

Case History

- He booked the flat 10th Sept-05 by paying ₹ 10,000 (Ten thousand)
- The flat cost was ₹ 5.40 lakh
- ₹ 15,000/- paid on 23-03-06
- ₹ 75,000/- paid on 11-07-06
- As per agreement - he had to pay ₹ 3,38,000/- (Three lakh thirty-eight thousand) by end of the Sept-2006 in full.
- He funded and terms and conditions of booking form and sale agreement which come under breach of agreement.
- He D.D. between he requested 15 days time on 15-05-07 but he have time more than that period.
- He has given one more letter by requesting some time to pay the payments.

Call letter no. 9.6.2006
Saluted
31/1/2007

Subhashini

SB

SOA - Buyer Info Table

Block No	A 401	Sold	Yes	Booking Date	30-Oct-06
Agr Executed	<input type="checkbox"/>	Agr Date		Area	725
Parking	Car	Booked by	Sridhar	Pmt. Scheme	QIS
Buyer Name	Mr. Shri Ram.S.Mogallapalli / Subashini			Phone	9849032358
Address	Flat No-101, Olive Residency, P&T Colony, Dilsuknagar, Hyderabad.				
Occupation	Software Engg working at USA			Sale Amt	776875
Total Amt	776875	Other Amt	131025	Receipts	913868
HL Req		HL App for		HL Released	0
HL From		App Made	<input type="checkbox"/>	HL Approved	<input type="checkbox"/> Pre HL Info <input type="checkbox"/>
NOC / ORC	<input type="checkbox"/>	Doc Complete	<input type="checkbox"/>	Reg Done	<input checked="" type="checkbox"/>
Payments Terms		Sale Completed	<input checked="" type="checkbox"/>	HL Release	<input type="checkbox"/>

Date	Description	Amount	Cheque No	Paid	PDC	PDC Dt.	Exp date
30-Oct-06	Booking Amount	10000	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
14-Nov-06	1st Installment	50000	0481500	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
20-Nov-06	2nd Installment	466000	482981	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
05-Dec-06	3rd Installment	125437	132750	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
31-Dec-06	4th Installment	125438	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

Other Payments

13-Dec-06	Car Parking Amount	40000	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
31-Dec-06	Extra Specs	6897	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
31-Dec-06	Service Tax	22188	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
17-Feb-07	Document Charges	2000	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
17-Feb-07	Stamp Paper	220	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
17-Feb-07	Bank Charges	30	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
17-Feb-07	Registration Charges	50520	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
17-Feb-07	VAT	8170	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
07-Feb-17	Misc Expenses	1000	Cash	<input checked="" type="checkbox"/>	<input type="checkbox"/>		

Receipts

Date	Towards	Amount	Cheque No	Cleared	Receipt No
30-Oct-06	Booking Amount	10000	Cash	<input checked="" type="checkbox"/>	1322
10-Nov-06	Payment Received	49896	0481500	<input checked="" type="checkbox"/>	
22-Nov-06	Payment Received	492466	482981	<input checked="" type="checkbox"/>	1539
11-Dec-06	Payment Received	132750	484498	<input checked="" type="checkbox"/>	1547
23-Jan-07	Payment Received	190000	Cash	<input checked="" type="checkbox"/>	1589/90
30-Jan-07	Payment Received	21000	Cash	<input checked="" type="checkbox"/>	1598
16-Feb-07	Payment Received	11788	Cash	<input checked="" type="checkbox"/>	1618
10-Jun-08	Adjustment after revised estim	5968		<input checked="" type="checkbox"/>	

Remarks

Date	Remarks	Taken By	Work Done

From: "Customer Relations" <cr@modiproperties.com>
To: "jaganmohan reddy" <zaganin@yahoo.com>; "Shriram Mogallapalli" <smogalla@yahoo.com>
Sent: Thursday, October 15, 2009 10:39 AM
Attach: scan0051.pdf
Subject: Legal Notice found stuck in 401, Silver Oak Apartments

Dear Sir,

With reference to the scanned legal notice found stuck in 401, Silver Oak Apartments door by your representative Mr. Jagan Mohan Reddy we state that we intend to provide legal assistance as committed earlier. As such you are requests you to advise your local representative Mr. Jagan Mohan Reddy to contact us at our Head Office positively today for further co-ordination.

With Regards,

Rama Chary
Legal Officer.

15-Oct-09

From: "jaganmohan reddy" <zaganin@yahoo.com>
To: "Aruna" <auna@modiproperties.com>
Cc: <cr@modiproperties.com>; <smogalla@yahoo.com>; <zaganin@yahoo.com>
Sent: Friday, July 10, 2009 2:30 PM
Subject: Legal Litigation : Flat no.401 of Silver Oak Apartments

Mr.Soham Modi,

Sub : Regarding legal litigation over Apt. No.401,Silver Oak Apartments, CherlaPalli,

Sir,

In your mail you have offered to appoint a Legal Counsel for us. Thank you for the same.

But before that can we first have,

A) A Proper Written Legal Opinion and advice of your in house legal team regarding the risk to us (or the lack of it as you assure us in your mail) in the litigation.

B) Copy of the Official Letter of Cancellation you served on Mr.Vinay Agarwal for default in payments due to you to prove your point that Mr.Vinay Agarwal's case is absolutely base less in the court of Law and simply a harassment.

Will you please send soft copies of the above by e-mail and the hard copies of the same by courier to our Indian address as mentioned in our sale deed.

Mrs. Subhashini S. Gade,
W/o. Mr. Shriram S. Mogallapalli,
R/o. H. No. 6-10-30/A, Raja Street ,
Peddapuram,
East Godavari District – 533 437.

Our e-mail Ids are
zaganin@yahoo.com
smogalla@yahoo.com

To prevent any un pleasant surprises we expect you to up date us with the progress of the case regularly and keep us informed,advised and unworried.

M.Jagan Mohan Reddy (99499 08610)

7/11/2009

for
Shriram S Mogallapalli and Subhashini S Gade (USA)

 Free Image Hosting

--- On Wed, 7/1/09, Aruna <auna@modiproperties.com> wrote:

From: Aruna <auna@modiproperties.com>
Subject: Clarification regarding your queries of flat no.401 of Silver Oak Apartments
To: smogalla@yahoo.com
Cc: zaganin@yahoo.com, "Customer Relations" <cr@modiproperties.com>
Date: Wednesday, July 1, 2009, 6:37 PM

To,
Mrs. Subhashini S. Gade,
W/o. Mr. Shriram S. Mogallapalli,
R/o. H. No. 6-10-30/A, Raja Street ,
Peddapuram,
East Godavari District – 533 437.

Date: 01.07.2009

Dear Madam,

Sub.: O.S. No. 1549 of 2007 in the court of The Principal Senior Civil Judge, Ranga
Reddy District, between Vinay Agarwal Vs. M/s. Summit Builders – implede
Petition.

Mr. Vinay Agarwal had booked flat no. 401 in our venture known as Silver Oak Apartments, situated at Sy. No. 290, Cherlapally, Hyderabad on 10th September, 2005 . Subsequently because of default in payment by Mr. Vinay Agarwal, his booking was cancelled after following due procedure mentioned in the booking form. However, Mr. Vinay Agarwal has started unnecessary litigations in the matter. He has no right, title or interest of whatsoever nature in the said apartment. To further complicate matters, he is trying to implede you in the said suit.

I would like to assure you that there is no substance in his case and we are certain to win the suit. We also objecting to your being impleded in the case. We assure you that there is nothing in the case for you to be anxious about it. Further, Clause no. 3 in our sale deed clearly states that 'we give warranty of title' and 'indemnify the Buyer fully for such losses'.

Please let us know if you would like us to appoint a legal counsel on your behalf.

Thank You.

Yours sincerely,
For SUMMIT BUILDERS,

Soham Modi
Partner.

7/11/2009

DECREE

IN THE COURT OF THE VIII ADDL. SENIOR CIVIL JUDGE, R.R.DISTRICT
AT L.B.NAGAR.

Present: Sri. M.Venkataramana
VIII Addl. Senior Civil Judge
Ranga Reddy District.

Dated on this the 15th day of October , 2014.

OS.NO. 1549 of 2007

BETWEEN:

Sri. Vinay Agarwal S/o. Vasudev, aged 42 yrs.
Occ: Business, R/o. Flat No. 403,
Susheel Residency, Opp: CDR Hospital
Hyderguda, Hyderabad- 500 029.

AND

- 1) M/s. Summit Builders
rep. by its Partner Sri Soham Modi
S/o. Sri Satish Modi . Aged 37 yrs.
Occ: Busienss, having Office at 5-4-187/3,
III Floor, M.G. Road, Secudnerabad – 500 003.
- 2) Smt. Subhashini S. Gade S/o. Sri Shriram Mogallapalli
aged about 30 yrs. Resideing at C/o. Sri Satyanarayana Murty Bondada,
H.No. 6-10-30/A, Raja street, Peddapuram
Eas Godavari District – 533 437. Defendants

Claim: This is a suit filed for Specific performance of the agreement date: 15-12-2005 praying for direction to the defendants to execute the sale deed in favour of the plaintiffs in respect of the lands plot premises of All that piece of land ad measuring 4375 Sq.yards in Sy.No. 290 Apartment No. 401 Admeasuring 725 Sq. feet and 36.25 540525/- and perpetual Injunction restraining not alienate.

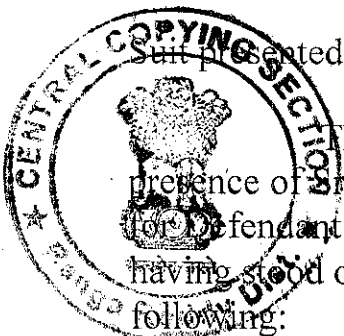
Valuation: The suit is valued at Rs. 5,40,525/- and a C.F. Of Rs. 7,926/- is paid under Section 39 of APCF & SV Act and the relief of Injunction is valued at Rs. 5000/- on which a C.F. Of Rs. 411/- is paid u/s 26 ©. Thus the total court fee of Rs. 8,337/- is paid under Article 1 (b) & © of schedule 1 of the A.P court fees and suit valuation Act.

Cause of Action: The cause of action arose on 15-12-2005, 19-02-2007.

Suit presented on: 03-07-2007 Suit filed on: 03-07-2007.

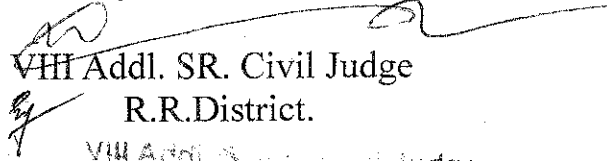
This suit is coming before me on 15-10-2014 for final disposal, in the presence of Sri. Shyam S. Agrawal, Counsle for plaintiff and Sri C. Bala Gopal, Counsel for Defendant No.1 and Sri. Ashok Reddy, Counsel for defendant No.2: and the matter having stood over for consideration till this day this court doth order and decree as following:

COURT OF THE DISTRICT & SESSIONS JUDGE Ranga Reddy District	
C.A.No. 4267 of 2015	
Application Filed on : 25/2/15	
Charges Called on : 31/3/15	
Charges Deposited on : 1/4/15	
Receipt No. 51/15 Rs.: 64/-	Plaintiff
Copy made Ready on : 9/4/15	
Copy Delivered on :	
	<i>R. Madhavi</i> Superintendent Central Copying Superintendent Ranga Reddy District



1) That the suit of the plaintiff be and the same is hereby Dismissed without costs.

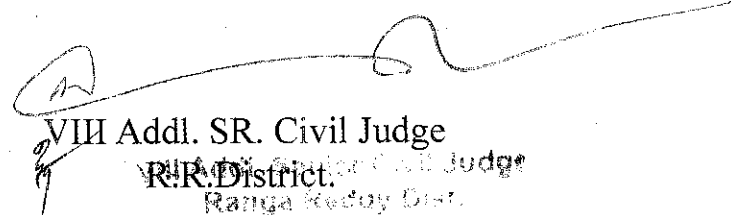
Given under my hand and the seal of this Court on this day of 15th October, 2014.


VIII Addl. SR. Civil Judge
R.R. District.

VIII Addl. Senior Civil Judge
Ranga Reddy Dist.

COST OF THE SUIT

	For Plaintiffs	For Defendants
1) Stamp on Plaint	Rs. 8,337-00	---
2) stamp on power	Rs. 2-00	2-00
3) Stamp on Exhibits	Rs. -	-
4) Advocate fee	Rs. -	-
5) Stamp on Petitions	Rs. -	-
6) Publication charges	Rs. -	-
7) Mis. Charges	Rs. -	-
Total	8,339-00	2-00


VIII Addl. SR. Civil Judge
R.R. District.

VIII Addl. Senior Civil Judge
Ranga Reddy Dist.

SCHEDULE OF THE PROPERTY

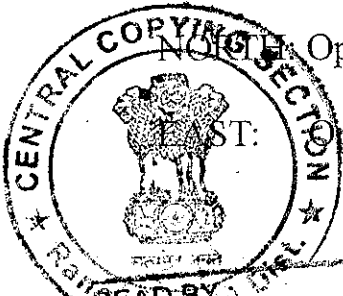
All that the Flat No. 401 on fourth floor in silver Oak apartments, forming part of survey No. 290, admeasuring 725 square feet fo super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No. 73, situated at cherlapally village, Ghatkesar Mandal, Ranga Reddy District and bounded by:




NOISE: Open to Sky

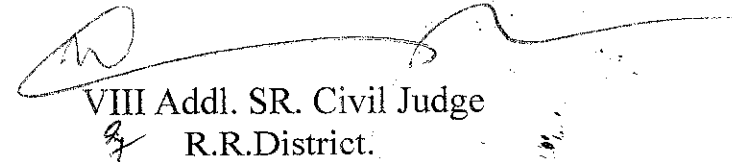
SOUTH: Flat No. 402

ST: Open to sky

WEST: 6 feet wide corridor



READ BY: 
COMPARED BY: 
Certified to be Xerox True Copy

Copyists Superintendent.


VIII Addl. SR. Civil Judge
R.R. District.

VIII Addl. Senior Civil Judge
Ranga Reddy Dist.

IN THE COURT OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE,
RANGAREDDY DISTRICT, AT L.B.NAGAR, HYDERABAD

Present : Sri M. Venkata Ramana,
VIII Addl.Senior Civil Judge
Rangareddy District

On this the 15th day of October, 2014

O.S.No.1549 Of 2007

Between :

Sri Vani Agarwal
S/o Sri Vasudev, aged 42 yrs.
Occ : Business, R/o Flat No.403,
Susheel Residency, Opp : CDR Hospital
Hyderguda, Hyderabad - 500 029. ...Plaintiff

A N D

1. M/s.Summit Builders
rep. by its Partner Sri Soham Modi
S/o Sri Satish Modi, aged 37 yrs.
Occ : Business, Having office at 5-4-187/3,
III Floor, M.G.Road, Secunderabad - 500 003.

