and Maintenance) Rules, 1971				
Village : Mandwa			Taluka Pansari	
Survey No.	Hissa No.	Tenure	Name of the occupant	Khata No.
14/9	34	Occupant Class	Shankar Pravin Mohan Asha Mangala Neha (2779)	115
Cultivable area		H. A.		Other rights : Janaseva Sahakari Bank Charge holder (4250)
-----		0-69		

Total		0-69		
Pot-Kharab		-		

Class (a)				
Class (b)				
Total		0-69		
Assessment		1-03	Boundary and survey marks	
Judi or special				
Assessment				

VILLAGE FORM XII

Register of Crops

(Rule 29 of the Maharashtra Land Revenue Record of Rights and Registers)

(Prepartation and Maintenance) Rules, 1971

Year	Season	Details of cropped area									Land not available for Cultivation		Source of Irrigation	Ramrks
		Mixed crops area					Pure crops area							
		Code No.of Mixture	Irraigated	Unirrigated	Constituent crops with			Name of crops	Irrigated	Unirrigated	Nature	Area		
					Name of Corp	Irrigated	Unirrigated							
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
2007-08	Kharip								Bajri			0-69		

CERTIFICATE BY CHARTERED ACCOUNTANT

Global Financial Services, Chartered Accountants

818/A, Shriram Towers, Bhishma Marg, Pune.

02/04/2008

CERTIFICATE

This is to certify that Mr. Laxman has, as on 31/03/2008, Rs. 63,17,923.60/- (Rupees Sixty-three lakhs Seventeen thousand Nine hundred Twenty-three and Sixty paise only) contained in the following accounts:

- **Vidarbha Ratna Co-operative Bank** – Rs. 22,45,322.50/- (Rupees Twenty-two lakhs Forty-five thousand Three hundred Twenty-two and Fifty paise only)
- **Rani Laxmibai Co-operative Bank** – Rs. 16,15,804.42/- (Rupees Sixteen lakhs Fifteen thousand Eight hundred Four and Forty-two paise only)
- **Jana Sahakari Bank** – Rs. 24,56,796.68/- (Rupees Twenty-four lakhs Fifty-six thousand Seven hundred Ninety-six and Sixty-eight paise only)

This is further to certify that Mr. Laxman has, till date, duly filed his Income tax returns as per the relevant provisions of the Income Tax Act, 1961.

Sd/-
Proprietor
**Global Financial Services,
Chartered Accountants**