2. Smt.Subhashini S. Gade
W/o Sri Shriram Mogallapalli
aged about 30 yrs. Residing at
C/o. Sri Satyanarayana Mury Bondada,
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari District - 533 437 ...Defendants

This suit is coming before me for final disposal in the presence of Sri Shyam S. Agarwal, Counsel for plaintiff and Sri C. Bala Gopal, Counsel for defendant No.1 and Sri Ashok Reddy, Counsel for defendant No.2; and upon perusing the material papers on record, this court delivered the following :

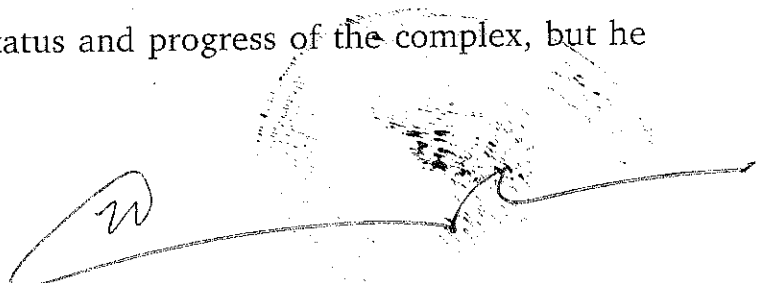
J U D G M E N T

This suit is filed seeking relief of Specific Performance of Contract. Initially the suit is filed against the 1st defendant. Subsequently 2nd defendant was impleaded as party as per orders passed in I.A.No.755/2008. dt.19.3.2010. The gist of the contents of the plaint is as follows :

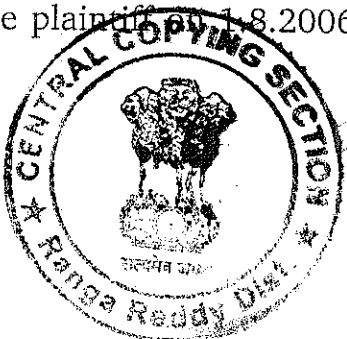


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That the defendant is owner and developer of Silver Oak apartments on the land forming part of Sy.No.290 situated at Cherlapally village, and they made an advertisement in the news papers. It is further contended that as plaintiff intended to purchase the flat in that apartments, approached 1st defendant and the 1st defendant showed the plaintiff the brochure relating to proposed apartments and plaintiff entered into an agreement to purchase flat bearing No.401 on the fourth floor admeasuring 725 sq.feet with super built up area along with proportionate undivided share of land to the extent of 36.25 sq.yards and a reserved two wheeler parking space bearing No.73. The property hereinafter is referred to as suit schedule property. After negotiations the consideration was fixed at Rs.6,49,000/- for sq.ft., and agreed total sale consideration was Rs.4,70,525/- and apart from sale consideration the plaintiff was asked to pay sum of Rs.50,000/- towards charges for amenities and Rs.5,000/- towards parking and Rs.15,000/- towards water and electricity charges. The plaintiff paid Rs.10,000/- to 1st defendant through a cheque dt.8.9.2005 towards earnest money and part payment of sale consideration. It is further contended that the terms of the contract was subsequently reduced into writing and agreement of sale was entered into by plaintiff and 1st defendant on 15.12.2005 and plaintiff paid additional sum of Rs.15,000/- to the defendant through a cheque. It is further contended that 1st defendant informed the plaintiff that they would intimate the plaintiff about the progress of construction of complex. It is nextly contended that when plaintiff was waiting patiently for the letter of 1st defendant informing about status and progress of the complex, but he

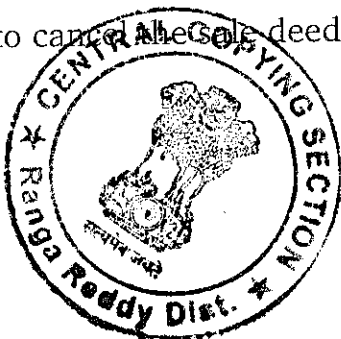
A handwritten signature in black ink is written over a circular stamp. The signature is a cursive scribble that starts with a large loop on the left and ends with a long horizontal stroke extending to the right. The stamp is a circular seal with some illegible text or a logo inside, partially obscured by the signature.

did not receive any correspondence from the 1st defendant. When plaintiff visited the office of 1st defendant to enquire about progress of complex, he was told that it would take some more time for the project to be completed. Be that as it may, to utter shock and surprise of the plaintiff, he received a letter from 1st defendant on 5.5.2006 calling for payment of three installments within seven days of the receipt of notice and warning the forfeiture. It is further contended that on that he sent suitable reply on 15.5.2006 to the 1st defendant informing that he has not received reminder earlier for payment as alleged in the letter and informed the defendant that plaintiff would pay amount in lumpsum immediate after sanction of loan which was delayed in view of change of status of plaintiff (sic income) from the salaried to self employed and he will also complete payment after sanction of housing loan. It is further contended that on receiving of reply, 1st defendant sent cancellation letter dt.9.6.2006 informing that plaintiff did not adhere to payment schedule not paid installments as promised. As such the agreement stood cancelled. It is further contended that after receiving of said cancellation notice the plaintiff sent reply letter dt.23.6.2006 informing that he has already informed through his letter dt.15.5.2006 that there was a delay in processing of loan and all the pending installments will be paid shortly and requested to bear for some time. It is further contended that as per discussions held between himself and 1st defendant, the plaintiff paid further amount of Rs.75,000/- through a cheque dt.11.7.2006 towards part payment of sale consideration and the 1st defendant addressed a letter to the plaintiff on 1.8.2006 asking him to visit the site to have a look at the



A handwritten signature in black ink, consisting of a stylized 'M' followed by a long horizontal line that ends in a small loop.

flat and to tell any additions or alterations to be done. It is further contended that the plaintiff patiently waited for response from 1st defendant, but to the shock of the plaintiff there was no such intimation from 1st defendant. It is further contended that getting vexed with attitude of 1st defendant and having lost hope of response plaintiff got a notice issued on 19.2.2007 through his Advocate calling upon the 1st defendant to execute sale deed. The 1st defendant addressed a letter with false contentions. It is further contended that Cancellation notice cannot terminate valid agreement of sale between parties and the plaintiff got a rejoinder notice issued on 12.3.2007 and again 1st defendant issued a reply notice. It is further contended that having received money towards part payment of sale consideration, 1st defendant failed to execute the sale deed in favour of the plaintiff. It is further contended that the 1st defendant is under obligation to execute sale deed in favour of the plaintiff. He nextly contended that plaintiff was ready and willing to perform his part of contract and he was ready to pay Rs.4,40,525/- towards balance sale consideration and it is further contended that the 1st defendant has any exclusive right to cancel the contract. After the 2nd defendant was impleaded as party, the plaint was also amended and it is further contended in the plaint that the 1st defendant sold the suit schedule property to the 2nd defendant under sale deed dt.31.1.2007, but the said sale deed is illegal and it is liable to be cancelled. As such it is prayed to direct the 1st defendant to execute and register the sale deed in favour of the plaintiffs. After taking balance sale consideration of Rs.4,40,000/- and to cancel the sale deed dt.31.1.2007 registered as document No.1804/2007



of 1st defendant in favour of 2nd defendant.

02. Defendant Nos.1 and 2 filed written statements. Defendant No.1 denied each and every material contention of plaintiff. Defendant No.1 admitted about entering into agreement of sale by plaintiff and 1st defendant in respect of the suit schedule property. The main contention of the 1st defendant is that the plaintiff did not adhere to payment schedule and committed default in paying the installments amount. He admitted about the payments made by the plaintiff to him. However, he denied remaining contentions of the plaintiff with regard to his readiness and willingness to perform his part of contract. It is mainly contended that only because of failure of plaintiff in paying the installments of the sale consideration the agreement was cancelled by the 1st defendant. It is further contended that the plaintiff is aware about the schedule of payments. But he did not choose to pay the installments as per schedule. It is further contended that as agreement was cancelled, the plaintiff is not entitled to claim any relief in the suit.

03. Defendant No.2 filed written statement denying each and every material contention of the plaintiff. Defendant No.2 denied the contentions of plaintiff in parawise. It is nextly contended that agreement of sale between plaintiff and 1st defendant is null and void and it was already cancelled for default of the plaintiff and it is further contended that plaintiff failed to perform his part of contract. It is further contended that plaintiff and 1st defendant colluded together to extract money from 2nd defendant and she



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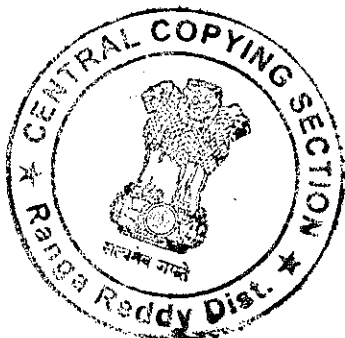
further told that the 2nd defendant is a bonafide purchaser and her sale deed cannot be cancelled.

03. Basing on the above pleadings of both the sides, the court framed the following issues :

- i. *Whether the plaintiff made the payments to the defendant according to the terms and conditions of the agreement ?*
- ii. *Whether the plaintiff is ready and willing to perform his part of contract ?*
- iii. *Whether the plaintiff is entitled for the relief to direct the defendant to execute the registered sale deed in favour of the plaintiff in respect of suit property ?*
- iv. *Whether the plaintiff is entitled for consequential relief of permanent injunction restraining the defendant from alienating or creating any third party interest over the suit property ?*
- v. *To what relief ?*

04. To prove the claim of plaintiff PWs-1 and 2 are examined. Exs.A1 to A18 are marked.

05. On behalf of 1st defendant, DW-1 is examined Exs.B1 is marked. Though chief examination affidavit of DW-2 is filed, he was sworn, subsequently DW-2 did not appear before the court for subjecting him to cross-examination. As such the defence evidence of defendant no.2 is closed and chief examination affidavit of DW-2 is deemed to have been eschewed from the record. As such the evidence of PW-1, PW.2 and DW-1 is available on record.



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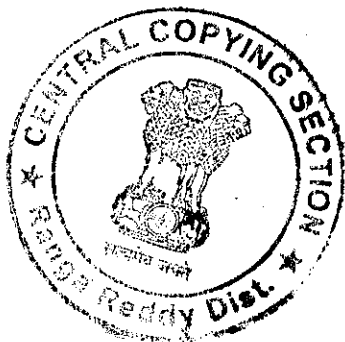
06. PW-1 filed chief examination affidavit wherein he stated in support of all contents of the plaint. He stated about entering into agreement of sale by himself and 1st defendant with regard to suit schedule property, payments made by him, terms and conditions of the agreement of sale, exchange of notices and letters between himself and 1st defendant, unilateral cancellation of agreement of sale by 1st defendant, failure of 1st defendant in execution of the sale deed in his favour, his readiness and willingness to perform his part of contract, delay for payment of installments due to delay in processing of loan by bank, demands made by him with 1st defendant to execute sale deed, his offer to pay balance sale consideration, execution of sale deed by the 1st defendant in favour of 2nd defendant. He prayed the court to direct the 1st defendant to execute registered sale deed and to cancel the sale deed executed by the 1st defendant in favour of 2nd defendant.

07. PW-2 filed chief examination affidavit wherein he stated that he was aware that, plaintiff entered into agreement of sale with 1st defendant for purchase of land in Silver Apartments and fixing of sale consideration at Rs.649/- per sq.ft. He further stated that the plaintiff paid Rs.75,000/- through a cheque in the month of July, 2006 and he was present at that time. He further stated that after entering into agreement, plaintiff obtained loan from ICICI Bank.

08. DW-1 filed chief examination affidavit wherein he stated in chief examination affidavit wherein he stated in support of all contentions of 1st



defendant. He stated that he is Manager and Customer Relations Officer of 1st defendant, as such he is acquainted with the facts of the suit. He stated about entering of agreement between plaintiff and 1st defendant, payment of Rs.10,000/- by plaintiff to the 1st defendant, terms and conditions of agreement. He further stated that after initial payment of Rs.10,000/- the plaintiff did not make any further payments until a letter addressed by 1st defendant and thereafter also he has not complied with the requirements for completion of valid contract. He further stated about addressing of letter by 1st defendant to the plaintiff cancelling the agreement. It is further stated that the plaintiff issued a reply with false and baseless allegations and he nextly stated that 1st defendant executed a sale deed in favour of 2nd defendant much before the suit is filed that is on 31.1.2007 and he nextly stated that there were no orders from the court restraining 1st defendant from executing the registered sale deed. He nextly stated that plaintiff miserably failed to stick to the payment schedule as agreed upon and no rights were accrued to him as he has not carried out his part of contract. He further stated that the payer for cancellation of registered sale deed dt.31.1.2007 is absolutely not tenable under law as that would change the nature of suit itself. He further stated that the plaintiff has not paid necessary court fee seeking cancellation of registered sale deed. He nextly stated that the plaintiff cannot seek for equitable relief of Specific Performance of Contract as he has relied on false averments suppressing all facts and he failed to perform his part of contract. He prayed the court to dismiss the suit.



09. Issue Nos.1 to 3: Heard counsel for plaintiff. He contended that the plaintiff sufficiently established his claim and he made payments according to terms of the agreement of sale. He nextly contended that the plaintiff is always ready and willing to perform his part of contract and he is ready to pay balance sale consideration of Rs.4,40,525/- and 1st defendant miserably failed to perform its part of contract. He nextly contended that instead of executing sale deed in favour of the plaintiff, the 1st defendant sold away the property to the 2nd defendant and that the sale deed executed by 1st defendant in favour of 2nd defendant is liable to be cancelled. He further contended that as the 1st defendant received part payment of Rs.75,000/- under Ex.A9 the 1st defendant cannot cancel the agreement of sale executed in favour of the plaintiff. He nextly contended that the suit is entitled to be decreed.

10. On the other hand, counsel for 1st defendant vehemently opposed the contention of counsel for plaintiff. He mainly contended that the plaintiff miserably failed to establish that he was always ready and willing to perform his part of contract and he committed default in paying the installments as agreed in Ex.A2. It is further contended that the plaintiff miserably failed to perform his part of contract. As such he is not at all entitled to claim relief of the Specific Performance of Contract. He further argued that the plaintiff came to the court with unclean hands and the discretionary relief sought for that is relief of Specific Performance of Contract cannot be granted to him. He further contended that the plaintiff was never ready and willing to perform his part of contract. As such he is



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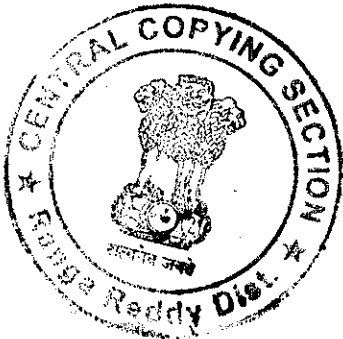
not at all entitled for any relief and the suit is liable to be dismissed.

11. Perused the entire material on record consisting of pleadings of both the sides, oral and documentary evidence adduced by both the sides. After thorough, careful and cautious examination and scrutiny of entire material on record, I am of the view there is no force in the contention of counsel for plaintiff. As rightly contended by counsel for 1st defendant, the plaintiff failed to stick to terms and conditions of Ex.A2 agreement of sale. As per terms and conditions of Ex.A2 a schedule for payment of installments is prescribed. For better appreciation para 4 of the Ex.A2 is reproduced which is as hereunder :

"The Buyer agrees to pay the balance sale consideration amount of Rs.5,30,525/- to the Vendor in installments as stated below :

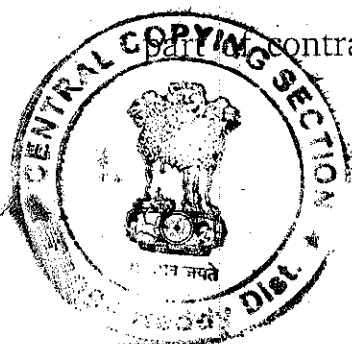
Installments	Amount	Due Date of Payment
I Installment	50,000-00	9th October 2005
II installment	96,105-00	1st December 2005
III installment	96,105-00	1st March, 2006
IV installment	96,105-00	1st July, 2006
V installment	96,105-00	1st October, 2006
VI installment	96,105-0	31st December, 2006

12. As per the above schedule the plaintiff has to pay entire sale consideration of Rs.5,30,525/- by 31st December, 2006. The plaintiff committed default in respect of the 1st installment itself. As per Ex.A4 he paid Rs.15,000/- on 3.3.2006. As per schedule of the payment the plaintiff was expected to pay Rs.50,000/- on or before 9.10.2005. The entire material on record shows that the plaintiff committed several defaults in payment of the installments. He never adhered to terms and conditions of



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the agreement of sale. As per material on record and as per admitted facts the plaintiff paid Rs.15,000/- on 3.3.2006 and Rs.75,000/- on 11.7.2006. Thereafter, he did not choose to pay any pie towards balance sale consideration. Moreover, it is not the case of plaintiff that he paid any other amounts other than three amounts covered by Ex.A1 (Rs.10,000/-), Ex.A4 (Rs.15,000/-) and Ex.A9 (Rs.75,000/-). Other than these amounts he has not paid any other pie. After careful and cautious scrutiny and examination of entire material on record it can be safely said that the plaintiff has not made payments to the defendant according to the terms and conditions of agreement of sale that is Ex.A2. Though the plaintiff contended in the plaint that he has been always ready and willing to perform his part of contract, he miserably failed in doing so. When the plaintiff failed to pay the installments as per schedule given in Ex.A2 he cannot say that he proved his readiness and willingness to perform his part of contract. Mere making averment in the plaint about his readiness and willingness to perform his contract is not at all sufficient. The plaintiff has to adduce sufficient and convincing, cogent and trustworthy evidence which shows that he has been always ready and willing to perform his part of contract. When the plaintiff failed to show that balance amount of sale consideration was kept ready and available, mere averment about his readiness is not sufficient to show that he was ready and willing to perform his part of contract. My view has support of the decision of Hon'ble High Court of A.P which is given in B.Rajamani vs. Azhar Sultana reported in 2005 AP 260. Readiness means financial capacity of plaintiff to perform his part of contract to pay entire sale consideration. The plaintiff miserably



failed in establishing his financial capacity to pay entire sale consideration. When he failed to adhere to the payment schedule, he cannot claim that he was always ready and willing to perform his part of contract. When plaintiff is seeking relief of Specific Performance of Contract she has to prove his continuous readiness and willingness to perform his part of contract from the date of the contract till the date of hearing. Even as per contents of the plaint he was unable to get housing loan due to change in his financial capacity. The plaintiff has to prove that all throughout he was willing to perform his part of contract. But he failed in doing so. Mere payment of three amounts referred supra cannot be based to say that he was always willing and ready to perform his part of contract. He made payment of Rs.75,000/- only subsequent to notice issued by the 1st defendant. Only because of the payment of Rs.75,000/- made by plaintiff, he cannot argue that he was always ready and willing to perform his part of contract. It may be true there are some discrepancies and infirmities in the evidence of DW-1. Those discrepancies and infirmities cannot be taken as advantage by the plaintiff. As it is the plaintiff who filed the suit seeking for Specific Performance of Contract it is his burden to establish his claim. In view of the foregoing discussion I am of the view plaintiff miserably failed to establish that he is ready and willing to perform his part of contract and in view of the foregoing findings and discussion I hold that the plaintiff is not at all entitled for relief of Specific Performance of Contract and a direction to 1st defendant to execute registered sale deed in favour of the plaintiff. Thus, I decided all three issues against the plaintiff.



13. Issue No.4 : In view of the findings and decisions given in Issue Nos.1 to 3, I hold that the plaintiff is not at all entitled for consequential relief of Permanent Injunction as prayed for. Thus, I answered this issue.

14. Issue No.5 : In the result, suit is dismissed without costs.

Dictated to the Senior Assistant/Personal Assistant,
transcribed by her, corrected and pronounced by me
in the open court on this the 15th day of October, 2014.


VIII ADDL.SENIOR CIVIL JUDGE
RANGAREDDY DISTRICT

APPENDIX OF EVIDENCE

WITNESSES EXAMINED ON BEHALF OF PLAINTIFFS:

PW-1 : Vinay Agarwal
PW-2 : R. Ravichander

WITNESSES EXAMINED ON BEHALF OF DEFENDANTS:

DW-1 : K. Krishna Prasad
DW-2 : M. Jagan Mohan Reddy

EXHIBITS MARKED ON BEHALF OF PLAINTIFFS :

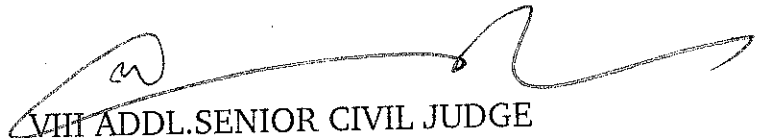
Ex.A1 : Original receipt dt.8.9.2005.
Ex.A2 : Original agreement dt.15.12.2005.
Ex.A3 : Original pricing and payment terms of defendants.
Ex.A4 : Original receipt dt.3.3.06.
Ex.A5 : Original reminder notice issued by defendant dt.5.5.06.
Ex.A6 : Office copy of reply to notice with acknowledgment dt.15.5.06.
Ex.A7 : Original Cancellation notice dt.9.6.06.
Ex.A8 : Office copy of reply dt.23.6.07.
Ex.A9 : Original receipt dt.11.7.06.
Ex.A10 : Original letter dt.1.8.06.
Ex.A11 : Plan of the flat.
Ex.A12 : Office copy of legal notice dt.19.2.07.
Ex.A13 : Reply notice dt.22.2.07.
Ex.A14 : Office copy of legal notice dt.12.3.07.
Ex.A15 : Original reply notice dt.28.3.2007.





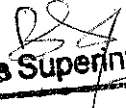
Ex.A16 : letter dt.24.5.07.
 Ex.A17 : Caveat filed by the defendants.
 Ex.A18 : CC of sale deed dt.31.1.2007.

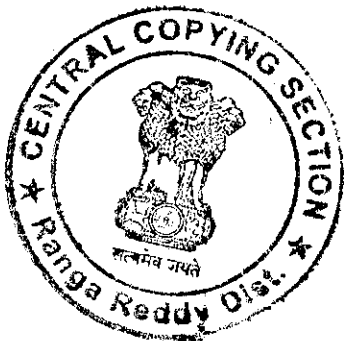
EXHIBITS MARKED ON BEHALF OF DEFENDANTS:

Ex.B1 : Authorization letter issued by D1 in favour of DW-1.


 VIII ADDL.SENIOR CIVIL JUDGE
 RANGAREDDY DISTRICT

**COURT OF THE DISTRICT &
 SESSIONS JUDGE
 Ranga Reddy District**
 C.A.No. 4267 of 2015
 Application Filed on : 25/2/15
 Charges Called on : 31/3/15
 Charges Deposited on : 1/4/15
 Receipt No. 51/15 Rs.: 64/-
 Copy made Ready on : 9/4/15
 Copy Delivered on : 15/4/15
 Superintendent
 Central Copying Superintendeny
 Ranga Reddy District

READ BY : 
 COMPARED BY : 
 Certified to be Xerox True Copy
 Copyists Superintendent




DECREE

IN THE COURT OF THE VIII ADDL. SENIOR CIVIL JUDGE, R.R.DISTRICT
AT L.B.NAGAR.

Present: Sri. M.Venkataramana
VIII Addl. Senior Civil Judge
Ranga Reddy District.

Dated on this the 15th day of October , 2014.

OS.NO. 1549 of 2007

BETWEEN:

Sri. Vinay Agarwal S/o. Vasudev, aged 42 yrs.
Occ: Business, R/o. Flat No. 403,
Susheel Residency, Opp: CDR Hospital
Hyderguda, Hyderabad- 500 029.

AND

- 1) M/s. Summit Builders
rep. by its Partner Sri Soham Modi
S/o. Sri Satish Modi . Aged 37 yrs.
Occ: Busienss, having Office at 5-4-187/3,
III Floor, M.G. Road, Secudnerabad – 500 003.
- 2) Smt. Subhashini S. Gade S/o. Sri Shriram Mogallapalli
aged about 30 yrs, Resideing at C/o. Sri Satyanarayana Murty Bondada,
H.No. 6-10-30/A, Raja street, Peddapuram
Eas Godavari District – 533 437. Defendants

COURT OF THE DISTRICT & SESSIONS JUDGE Ranga Reddy District
C.A.No. 4267 of 2015
Application Filed on : 25/2/15
Charges Called on : 31/3/15
Charges Deposited on : 1/4/15
... Plaintiff 51/15 Rs.: 64/-
Copy made Ready on : 9/4/15
Copy Delivered on :
Superintendent 18/10/15
Central Copying Superintendent Ranga Reddy District

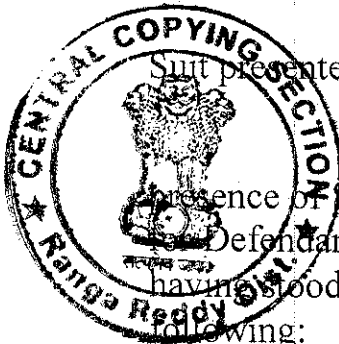
Claim: This is a suit filed for Specific performance of the agreement date: 15-12-2005 praying for direction to the defendants to execute the sale deed in favour of the plaintiffs in respect of the lands plot premises of All that piece of land ad measuring 4375 Sq.yards in Sy.No. 290 Apartment No. 401 Admeasuring 725 Sq. feet and 36.25 540525/- and perpetual Injunction restraining not alienate.

Valuation: The suit is valued at Rs. 5,40,525/- and a C.F. Of Rs. 7,926/- is paid under Section 39 of APCF & SV Act and the relief of Injunction is valued at Rs. 5000/- on which a C.F. Of Rs. 411/- is paid u/s 26 ©. Thus the total court fee of Rs. 8,337/- is paid under Article 1 (b) & © of schedule 1 of the A.P court fees and suit valuation Act.

Cause of Action: The cause of action arose on 15-12-2005, 19-02-2007.

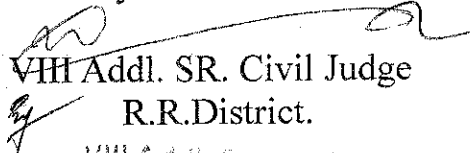
Suit presented on: 03-07-2007 Suit filed on: 03-07-2007.

This suit is coming before me on 15-10-2014 for final disposal, in the presence of Sri. Shyam S. Agrawal, Counsle for plaintiff and Sri C. Bala Gopal, Counsel as Defendant No.1 and Sri. Ashok Reddy, Counsel for defendant No.2: and the matter having stood over for consideration till this day this court doth order and decree as following:



1) That the suit of the plaintiff be and the same is hereby Dismissed without costs.

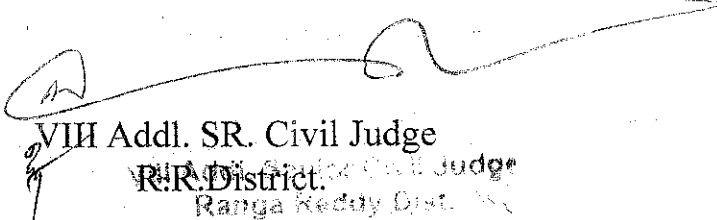
Given under my hand and the seal of this Court on this day of 15th October, 2014.


VIII Addl. SR. Civil Judge
R.R. District.

VIII Addl. Senior Civil Judge
Ranga Reddy Dist.

COST OF THE SUIT

	For Plaintiffs	For Defendants
1) Stamp on Plaint	Rs. 8,337-00	---
2) stamp on power	Rs. 2-00	2-00
3) Stamp on Exhibits	Rs. -	-
4) Advocate fee	Rs. -	-
5) Stamp on Petitions	Rs. -	-
6) Publication charges	Rs. -	-
7) Mis. Charges	Rs. -	-
Total	8,339-00	2-00


VIII Addl. SR. Civil Judge

R.R. District.
Ranga Reddy Dist.

SCHEDULE OF THE PROPERTY

All that the Flat No. 401 on fourth floor in silver Oak apartments, forming part of survey No. 290, admeasuring 725 square feet fo super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No. 73, situated at cherlapally village, Ghatkesar Ranga Reddy District and bounded by:

NORTH: Open to Sky

SOUTH: Flat No. 402

EAST: Open to sky

WEST: 6 feet wide corridor

COMPARED BY: 

Certified to be Xerox True Copy


Copyists Superintendent.


VIII Addl. SR. Civil Judge

R.R. District.

VIII Addl. Senior Civil Judge
Ranga Reddy Dist.

IN THE COURT OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE,
RANGAREDDY DISTRICT, AT L.B.NAGAR, HYDERABAD

Present : Sri M. Venkata Ramana,
VIII Addl.Senior Civil Judge
Rangareddy District

On this the 15th day of October, 2014

O.S.No.1549 Of 2007

Between :

Sri Vani Agarwal
S/o Sri Vasudev, aged 42 yrs.
Occ : Business, R/o Flat No.403,
Susheel Residency, Opp : CDR Hospital
Hyderguda, Hyderabad - 500 029. ...Plaintiff

AND

1. M/s.Summit Builders
rep. by its Partner Sri Soham Modi
S/o Sri Satish Modi, aged 37 yrs.
Occ : Business, Having office at 5-4-187/3,
III Floor, M.G.Road, Secunderabad - 500 003.

2. Smt.Subhashini S. Gade
W/o Sri Shriram Mogallapalli
aged about 30 yrs. Residing at
C/o. Sri Satyanarayana Mury Bondada,
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari District - 533 437 ...Defendants

This suit is coming before me for final disposal in the presence of Sri Shyam S. Agarwal, Counsel for plaintiff and Sri C. Bala Gopal, Counsel for defendant No.1 and Sri Ashok Reddy, Counsel for defendant No.2; and upon perusing the material papers on record, this court delivered the following :

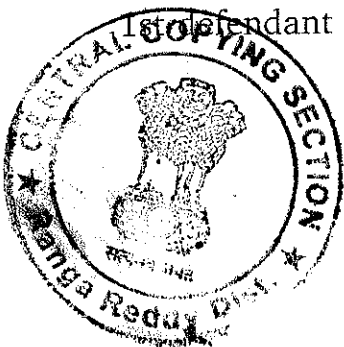
JUDGMENT

This suit is filed seeking relief of Specific Performance of Contract. Initially the suit is filed against the 1st defendant. Subsequently 2nd defendant was impleaded as party as per orders passed in I.A.No.755/2008 dt.19.3.2010. The gist of the contents of the plaint is as follows :

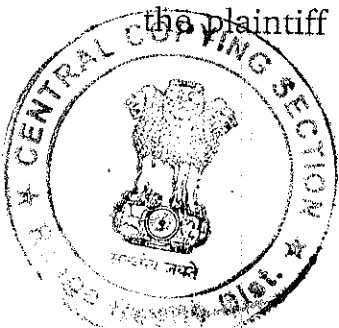


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That the defendant is owner and developer of Silver Oak apartments on the land forming part of Sy.No.290 situated at Cherlapally village, and they made an advertisement in the news papers. It is further contended that as plaintiff intended to purchase the flat in that apartments, approached 1st defendant and the 1st defendant showed the plaintiff the brochure relating to proposed apartments and plaintiff entered into an agreement to purchase flat bearing No.401 on the fourth floor admeasuring 725 sq.feet with super built up area along with proportionate undivided share of land to the extent of 36.25 sq.yards and a reserved two wheeler parking space bearing No.73. The property hereinafter is referred to as suit schedule property. After negotiations the consideration was fixed at Rs.6,49,000/- for sq.ft., and agreed total sale consideration was Rs.4,70,525/- and apart from sale consideration the plaintiff was asked to pay sum of Rs.50,000/- towards charges for amenities and Rs.5,000/- towards parking and Rs.15,000/- towards water and electricity charges. The plaintiff paid Rs.10,000/- to 1st defendant through a cheque dt.8.9.2005 towards earnest money and part payment of sale consideration. It is further contended that the terms of the contract was subsequently reduced into writing and agreement of sale was entered into by plaintiff and 1st defendant on 15.12.2005 and plaintiff paid additional sum of Rs.15,000/- to the defendant through a cheque. It is further contended that 1st defendant informed the plaintiff that they would intimate the plaintiff about the progress of construction of complex. It is nextly contended that when plaintiff was waiting patiently for the letter of 1st defendant informing about status and progress of the complex, but he



did not receive any correspondence from the 1st defendant. When plaintiff visited the office of 1st defendant to enquire about progress of complex, he was told that it would take some more time for the project to be completed. Be that as it may, to utter shock and surprise of the plaintiff, he received a letter from 1st defendant on 5.5.2006 calling for payment of three installments within seven days of the receipt of notice and warning the forfeiture. It is further contended that on that he sent suitable reply on 15.5.2006 to the 1st defendant informing that he has not received reminder earlier for payment as alleged in the letter and informed the defendant that plaintiff would pay amount in lumpsum immediate after sanction of loan which was delayed in view of change of status of plaintiff (sic income) from the salaried to self employed and he will also complete payment after sanction of housing loan. It is further contended that on receiving of reply, 1st defendant sent cancellation letter dt.9.6.2006 informing that plaintiff did not adhere to payment schedule not paid installments as promised. As such the agreement stood cancelled. It is further contended that after receiving of said cancellation notice the plaintiff sent reply letter dt.23.6.2006 informing that he has already informed through his letter dt.15.5.2006 that there was a delay in processing of loan and all the pending installments will be paid shortly and requested to bear for some time. It is further contended that as per discussions held between himself and 1st defendant, the plaintiff paid further amount of Rs.75,000/- through a cheque dt.11.7.2006 towards part payment of sale consideration and the 1st defendant addressed a letter to the plaintiff on 1.8.2006 asking him to visit the site to have a look at the



flat and to tell any additions or alterations to be done. It is further contended that the plaintiff patiently waited for response from 1st defendant, but to the shock of the plaintiff there was no such intimation from 1st defendant. It is further contended that getting vexed with attitude of 1st defendant and having lost hope of response plaintiff got a notice issued on 19.2.2007 through his Advocate calling upon the 1st defendant to execute sale deed. The 1st defendant addressed a letter with false contentions. It is further contended that Cancellation notice cannot terminate valid agreement of sale between parties and the plaintiff got a rejoinder notice issued on 12.3.2007 and again 1st defendant issued a reply notice. It is further contended that having received money towards part payment of sale consideration, 1st defendant failed to execute the sale deed in favour of the plaintiff. It is further contended that the 1st defendant is under obligation to execute sale deed in favour of the plaintiff. He nextly contended that plaintiff was ready and willing to perform his part of contract and he was ready to pay Rs.4,40,525/- towards balance sale consideration and it is further contended that the 1st defendant has any exclusive right to cancel the contract. After the 2nd defendant was impleaded as party, the plaint was also amended and it is further contended in the plaint that the 1st defendant sold the suit schedule property to the 2nd defendant under sale deed dt.31.1.2007, but the said sale deed is illegal and it is liable to be cancelled. As such it is prayed to direct the 1st defendant to execute and register the sale deed in favour of the plaintiffs. After taking balance sale consideration of Rs.4,40,000/- and

to cancel the sale deed dt.31.1.2007 registered as document No.1804/2007



of 1st defendant in favour of 2nd defendant.

02. Defendant Nos.1 and 2 filed written statements. Defendant No.1 denied each and every material contention of plaintiff. Defendant No.1 admitted about entering into agreement of sale by plaintiff and 1st defendant in respect of the suit schedule property. The main contention of the 1st defendant is that the plaintiff did not adhere to payment schedule and committed default in paying the installments amount. He admitted about the payments made by the plaintiff to him. However, he denied remaining contentions of the plaintiff with regard to his readiness and willingness to perform his part of contract. It is mainly contended that only because of failure of plaintiff in paying the installments of the sale consideration the agreement was cancelled by the 1st defendant. It is further contended that the plaintiff is aware about the schedule of payments. But he did not choose to pay the installments as per schedule. It is further contended that as agreement was cancelled, the plaintiff is not entitled to claim any relief in the suit.

03. Defendant No.2 filed written statement denying each and every material contention of the plaintiff. Defendant No.2 denied the contentions of plaintiff in parawise. It is nextly contended that agreement of sale between plaintiff and 1st defendant is null and void and it was already cancelled for default of the plaintiff and it is further contended that plaintiff failed to perform his part of contract. It is further contended that plaintiff and 1st defendant colluded together to extract money from 2nd defendant and she



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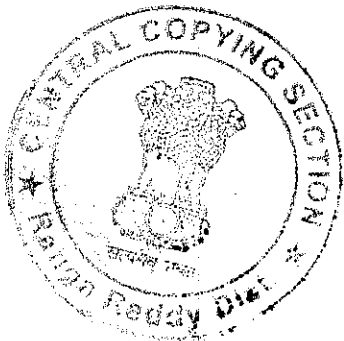
further told that the 2nd defendant is a bonafide purchaser and her sale deed cannot be cancelled.

03. Basing on the above pleadings of both the sides, the court framed the following issues :

- i. *Whether the plaintiff made the payments to the defendant according to the terms and conditions of the agreement ?*
- ii. *Whether the plaintiff is ready and willing to perform his part of contract ?*
- iii. *Whether the plaintiff is entitled for the relief to direct the defendant to execute the registered sale deed in favour of the plaintiff in respect of suit property ?*
- iv. *Whether the plaintiff is entitled for consequential relief of permanent injunction restraining the defendant from alienating or creating any third party interest over the suit property ?*
- v. *To what relief ?*

04. To prove the claim of plaintiff PWs-1 and 2 are examined. Exs.A1 to A18 are marked.

05. On behalf of 1st defendant, DW-1 is examined Exs.B1 is marked. Though chief examination affidavit of DW-2 is filed, he was sworn, subsequently DW-2 did not appear before the court for subjecting him to cross-examination. As such the defence evidence of defendant no.2 is closed and chief examination affidavit of DW-2 is deemed to have been eschewed from the record. As such the evidence of PW-1, PW.2 and DW-1 is available on record.

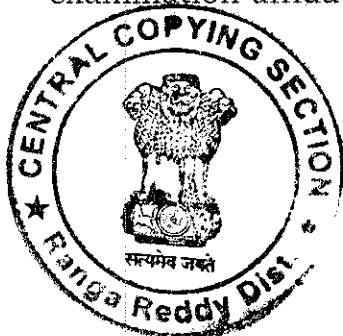


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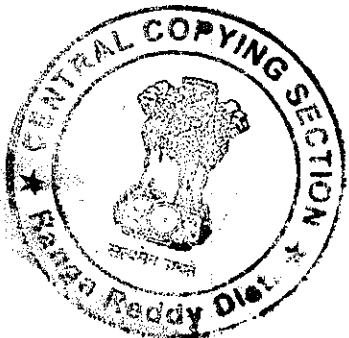
06. PW-1 filed chief examination affidavit wherein he stated in support of all contents of the plaint. He stated about entering into agreement of sale by himself and 1st defendant with regard to suit schedule property, payments made by him, terms and conditions of the agreement of sale, exchange of notices and letters between himself and 1st defendant, unilateral cancellation of agreement of sale by 1st defendant, failure of 1st defendant in execution of the sale deed in his favour, his readiness and willingness to perform his part of contract, delay for payment of installments due to delay in processing of loan by bank, demands made by him with 1st defendant to execute sale deed, his offer to pay balance sale consideration, execution of sale deed by the 1st defendant in favour of 2nd defendant. He prayed the court to direct the 1st defendant to execute registered sale deed and to cancel the sale deed executed by the 1st defendant in favour of 2nd defendant.

07. PW-2 filed chief examination affidavit wherein he stated that he was aware that, plaintiff entered into agreement of sale with 1st defendant for purchase of land in Silver Apartments and fixing of sale consideration at Rs.649/- per sq.ft. He further stated that the plaintiff paid Rs.75,000/- through a cheque in the month of July, 2006 and he was present at that time. He further stated that after entering into agreement, plaintiff obtained loan from ICICI Bank.

08. DW-1 filed chief examination affidavit wherein he stated in chief examination affidavit wherein he stated in support of all contentions of 1st



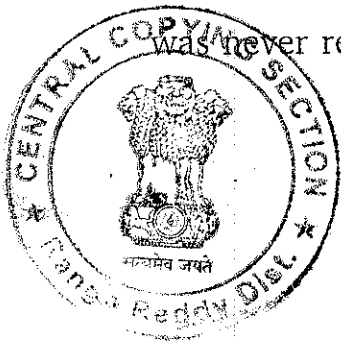
defendant. He stated that he is Manager and Customer Relations Officer of 1st defendant, as such he is acquainted with the facts of the suit. He stated about entering of agreement between plaintiff and 1st defendant, payment of Rs.10,000/- by plaintiff to the 1st defendant, terms and conditions of agreement. He further stated that after initial payment of Rs.10,000/- the plaintiff did not make any further payments until a letter addressed by 1st defendant and thereafter also he has not complied with the requirements for completion of valid contract. He further stated about addressing of letter by 1st defendant to the plaintiff cancelling the agreement. It is further stated that the plaintiff issued a reply with false and baseless allegations and he nextly stated that 1st defendant executed a sale deed in favour of 2nd defendant much before the suit is filed that is on 31.1.2007 and he nextly stated that there were no orders from the court restraining 1st defendant from executing the registered sale deed. He nextly stated that plaintiff miserably failed to stick to the payment schedule as agreed upon and no rights were accrued to him as he has not carried out his part of contract. He further stated that the payer for cancellation of registered sale deed dt.31.1.2007 is absolutely not tenable under law as that would change the nature of suit itself. He further stated that the plaintiff has not paid necessary court fee seeking cancellation of registered sale deed. He nextly stated that the plaintiff cannot seek for equitable relief of Specific Performance of Contract as he has relied on false averments suppressing all facts and he failed to perform his part of contract. He prayed the court to dismiss the suit.



09. Issue Nos.1 to 3: Heard counsel for plaintiff. He contended that the plaintiff sufficiently established his claim and he made payments according to terms of the agreement of sale. He nextly contended that the plaintiff is always ready and willing to perform his part of contract and he is ready to pay balance sale consideration of Rs.4,40,525/- and 1st defendant miserably failed to perform its part of contract. He nextly contended that instead of executing sale deed in favour of the plaintiff, the 1st defendant sold away the property to the 2nd defendant and that the sale deed executed by 1st defendant in favour of 2nd defendant is liable to be cancelled. He further contended that as the 1st defendant received part payment of Rs.75,000/- under Ex.A9 the 1st defendant cannot cancel the agreement of sale executed in favour of the plaintiff. He nextly contended that the suit is entitled to be decreed.

10. On the other hand, counsel for 1st defendant vehemently opposed the contention of counsel for plaintiff. He mainly contended that the plaintiff miserably failed to establish that he was always ready and willing to perform his part of contract and he committed default in paying the installments as agreed in Ex.A2. It is further contended that the plaintiff miserably failed to perform his part of contract. As such he is not at all entitled to claim relief of the Specific Performance of Contract. He further argued that the plaintiff came to the court with unclean hands and the discretionary relief sought for that is relief of Specific Performance of Contract cannot be granted to him. He further contended that the plaintiff

was never ready and willing to perform his part of contract. As such he is



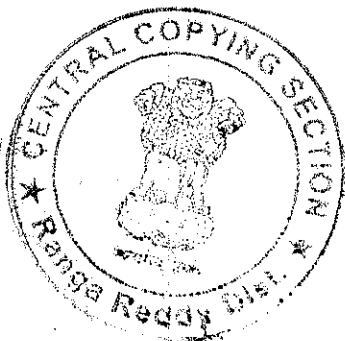
not at all entitled for any relief and the suit is liable to be dismissed.

11. Perused the entire material on record consisting of pleadings of both the sides, oral and documentary evidence adduced by both the sides. After thorough, careful and cautious examination and scrutiny of entire material on record, I am of the view there is no force in the contention of counsel for plaintiff. As rightly contended by counsel for 1st defendant, the plaintiff failed to stick to terms and conditions of Ex.A2 agreement of sale. As per terms and conditions of Ex.A2 a schedule for payment of installments is prescribed. For better appreciation para 4 of the Ex.A2 is reproduced which is as hereunder :

"The Buyer agrees to pay the balance sale consideration amount of Rs.5,30,525/- to the Vendor in installments as stated below :

Installments	Amount	Due Date of Payment
I Installment	50,000-00	9th October 2005
II installment	96,105-00	1st December 2005
III installment	96,105-00	1st March, 2006
IV installment	96,105-00	1st July, 2006
V installment	96,105-00	1st October, 2006
VI installment	96,105-0	31st December, 2006

12. As per the above schedule the plaintiff has to pay entire sale consideration of Rs.5,30,525/- by 31st December, 2006. The plaintiff committed default in respect of the 1st installment itself. As per Ex.A4 he paid Rs.15,000/- on 3.3.2006. As per schedule of the payment the plaintiff was expected to pay Rs.50,000/- on or before 9.10.2005. The entire material on record shows that the plaintiff committed several defaults in payment of the installments. He never adhered to terms and conditions of

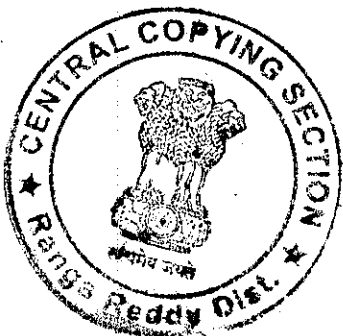


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the agreement of sale. As per material on record and as per admitted facts the plaintiff paid Rs.15,000/- on 3.3.2006 and Rs.75,000/- on 11.7.2006. Thereafter, he did not choose to pay any pie towards balance sale consideration. Moreover, it is not the case of plaintiff that he paid any other amounts other than three amounts covered by Ex.A1 (Rs.10,000/-), Ex.A4 (Rs.15,000/-) and Ex.A9 (Rs.75,000/-). Other than these amounts he has not paid any other pie. After careful and cautious scrutiny and examination of entire material on record it can be safely said that the plaintiff has not made payments to the defendant according to the terms and conditions of agreement of sale that is Ex.A2. Though the plaintiff contended in the plaint that he has been always ready and willing to perform his part of contract, he miserably failed in doing so. When the plaintiff failed to pay the installments as per schedule given in Ex.A2 he cannot say that he proved his readiness and willingness to perform his part of contract. Mere making averment in the plaint about his readiness and willingness to perform his contract is not at all sufficient. The plaintiff has to adduce sufficient and convincing, cogent and trustworthy evidence which shows that he has been always ready and willing to perform his part of contract. When the plaintiff failed to show that balance amount of sale consideration was kept ready and available, mere averment about his readiness is not sufficient to show that he was ready and willing to perform his part of contract. My view has support of the decision of Hon'ble High Court of A.P which is given in B.Rajamani vs. Azhar Sultana reported in 2005 AP 260. Readiness means financial capacity of plaintiff to perform his part of contract to pay entire sale consideration. The plaintiff miserably



failed in establishing his financial capacity to pay entire sale consideration. When he failed to adhere to the payment schedule, he cannot claim that he was always ready and willing to perform his part of contract. When plaintiff is seeking relief of Specific Performance of Contract she has to prove his continuous readiness and willingness to perform his part of contract from the date of the contract till the date of hearing. Even as per contents of the plaint he was unable to get housing loan due to change in his financial capacity. The plaintiff has to prove that all throughout he was willing to perform his part of contract. But he failed in doing so. Mere payment of three amounts referred supra cannot be based to say that he was always willing and ready to perform his part of contract. He made payment of Rs.75,000/- only subsequent to notice issued by the 1st defendant. Only because of the payment of Rs.75,000/- made by plaintiff, he cannot argue that he was always ready and willing to perform his part of contract. It may be true there are some discrepancies and infirmities in the evidence of DW-1. Those discrepancies and infirmities cannot be taken as advantage by the plaintiff. As it is the plaintiff who filed the suit seeking for Specific Performance of Contract it is his burden to establish his claim. In view of the foregoing discussion I am of the view plaintiff miserably failed to establish that he is ready and willing to perform his part of contract and in view of the foregoing findings and discussion I hold that the plaintiff is not at all entitled for relief of Specific Performance of Contract and a direction to 1st defendant to execute registered sale deed in favour of the plaintiff. Thus, I decided all three issues against the plaintiff.




A handwritten signature or set of initials, possibly "M" followed by a long horizontal line and a flourish.

13. Issue No.4 : In view of the findings and decisions given in Issue Nos.1 to 3, I hold that the plaintiff is not at all entitled for consequential relief of Permanent Injunction as prayed for. Thus, I answered this issue.

14. Issue No.5 : In the result, suit is dismissed without costs.

Dictated to the Senior Assistant/Personal Assistant,
transcribed by her, corrected and pronounced by me
in the open court on this the 15th day of October, 2014.


VIII ADDL.SENIOR CIVIL JUDGE
RANGAREDDY DISTRICT

APPENDIX OF EVIDENCE

WITNESSES EXAMINED ON BEHALF OF PLAINTIFFS:

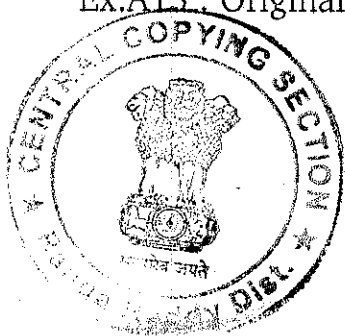
PW-1 : Vinay Agarwal
PW-2 : R. Ravichander

WITNESSES EXAMINED ON BEHALF OF DEFENDANTS:

DW-1 : K. Krishna Prasad
DW-2 : M. Jagan Mohan Reddy

EXHIBITS MARKED ON BEHALF OF PLAINTIFFS :


Ex.A1 : Original receipt dt.8.9.2005.
Ex.A2 : Original agreement dt.15.12.2005.
Ex.A3 : Original pricing and payment terms of defendants.
Ex.A4 : Original receipt dt.3.3.06.
Ex.A5 : Original reminder notice issued by defendant dt.5.5.06.
Ex.A6 : Office copy of reply to notice with acknowledgment dt.15.5.06.
Ex.A7 : Original Cancellation notice dt.9.6.06.
Ex.A8 : Office copy of reply dt.23.6.07.
Ex.A9 : Original receipt dt.11.7.06.
Ex.A10 : Original letter dt.1.8.06.
Ex.A11 : Plan of the flat.
Ex.A12 : Office copy of legal notice dt.19.2.07.
Ex.A13 : Reply notice dt.22.2.07.
Ex.A14 : Office copy of legal notice dt.12.3.07.
Ex.A15 : Original reply notice dt.28.3.2007.

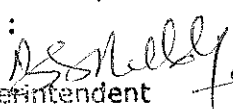




Ex.A16 : letter dt.24.5.07.
 Ex.A17 : Caveat filed by the defendants.
 Ex.A18 : CC of sale deed dt.31.1.2007.

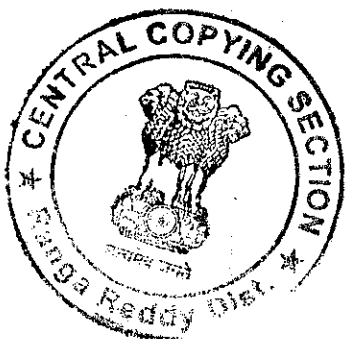
EXHIBITS MARKED ON BEHALF OF DEFENDANTS:

Ex.B1 : Authorization letter issued by D1 in favour of DW-1.


 VIII ADDL.SENIOR CIVIL JUDGE
 RANGAREDDY DISTRICT

COURT OF THE DISTRICT & SESSIONS JUDGE Ranga Reddy District	
C.A.No. 4267	of 2015
Application Filed on : 25/2/15	
Charges Called on : 31/3/15	
Charges Deposited on : 1/4/15	
Receipt No. 51/15	Rs.: 64/-
Copy made Ready on : 9/4/15	
Copy Delivered on :	
 Superintendent Central Copying Superintendent Ranga Reddy District	

READ BY :
COMPARED BY : 
Certified to be Xerox True Copy
 Copyists Superintendent



2

MEMORANDUM OF FIRST APPEAL

(under section 96 of the Code of Civil Procedure, 1908)

IN THE COURT OF THE VII ADDITIONAL SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT ; AT L.B. NAGAR ; HYDERABAD

O.S.No. 1549 OF 2007

**IN THE HON'BLE HIGH COURT OF JUDICATURE ; AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

A.S.No. 631 OF 2015

Between :

Sri Vinay Agarwal
S/o. Sri Vasudev, aged about 50 years
Occ : business, R/o. Flat No.403
Susheel Residency, Opp. CDR Hospital
Hyderguda, Hyderabad – 500 029.

...Appellant/Plaintiff

AND

1. M/s. Summit Builders
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, aged about 45 years, Occ : business
having office at 5-4-187/3, III Floor
M.G. Road, Secunderabad – 500 003.

2. Smt. Subhashini S. Gade
W/o. Sri Shriram Mogallapalli
aged about 38 years, residing
at C/o. Sri Satyanarayana Murty Bondada,
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari district – 533 437.

...Respondents/Defendants

The address of the appellant for the purpose of service of all notices, etc. is that of the counsel M/s. SHYAM S.AGRAWAL - 5099, Smt. BABITA AGRRAWAL - 7563, L.Praveen Kumar, L.Pradhan Kumar, K.Shashirekha, Naresh Singh and Har Rachan Kaur, Advocates, having office at # 101, R. K. Residency, lane beside Minerva Coffee Shop, 3-6-237/1, Street No.15, Himayatnagar, Hyderabad - 500 029, Phone : 91-40-2322-2700.

Contd..2

Being aggrieved by the judgment and decree of dismissal dated 15-10-2014 passed in O.S.No.1549/2007 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy district, the appellant prefers this Memorandum of first appeal on the following among other :

GROUNDS

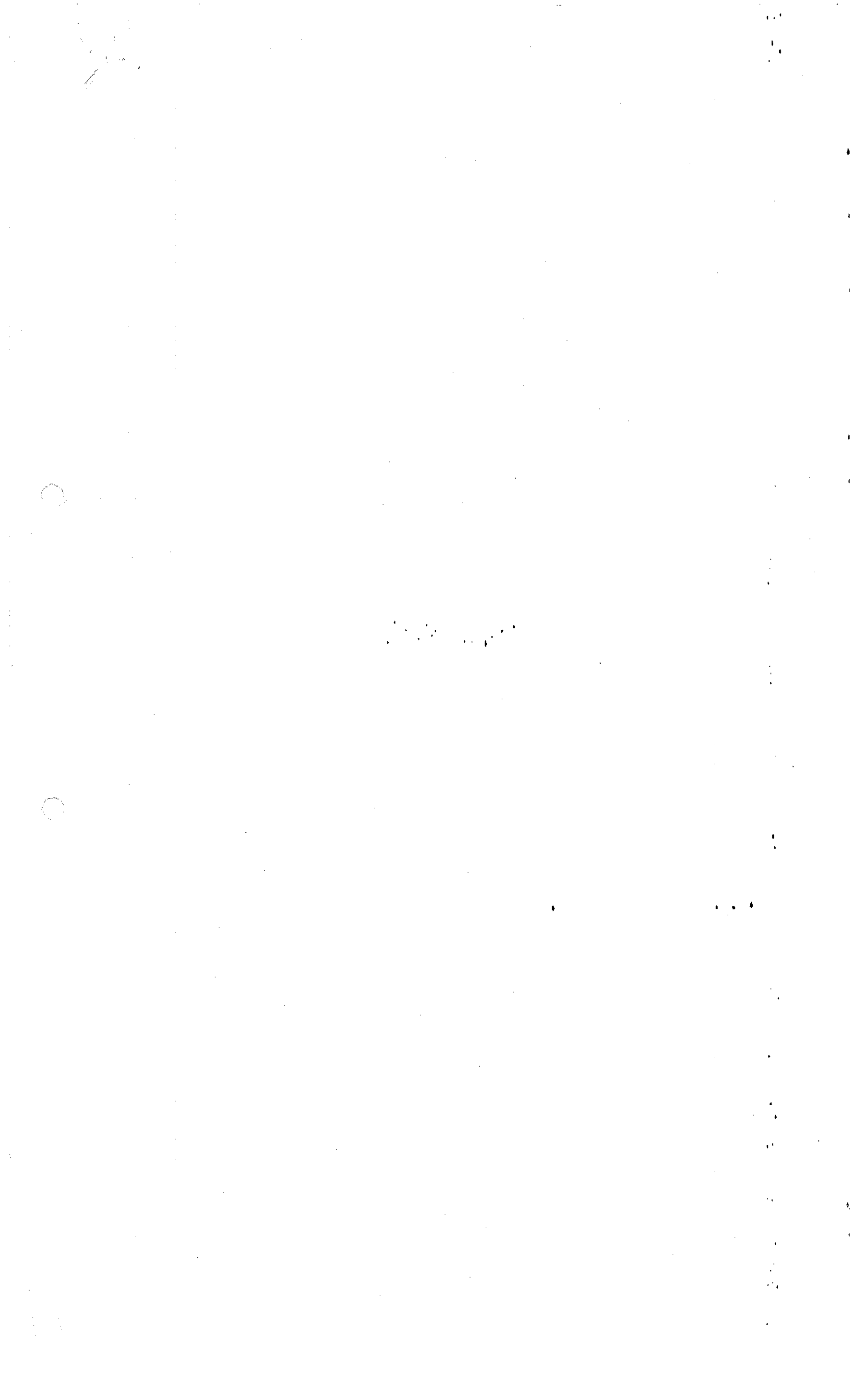
1. The judgment and decree of the court below in dismissing the suit of the appellant filed seeking the relief of specific performance of the agreement of sale dated 15-12-2005, is illegal, arbitrary, high handed, unreasonable and not based on proper appreciation of the facts of the case and the material on record.
2. The judgment of the court below has resulted in grave injustice to the appellant and has taken away his right of justice, thereby giving encouragement to the respondent No.1 to enter into contract for sale of immovable property, take money towards part payment of sale consideration promising to transfer the property and then not coming forward to fulfill their part of the contract and also of selling the property to others on higher rate.
3. The judgment of the court below refusing to grant decree of specific performance in respect of flat No. 401, on fourth floor in Silver Oak Apartments, forming part of Survey No.290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73, situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district, is incorrect and has resulted in miscarriage of justice.
4. The court below has utterly failed to draw adverse inference against the defendant No.1 in view of the defendant No.1 taking pleas, which are against the documentary evidence and also the attempts made by the witnesses of the defendants deposed as DWs.1 & 2, during their cross examination. The evidence of DWs.1 & 2 and more particularly their cross examination makes it crystal clear that the defendant No.1 acted in unfair manner and made attempt to mislead the Hon'ble Court having played fraud on the appellant.
5. The court below has utterly failed to appreciate contents of legal notice under Ex.A-12 and rejoinder notice under Ex.A-14, where under the plaintiff had expressed willingness to pay balance of sale consideration, but the defendant No.1 had contended the agreement to have been cancelled, which was not so admittedly. In view of the alleged cancellation under Ex.A-7 having already been withdrawn and waived of, the agreement was in force and offer of the plaintiff to make payment of balance sale consideration under legal notice and rejoinder of the notice of Exs.A-12 and A-14 clearly make out the case of the readiness and willingness of the plaintiff to pay the balance of sale consideration.

6. When the defendant stated to have terminated contract under Ex.A-7 dated 09-06-2006, but in view of the defendant No.1 subsequently receiving payment and more particularly under Ex.A-9 dated 11-07-2006 and also addressing letter under Ex.A-10 on 01-08-2006, the alleged cancellation under Ex.A-7 stood waived and withdrawn.
7. The very conduct on part of the defendant No.1 in selling the schedule property to the defendant No.2 without terminating/cancelling agreement of sale in favour of the plaintiff itself exposes the mischief on their part and strengthens the case of the plaintiff that in view of escalation of prices, the defendant No.1 did not honour the commitment/contract and to have illegal and unlawful gain, they sold the flat to defendant No.2. In fact, by the date of issuing reply notices under Ex.A-13 and A-15, the defendant No.1 had already sold the schedule property to the defendant No.2, but the same was suppressed and was not disclosed, which aspect strengthens further mischief on part of the defendant No.1.
8. The observation of the court below and extraction of the schedule of payment under para No.11 of the judgment is of no consequence and incorrect, as admittedly, the defendant No.1 though issued letter of cancellation complaining non adherence thereto, but later accepted payment and admittedly deviated from said schedule whereby giving consent to the plaintiff to make payment as per the convenience and hence all the observations and the findings of the court below in that regard are prima facie illegal.
9. The court below has also not appreciated that originally the plaintiff had plan to obtain housing loan for purchase of schedule property, but later as he could not get the same, he planned to pay it on his own and accordingly he made payments deviating from the schedule, which was duly accepted by the defendant No.1 and hence it is clear that the plaintiff was ready and willing to perform his part of the contract.
10. The court below has grossly erred in law in attributing wrongs to the appellant instead of appreciating truth in his case, which is very clear from the record as well as the evidence.
11. The court below ought to have seen that the appellant is a businessman and does not know the technicalities relating to execution of the agreement and other aspects thereof and also other formalities to be completed in relation thereto and therefore even if there were any discrepancies in his approach, the same cannot wipe of the contract.
12. From the judgment, it is clear that the court below proceeded with the matter with pre-determination to dismiss the suit. Though the defendant No.1 admitted the execution of contract, transaction of agreement of sale, receipt of part payment of sale consideration, etc., which are sufficient to decree the suit in favour of the appellant, but court below has gone to the extent of attributing wrongs to the appellant and caused harm.

13. The court below has overlooked and ignored the very admitted fact of receipt of part payment of sale consideration by the respondent No.1 in order to dismiss the suit.
14. The very conduct on the part of the court below in not highlighting the admissions made by the defence witnesses is sufficient to come to the conclusion that the court below was determined to dismiss the suit and in the process, on its own it went on searching for the defects if any in the suit and on the part of the appellant.
15. Another observation of the court below that the plaintiff has not placed any material to show his ready and willingness or capacity to pay the balance of sale consideration is also the result of pre-determination to dismiss the suit. Numerous judicial precedents have laid down clear law that the statement of the plaintiff in that regard is sufficient to say that the plaintiff has been ready and willing to fulfill his part of the contract.
16. The court below has passed the judgment in an unusual manner and the findings thereof are not heard of nor expected of from any judicial authority.
17. It appears the court below has passed the judgment in a hurried, mechanical and predetermined manner and for that reason, it has committed grave errors.
18. The judgment of the court below is not tenable in any view of law.
19. The other grounds will be urged at the time of final hearing.
20. The appellant values the present first appeal for the purpose of jurisdiction and court fee as in the suit at Rs.5,525/- under section 49 and the ad-voluerum and proper court fee of Rs. 8337/- is paid under article 1 (b) & (c) of Schedule I of the Andhra Pradesh Court fees and Suits Valuation Act, 1956, which is sufficient.
21. It is therefore prayed that this Hon'ble court may be pleased to call for the records in O.S.No.1549/2007 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy district, examine the same for the purpose of considering the correctness, legality and propriety of the judgment dated 15-10-2014, allow the appeal and consequently the suit of the appellant with costs in the interest of justice and grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

Hyderabad
Date : 03-07-2015

COUNSEL FOR THE APPELLANT



RANGA REDDY DISTRICT
HIGH COURT OF JUDICATURE; HYDERABAD
FOR THE STATE OF TELANGANA AND THE
STATE OF ANDHRA PRADESH

A.S.No. OF 2015

Against

O.S.No. 1549 OF 2007

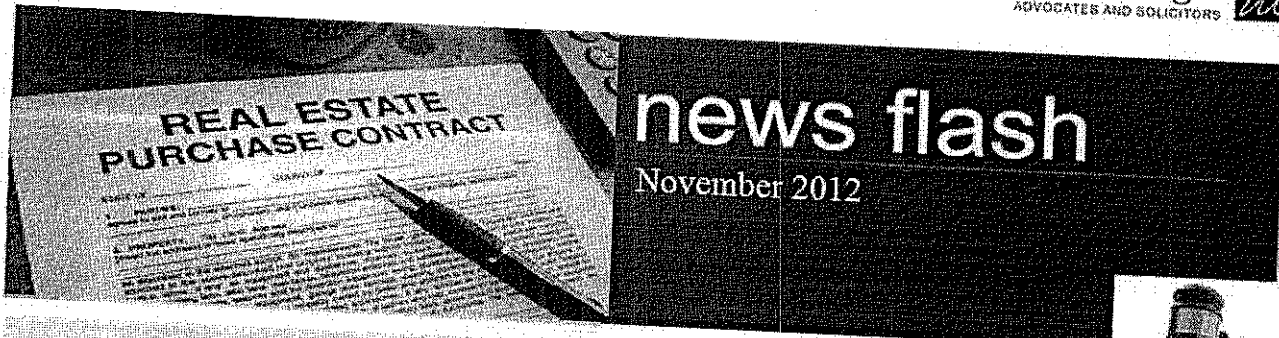
(On the file of the VIII Additional Senior Civil Judge,
Ranga Reddy District, L.B. Nagar)

GROUND'S OF FIRST APPEAL

FILED BY :

M/s. SHYAM S.AGRAWAL - 5099
Smt. BABITA AGRAWAL - 7563
L. Praveen Kumar
L. Pradhan Kumar
K.Shashirekha
Naresh Singh
Har Rachan Kaur

COUNSEL FOR THE APPELLANT



PROPERTY BUYER CAN LOSE EARNEST MONEY

Supreme Court Ruling

The Hon'ble Supreme Court of India has recently in the case of *Satish Batra Vs. Sudhir Rawal* held that the earnest money given by the purchaser to the seller towards purchase of an immovable property can be forfeited by the seller if the transaction entered between them has not been completed due to failure or fault of the purchaser.

Brief facts

Satish Batra ("Purchaser") had entered into an Agreement for Sale ("Agreement") with Sudhir Rawal ("Seller") for purchase of an immovable property in Delhi for a consideration of Rs. 70,00,000/-. While entering into the Agreement, the Purchaser paid Rs. 7,00,000/- ("Earnest Money") to the Seller as a token amount. The balance amount of Rs. 63,00,000/- was to be paid within 3 months, pursuant to which parties had agreed to enter into a sale deed for absolute transfer of the property in favour of the purchaser. The Purchaser however failed to pay the balance amount of Rs. 63,00,000/- in terms of the Agreement. The Agreement entitled the Seller to forfeit the Earnest Money if the transaction was not completed on account of fault or failure by the Purchaser to pay the balance amount within the prescribed time. Accordingly, the Seller terminated the Agreement and forfeited the Earnest Money.

Being aggrieved with the forfeiture of the Earnest Money by the Seller, the Purchaser approached the civil court for recovery of the Earnest Money. The civil court held that the Seller has a right to forfeit the Earnest Money if the transaction has not been completed due to fault of the Purchaser. Thereafter, the Purchaser filed an appeal against the order of the trial court before the Hon'ble High Court of Delhi. In the appeal, the Delhi High Court relying on the judgment of *Fateh Chand v. Balkishan Dass* held that the seller is entitled to forfeit only a nominal amount and not the entire amount of Earnest Money.

The Seller being aggrieved by the order of the Delhi High Court approached the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India relying on various judgments stated that to justify the forfeiture of advance money being part of 'earnest money' the terms of the contract/agreement for sale should be clear and explicit. Earnest money is paid or given at the time when the contract is entered into and as a pledge for its due performance by the depositor, which is to be forfeited in case of non-performance by the depositor. Accordingly, the Supreme Court held that the Seller was justified in forfeiting the Earnest Money as per the Agreement, since the Earnest Money was primarily a security for due performance of the Agreement.

contd..

ALMT Legal

Important Observations of the Court:

The earnest money (irrespective of the amount) paid by a purchaser of an immovable property as a guarantee for due performance of the contract can be forfeited by the seller, if the former fails to pay the balance amount. However, if the payment is made only towards part payment of consideration and not intended as earnest money, then such an amount cannot be forfeited.

Disclaimer

This news flash has been written for the general interest of our clients and professional colleagues and is subject to change. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this news flash.

For further clarification and details on the above circular, you may write to the Team, comprising of Hitesh Jain, Senior Partner at hjain@almtlegal.com, Vaishakh Kapadia, Partner at vkapadia@almtlegal.com, Alpesh Parekh, Senior Associate aparekh@almtlegal.com, Murtuza Kachwalla, Associate at mkachwalla@almtlegal.com, Karen Contractor, Associate at kcontractor@almtlegal.com.

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O.S. NO. 1549/07

~~12.5.08~~

Next hearing is on 19th July 2011

25/4/12

27/6/12

7/8/12

16/8/12

28/8/12

21/9/12

26/9/12

29/11/12

5/12/12

hearing on P.A
order in (Reserved for order) 12

SOA - Buyer Info Table

Block No	A 401	Sold	Yes	Booking Date	09-Oct-05
Agr Executed	<input type="checkbox"/>	Agr Date		Area	725
Parking	Scooter	Booked by	Jagdish	Pmt. Scheme	HL
Buyer Name	Vinay Agarwal			Phone	55661766
Address	403, Susheel Residency, Opp.CDR Hospital, Hyerguda, Hyderabad.				
Occupation	Business	Sale Amt	540525		
Total Amt	540525	Other Amt	842	Receipts	100000
HL Req		HL App for		HL Released	0
HL From		App Made	<input type="checkbox"/>	HL Approved	<input type="checkbox"/> Pre HL Info <input type="checkbox"/>
NOC / ORC	<input type="checkbox"/>	Doc Complete	<input type="checkbox"/>	Reg Done	<input type="checkbox"/>
Payments Terms		Sale Completed	<input type="checkbox"/>	HL Release	<input type="checkbox"/>

Date	Description	Amount	Cheque No	Paid	PDC	PDC Dt.	Exp date
10-Sep-05	Booking Amount	10000	264914	<input checked="" type="checkbox"/>	<input type="checkbox"/>	03-Dec-05	
09-Oct-05	1st Installment	50000	619352, 691784	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
01-Dec-05	2nd Installment	96105	691784 (Rs.56105)	<input type="checkbox"/>	<input type="checkbox"/>		
01-Apr-06	3rd Installment	96105		<input type="checkbox"/>	<input type="checkbox"/>		
01-Jul-06	4th Installment	96105		<input type="checkbox"/>	<input type="checkbox"/>		
01-Oct-06	5th Installment	96105		<input type="checkbox"/>	<input type="checkbox"/>		
31-Dec-06	6th Installment	96105		<input type="checkbox"/>	<input type="checkbox"/>		

Other Payments

31-Mar-06	Service Tax	842	<input type="checkbox"/>	<input type="checkbox"/>
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Receipts

Date	Towards	Amount	Cheque No	Cleared	Receipt No
02-Dec-05	Booking Amount	10000	264914	<input checked="" type="checkbox"/>	
03-Mar-06	Part of 1st Installment	15000	619352	<input checked="" type="checkbox"/>	
13-Jul-06	Payment Received	75000	691784	<input checked="" type="checkbox"/>	1262

Remarks

Date	Remarks	Taken By	Work Done
12-Sep-05	1. Booked under PPT No-109 2. Standard 3. Single Phase 4. Discount Rs.50/- ie 36250/-	Jagdish	<input checked="" type="checkbox"/>
08-Dec-05	1. City Bank loan of Rs. 675000/- sanctioned 2. 25000/- cheque ready 3. Expected on 09/12/05	Soham Mod	<input checked="" type="checkbox"/>
15-Dec-05	5.00Lacs HL approved by Citi Bank, Differences will pay on 16/12/05.	Soham Mod	<input checked="" type="checkbox"/>
05-Jan-06	HL approved. Registration on 16/1/06.	Soham Mod	<input checked="" type="checkbox"/>
29-Mar-06	Mr. Vijay Agarwal is gone out of station he will be back after a week.	Rani	<input checked="" type="checkbox"/>

Thursday, July 13, 2006

*Booking cancelled
Amount for total
7/9/06*

<u>19-Apr-06</u>	3rd Income tax return is due. HL from DHFL	<u>Soham</u>	<input checked="" type="checkbox"/>
<u>03-May-0</u>	Send reminder notice	<u>Jagdish</u>	<input checked="" type="checkbox"/>
<u>08-Jun-06</u>	Send cancellation notice. Cancel from database and return file to me.	<u>Soham</u>	<input checked="" type="checkbox"/>
<u>13-Jul-06</u>	Soham sir asked to re-enter the booking form.	<u>Ramana</u>	<input checked="" type="checkbox"/>

Cross-Examination:- D1 is a builder. Carrying on the business of apartments and independent houses. The name of the present project is Silver Oaks. I have not signed any booking form before I entered agreement with D1. I know all the contents of ExA2. It is signed by myself and Dw1. As per ExA.2 the total cost of the project is Rs.5,40,525/-. As per terms of ExA2 I was permitted to a sale consideration of the plot in six installments mentioned in clause -IV of ExA2. After I made second payment of Rs.15,000/- I have not made any other payments till 13-07-2006. It is true D1 issued Ex.A6 dated 05-05-2006 demanding me to pay the installments as per terms of Ex.A2. It is true even after receipt of ExA6 Notice I have not paid total installments, instead I paid Rs.75,000/- on 13-07-2006. The witnesses adds that in pursuance of discussion which took place between himself and representative of D1 he paid Rs.75,000/- only. After that I have not paid any amount of money to the builder. It is true under ExA10 I was apprised by D1 that the construction of the plot was completed. I have not made any other payment subsequent to ExA10 as D1 was delaying process. After receipt of ExA10 letter from D1 I went to project site and I found construction of all apartments of silver oaks was completed in all respects. I had been approaching D1 from August 2006 to February, 2007 offering to pay balance sale consideration. It is true as per Clause-VI of ExA2 if the installments are not paid regularly for the agreement (ExA2) stand canceled. It is not true to say that D1 informed me about cancellation of exA2 due to my failure in paying installments. It is true D1 sent a letter under ExA7 on 09-06-2006 intimating cancellation of ExA2 Agreement.

Even after I received ExA7 letter I have not paid total balance consideration of Rs.1,80,000/- and odd but I chose to pay Rs.75,000/- only. It is true in ExA8 my reply to ExA7 I mentioned that there was delay in process of bank in sanctioning the loan as such I could not pay total balance sale consideration of Rs.1,80,000/- and odd. and I under took to pay the balance sale consideration by 05-07-2006 in lumpsum. It is not true to say that entire default is on my part in paying sale consideration of the flat and that there is no any default or delay on the part of D1. I know about the contents of class VIII of ExA2. It is not true to say that I invented the theory of alleged discussion between myself and representative of D1 for the first time in support of my version. It is further not true to say that no such discussion took place between myself and any representative of D1. I was not aware that D1 sold away the suit flat to D2 by the date I issued ExA12 notice. I do not remember whether any clause of ExA2 gives authority to D1 to sell away the flat in case of my default after cancellation of ExA2 agreement. I purchase flats per investment purpose.

Cross-examination: D1 is a builder. Carrying on the business of apartments and independent houses. The name of the present project is Silver Oaks. I have not signed any booking form before I entered agreement with D1. I know all the contents of ExA2. It is signed by myself and Dwl. As per ExA2 the total cost of the project is Rs.5,40,525/-. As per terms of ExA2 I was permitted to a sale consideration of the plot in six installments mentioned in clause -IV of ExA2. After I made second payment of Rs.15,000/- I have not made any other payments till 13-07-2006. It is true D1 issued ExA6 dated 05-05-2006 demanding me to pay the installments as per terms of ExA2. It is true even after receipt of ExA6 Notice I have not paid total installments, instead I paid Rs.75,000/- on 13-07-2006. The witnesses add that in pursuance of discussion which took place between himself and representative of D1 he paid Rs.75,000/- only. After that I have not paid any amount of money to the builder. It is true under ExA10 I was apprised by D1 that the construction of the plot was completed. I have not made any other payment subsequent to ExA10 as D1 was delaying process. After receipt of ExA10 letter from D1 I went to project site and I found construction of all apartments of silver oaks was completed in all respects. I had been approaching D1 from August 2006 to February, 2007 offering to pay balance sale consideration. It is true as per Clause-VI of ExA2 if the installments are not paid regularly for the agreement (ExA2) stand canceled. It is not true to say that D1 informed me about cancellation of exA2 due to my failure in paying installments. It is true D1 sent a letter under ExA7 on 09-06-2006 intimating cancellation of ExA2 Agreement.

Even after I received ExA7 letter I have not paid total balance consideration of Rs.1,80,000/- and odd but I chose to pay Rs.75,000/- only. It is true in ExA8 my reply to ExA7 I mentioned that there was delay in process of bank in sanctioning the loan as such I could not pay total balance sale consideration of Rs.1,80,000/- and odd. and I under took to pay the balance sale consideration by 05-07-2006 in lumpsum. It is not true to say that entire default is on my part in paying sale consideration of the flat and that there is no any default or delay on the part of D1. I know about the contents of class VIII of ExA2. It is not true to say that I invented the theory of alleged discussion between myself and representative of D1 for the first time and in support on my version. It is further not true to say that no such discussion took place between myself and any representative of D1. I was not aware that D1 sold away the suit flat to D2 by the date I issued ExA12 notice. I do not remember whether any clause of ExA2 gives authority to D1 to sell away the flat in case of my default after cancellation of ExA2 agreement. I purchase flats per investment purpose.

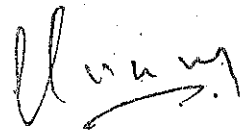
OS. 1549 of 2007

FN-1: Date: 03-04-2013.

Witness is Present and he is sworn for the purpose of Cross - Examination:-

Cross - Examination by counsel for D2 :- I filed this suit seeking specific performance of contract. I do not remember the boundaries of suit schedule flat. It is true D2 is no party to ExA2. No paper publication was given subsequent to ExA2 in respect of the purchase transaction of Flat. I have paid all installments of Payments to D1 regularly. It is not true to say that I have not pad all installments of sale consideration and that I became defaulter. To my remembrance I filed this suit in the year 2007. subsequent to I filed this suit I came to know that D1 sold the suit schedule flat. I do not remembered the exact date when I filed this suit. As per ExA18 D2 purchased the suit schedule flat on 31-01-2007. As per record of this case I filed this suit on 03-07-2012. It is not true to say that as I became defaulter in paying installments, D1 sold the suit schedule flat to D2. It is not true to say that D2 is a bonafide purchased and that I colluded with D1 to file this suit. It is not true to say that I am not entitle to seek any relief of specific performance of contract.

Re-Examination reported NIL.



Typed to my dictation in the open Court, read over and explained / interpreted to the witness, admitted by him / her to be correct.

DEPOSITION OF WITNESS

IN THE COURT OF THE VIII ADDL. SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT AT L.B. NAGAR, HYDERABAD.

OS.1549 of 2007

Witness No.: PW-2

Name of the Witness: R.Ravichander

S/o.R.K Rao

Age: 42 yrs

Occ: Service

R/o.Badangpet

Date: 22-04-2013

Oath is administered By Sri. M. Venkata Ramana, B. Com., B.L.,
VIII Addl. Senior Civil Judge in accordance with the provisions
Oath Act 44 of 1969.

PW2- present and he is sworn, he stated that he know all the
contents of his chief examination affidavit.

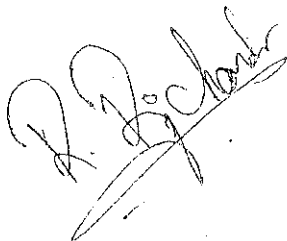
Cross-Examination:- the total cost of the flat which was prosed to be purchased by plaintiff is Rs.4,00,000/-. I do not know about the agreed schedule for the payment of the sale consideration of the flat. The negotiation took place between plaintiff and representative of D1. I was present on one or two occasions when negotiations took place between plaintiff and representative of D1. In my present plaintiff delivered cheque for Rs.75,000/- to the representative of D1 towards part of the sale consideration. To my knowledge plaintiff paid two amounts i.e R.10,00/- and 5,000/- to the representative of D1. I do not know whether the plaintiff paid installment of sale consideration regularly. Plaintiff told met that he signed booking form. No agreement were entered into by plaintiff and D1 are his representative in my presence. I have no knowledge about term an conditions for the purchase of flat. I visited the suit schedule flat. When it was under construction. I have knowledge about making application by plaintiff with ICICI bank for house loan and sanctioning of said



loan. It is not true to say that the plaintiff buys and sells flats for getting profits. I have not visited suit schedule flat after its construction was completed. I have not seen Agreement between plaintiff and D1 or any other connected documents. The plaintiff filed this suit seeking for specific performance of contract.

Cross-Examination by counsel for D2. I do not know boundaries of suit schedule flat. This suit is filed in the year 2007. I do not know whether the plaintiff paid sale consideration duly. I do not know whether plaintiff paid entire sale consideration to D1 or not. I can not rule out the suggestion for counsel for D2 that as plaintiff fail to pay installment regularly he is not entitle to seek any relief against D2. It is not true to say that I do not know any thing about facts of this suit and that I a deposing false to suit the version of plaintiff as he is my friend.

Re-Examination reported NIL.

A handwritten signature in black ink, appearing to read "R. D. Chandra", is written over a horizontal line. The signature is cursive and somewhat stylized.

IN THE COURT OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS ; AT L.B.NAGAR ; HYDERABAD

O.S.No. 1549 OF 2007

Between :

Sri Vinay Agarwal

...Plaintiff

AND

M/s. Summit Builders and another


...Defendants

EVIDENCE AFFIDAVIT OF THE Sri R. RAVI CHANDER AS P.W.-2

I, R. Ravi Chander, S/o. late Sri R.K. Rao, aged about 42 years, Occ : Service, R/o.20-64, Sri Lakshmi Enclave, Badangpet, Saroornagar, Ranga Reddy district, do hereby solemnly affirm and sincerely state on oath as follows :

1. I am the third party herein and I am deposing the facts known to me.
2. I submit that I know the plaintiff since 2001 in know the plaintiff, and bearing the close family friend, the plaintiff entered into agreement with the defendant No.1 for purchase of flat in "Silver Oak" apartments, situated at Cherlapally village, Ghatkesar mandal, Ranga Reddy district. I was present at the time of negotiation and the sale consideration was fixed at Rs.649/- per square feet.
3. I further submit that the plaintiff paid an amount of Rs.75,000/- through cheque in July 2006, to the representative of the defendant No.1 at the house of the plaintiff and I was present at that time also, having gone to the plaintiffs house, I know that after entering into the agreement the plaintiff had obtained loan from M/s. ICICI bank for purchase flat., but the defendant No.1 sold it to defendant No.2 to have illegal gains.
4. Hence this affidavit.

Sworn & signed before me on this the
15th day of April, 2012 at Hyderabad.


DEPONENT



ADVOCATE-HYDERABAD

Identified by Sri Shyam S.Agrawal, Advocate

IN THE COURT OF THE VIII ADDITIONAL;
SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS ; AT L.B.NAGAR

O.S.No. 1549 OF 2007

Between :

Sri Vinay Agarwal ...Plaintiff

AND

M/s. Summit Builders & another ...Defendants

EVIDENCE AFFIDAVIT OF THE Sri R. RAVI
CHANDER AS P.W.-2

Filed on : 15-04-2013

Filed by :

M/s. SHYAM S.AGRAWAL

L.Praveen Kumar

L.Pradhan Kumar

K.Shashirekha

Naresh Singli

Har Rachan Kaur

COUNSEL FOR THE PLAINTIFF

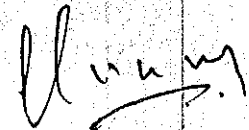
OS. 1549 of 2007

FW-1; Date: 03-04-2013.

Witness is Present and he is sworn for the purpose of Cross - Examination:-

Cross - Examination by counsel for D2 :- I filed this suit seeking specific performance of contract. I do not remember the boundaries of suit schedule flat. It is true D2 is no party to ExA2. No paper publication was given subsequent to ExA2 in respect of the purchase transaction of Flat. I have paid all installments of Payments to D1 regularly. It is not true to say that I have not paid all installments of sale consideration and that I became defaulter. To my remembrance I filed this suit in the year 2007. subsequent to I filed this suit I came to know that D1 sold the suit schedule flat. I do not remembered the exact date when I filed this suit. As per ExA18 D2 purchased the suit schedule flat on 31-01-2007. As per record of this case I filed this suit on 03-07-2012. It is not true to say that as I became defaulter in paying installments, D1 sold the suit schedule flat to D2. It is not true to say that D2 is a bonafide purchased and that I colluded with D1 to file this suit. It is not true to say that I am not entitle to seek any relief of specific performance of contract.

Re-Examination reported NIL.



Typed to my dictation in the open Court, read over and explained / interpreted to the witness, admitted by him / her to be correct.

Points:

1. Does he have an own house ?
2. Did he intend to stay in the flat ?
3. Did he buy the flat for self use or investment purpose ?
4. Did he expect substantial profit from the investment ?
5. What is his loss in monetary terms in not getting the said flat ?

DEPOSITION OF WITNESS

IN THE COURT OF THE VIII ADDL SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT AT L.B. NAGAR, HYDERABAD.

OS.1549 of 2007

Witness No.: PW-2

Name of the Witness: R.Ravichandler

S/o.R.K Rao

Age: 42 yrs

Occ: Service

R/o.Badangpet

Date: 22-04-2013

Oath is administered By Sri. M. Venkata Ramana, B. Com., B.L.,
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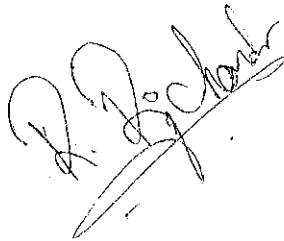
Cross-Examination:- the total cost of the flat which was prosed to
be purchased by plaintiff is Rs.4,20,000/-. I do not know about the
agreed schedule for the payment of the sale consideration of the
flat. The negotiation took place between plaintiff and
representative of DI. I was present on one or two occasions when
negotiations took place between plaintiff and representative of
DI. In my present plaintiff delivered cheque for Rs.75,000/- to
the representative of DI towards part of the sale consideration. To
my knowledge plaintiff paid two amounts i.e R.10,00/- and 5,000/-
to the representative of DI. I do not know whether the plaintiff
paid installment of sale consideration regularly. Plaintiff told
met that he signed booking form. No agreement were entered
into by plaintiff and DI are his representative in my presence. I
have no knowledge about term an conditions for the purchase of
flat. I visited the suit schedule flat. When it was under
construction. I have knowledge about making application by
plaintiff with ICICI bank for house loan and sanctioning of said



loan. It is not true to say that the plaintiff buys and sells flats for getting profits. I have not visited suit schedule flat after its construction was completed. I have not seen Agreement between plaintiff and D1 or any other connected documents. The plaintiff filed this suit seeking for specific performance of contract.

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IN THE COURT OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS : AT L.B.NAGAR ; HYDERABAD

O.S.No. 1549 OF 2007

Between :

Sri Vinay Agarwal

...Plaintiff

AND

M/s. Summit Builders and another

...Defendants

EVIDENCE AFFIDAVIT OF THE Sri R. RAVI CHANDER AS P.W.-2

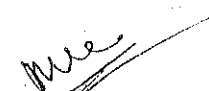
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1. I am the third party herein and I am deposing the facts known to me.
2. I submit that I know the plaintiff since 2001 in know the plaintiff, and bearing the close family friend, the plaintiff entered into agreement with the defendant No.1 for purchase of flat in "Silver Oak" apartments, situated at Cherlapally village, Ghatkesar mandal, Ranga Reddy district. I was present at the time of negotiation and the sale consideration was fixed at Rs.649/- per square feet.
3. I further submit that the plaintiff paid an amount of Rs.75,000/- through cheque in July 2006, to the representative of the defendant No.1 at the house of the plaintiff and I was present at that time also, having gone to the plaintiffs house, I know that after entering into the agreement the plaintiff had obtained loan from M/s. ICICI bank for purchase flat., but the defendant No.1 sold it to defendant No.2 to have illegal gains.
4. Hence this affidavit.

Sworn & signed before me on this the
15th day of April, 2012 at Hyderabad.

Identified by Sri Shyam S.Agrawal, Advocate


DEPONENT


ADVOCATE-HYDERABAD

IN THE COURT OF THE VIII ADDITIONAL,
SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS ; AT L.B.NAGAR

O.S.No. 1549 OF 2007

Between :

Sri Vinay Agarwal ...Plaintiff

AND

M/s. Summit Builders & another ...Defendants

EVIDENCE AFFIDAVIT OF THE Sri R. RAVI
CHANDER AS P.W.-2

Filed on : 15-04-2013

Filed by :

M/s. SHYAM S.AGRAWAL
L.Praveen Kumar
L.Pradhan Kumar
K.Shashirekha
Naresh Singh
Har Rachan Kaur

COUNSEL FOR THE PLAINTIFF

IN THE COURT OF THE VIII ADDL. SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT COURTS: AT L.B.NAGAR

O.S.No. 1549 of 2007

Between:

Vinay Agarwal ... Plaintiff

And

M/s.Summit Builders & Another ... Defendant

CHIEF EVIDENCE OF DW1

I, K.Krishna Prasad,S/o.Late K.Hanumantha Rao, aged 37 years, Venkatapuram, Secunderabad, do hereby solemnly affirm and state on oath as follows:

1. I am the Manager-Customer Relations of the Defendant No.1 and as such I am well acquainted with the facts deposed hereunder. I am authorized to file this affidavit on behalf of the defendant No1. I am filing the authorization letter along with this affidavit.
2. I submit that the plaintiff had approached the defendant No.1 for booking for himself a flat bearing No.401 in the complex known as Silver Oak Apartments, admeasuring 725 Sqft., situated at chelralapally village, Ghatkesar Mandal, RR Dist., being developed by the defendant No.1. The plaintiff was fully aware of the status of the project and the terms and conditions applicable for obtaining a flat. The plaintiff was also fully aware that he had to sign, which he did, a booking form which was a provisional booking and he did not gain any rights in respect of the property. The plaintiff signed the booking form on 10.9.2005 and issued a cheque for the first payment of Rs.10,000/-. The booking form contains the details of the further payments to be made by the plaintiff for completing the transaction. The booking form also has the terms and conditions on the reverse which form part of the agreement under the booking form. The terms under the agreement make it clear that the booking form is only provisional and an agreement had to be executed. The respondent has gone through all the terms and conditions contained in the booking form and it not now open to him to say that is unaware of the terms. It should also be mentioned that booking under the booking form is only provisional.
3. It is not correct to say that the transaction was completed under an oral agreement as claimed by the plaintiff. The defendant No.1 does

not have the practice of entering into any oral agreements. The booking form clearly stipulates the formalities to be completed in respect of the property including the schedule of payment. The plaintiff cannot therefore claim that he was ignorant as to the schedule of payments. After initial payment of Rs.10,000/- the plaintiff did not make any further payment until the letter addressed by the defendant. Even thereafter he has not complied with the requirements for completion of a valid contract. Therefore the defendant addressed a letter to the plaintiff cancelling the agreement and informing him of this development. Strangely the plaintiff had issued a reply with false and baseless allegations.

4. The Sale Deed dated 31.01.2007 in favour of Defendant No.2 was executed by the Defendant No.1, which is much before the filing of the suit and more over, there were no orders from this Hon'ble Court restraining the Defendant No.1 in the execution of the registered Sale Deed and there is absolutely no illegality. The notice given by the Plaintiff was suitably replied to by the Defendant No.1 through its counsel on 28.03.2007. The Plaintiff had miserably failed to stick to the payment schedule as agreed upon and no rights have accrued to him as he has not carried out his part of contract.

5. The prayer for cancellation of Registered Sale Deed dt.31.01.2007 is absolutely not tenable under Law as that would change the nature of the suit itself which is for specific performance of contract and more over, the Plaintiff has not paid the necessary court fee for seeking the cancellation of Registered Sale Deed. The above Sale Deed is not null and void and is binding on the Plaintiff.

It is therefore submitted that the plaintiff cannot seek the equitable relief of specific performance as he has relied on false averments suppressing all facts and not performing his part of the contract. The suit should be dismissed with costs.

L.B.NAGAR
DATE: 29.4.2013

DEPONENT

IN THE COURT OF THE VIII ADDL.
SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT COURTS:
AT L.B.NAGAR

O.S.No. 1549 of 2007

Between:

Vinay Agarwal
... Plaintiff

And

M/s.Summit Builders & Another
...Defendant

CHIEF EVIDENCE OF DW1

Filed on: 29.04.2013

FILED BY:

**SRI C.BALAGOPAL
ADVOCATE**

103, Suresh Harivillu Apartments,
Road No.11, West Marredpally,
Secunderabad.

DEFENDANT NO.1

IN THE COURT OF THE VIII ADDL. SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT COURTS: AT L.B.NAGAR

IA NO. OF 2013
IN
O.S.No. 1549 of 2007

Between:

M/s.Summit Builders & Another ... Petitioner/Defendant

And

Vinay Agarwal ... Respondent/Plaintiff

A F F I D A V I T

I, K.Krishna Prasad,S/o.Late K.Hanumantha Rao, aged 37 years, Venkatapuram, Secunderabad, do hereby solemnly affirm and state on oath as follows:

1. I am the Manager-Customer Relations of the Defendant No.1 and as such I am well acquainted with the facts deposed hereunder. I am authorized to file this affidavit on behalf of the defendant No1. I am filing the authorization letter along with this affidavit.
2. I submit that when the Petitioner herein filed its written statement in the main suit Authorisation letter could not be filed along with the written statement.
3. I submit that document could not filed due to oversight. The document is necessary for proper adjudication of the case.
4. It is therefore necessary that the document mentioned in the list of document should be received by this Hon'ble court and the same has to be marked as exhibit.

The Petitioner therefore prays that this Hon'ble court may be please to receive the document and mark the same as the defendant exhibit as otherwise the petitioner would be put to irreparable lose and hardship.

Sworn and signed on this

The 29th day of April'2013

DEPONENT

Advocate/Hyderabad

IN THE COURT OF THE VIII ADDL. SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT COURTS: AT L.B.NAGAR

IA NO. OF 2013
IN
O.S.No. 1549 of 2007

Between:

M/s.Summit Builders & Another ... Petitioner/Defendant

And

Vinay Agarwal ... Respondent/Plaintiff

A F F I D A V I T

I, K.Krishna Prasad,S/o.Late K.Hanumantha Rao, aged 37 years, Venkatapuram, Secunderabad, do hereby solemnly affirm and state on oath as follows:

1. I am the Manager-Customer Relations of the Defendant No.1 and as such I am well acquainted with the facts deposed hereunder. I am authorized to file this affidavit on behalf of the defendant No1. I am filing the authorization letter along with this affidavit.
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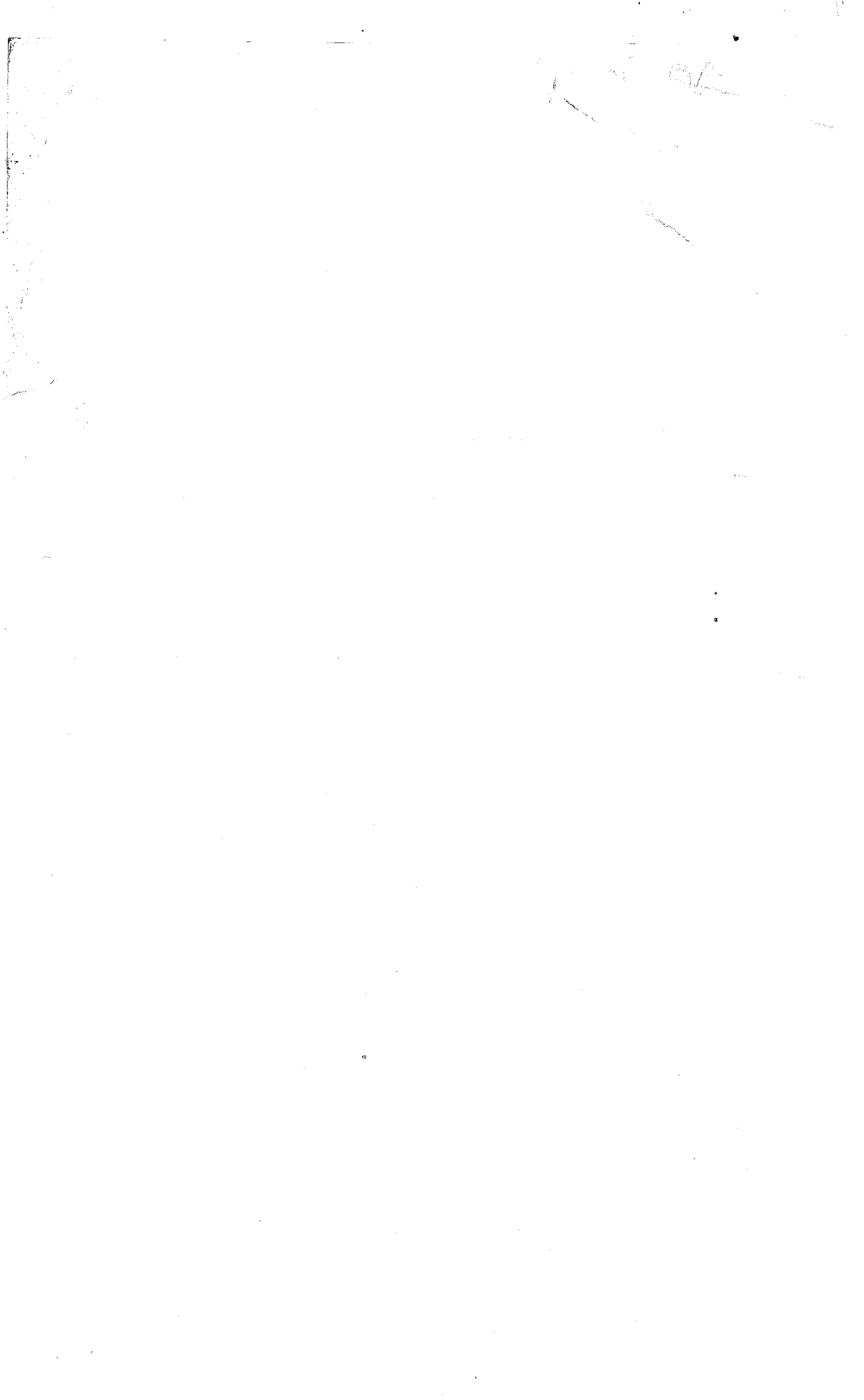
The Petitioner therefore prays that this Hon'ble court may be please to receive the document and mark the same as the defendant exhibit as otherwise the petitioner would be put to irreparable lose and hardship.

Sworn and signed on this

1st The 29th day of April'2013

DEPONENT

Advocate/Hyderabad



IN THE COURT OF THE VIII ADDL. SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT COURTS: AT L.B.NAGAR

IA NO. OF 2013
IN
O.S.No. 1549 of 2007

Between:

Summit Builders, Rep. by its Partner
Mr.Soham Modi, S/o.Sri Sathish Modi,
Aged 42 years, having its office at 5-4-187/3 & 4,
III Flor, Soham Mansion, M.G.Road,
Secunderabad .. PETITIONER/DEFENDANT No.1

And

Vinay Agarwal,S/o.Vasudev,
Aged 47 years,
R/o Plot No.403,Susheel Residency
Hyderguda, Hyderabad ... RESPONDENT/PLAINTIFF

Smt.Subhashini S.Gade,
W/o.Sri Ram Mogalapalli, aged 32 years
R/o.6-10-30/A,Raja Street, Peddrapuram,
East Godavari Dist., ... RESPONDENT/DEF No.2

PETITION FILED UNDER ORDER 8 RULE 1A(3) OF CPC

For the reasons stated in the accompanying affidavit, the
Petitioner prays that this Hon'ble court may be pleased to receive the
document which are being filed along with the list of documents in the
above suit and pass such order or orders as the court deems fit and
proper in the circumstances of this case.

Place:HYDERABAD

Date: 29-04-2013 COUNSEL FOR PETITIONER/DEFENDANT No.1

COUNSEL FOR DEFENDANT NO.1

103, Suresh Harivillu Apartments,
Road No.11, West Marredpally,
Secunderabad.

SRI C. BALAGOPAL
ADVOCATE

FILED BY:

Filed on: 29.04.2013

PETITION FILED UNDER ORDER
8 RULE 1A(3) OF CPC

M/s. Summit Builders & Another
... Defendant

And

Vinay Agarwal
... Plaintiff

Between:

O.S.No. 1549 of 2007

IN

IA NO. OF 2013

AT L.B.NAGAR

IN THE COURT OF THE VIII ADDL.
SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT COURTS:

o/c

SUMMIT BUILDERS

5-4-187/3&4, III Floor, M.G. Road, Secunderabad - 500 003

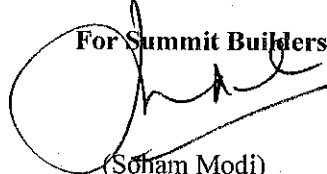
Ph : 66335551

TO WHOM SO EVER IT MAY CONCERN

We hereby authorize Mr. ^KM. Krishna Prasad, S/o. Late. K. Hanumanth Rao R/o. Venkatapuram, Alwal, Secunderabad who is our firm's Manager – Customer Relations to give an evidence before the Hon'ble VIII Senior Civil Judge, at R. R. Dist in the case of Vinay Agarwal Case No. 1549 of 2007.

Date: 26.04.2013.

Place: Secunderabad.

For Summit Builders

(Soham Modi)
Partner

SILVER OAK

Flat No./Plot No. 401 Date: 5/1/06

Name: Vinay Agarwal

Remarks: HC appeared. Reg. on 16/1/06.

By: Sriram Nair Work Completed:

SILVER OAK

Flat No./Plot No. 401 Date: 19/4/06

Name: Vinay Agarwal

Remarks: 3rd IT return is due. HC

from DHFC.

By: Sriram Work Completed:

SILVER OAK

Flat No./Plot No. 401 Date: 29/3/06

Name: Vinay Agarwal

Remarks: HC appeared. Reg. on 16/1/06.

is gone out of station. He will be

back after a week.

By: [Signature] Work Completed:

SILVER OAK

Flat No./Plot No. 4401 Date: 3/5

Name: Vinay Agarwal

Remarks: Send Reminders notes

[Signature]

By: [Signature] Work Completed:

Date: 22-08-2013.

Witness is present and he is sworn for the purpose of Cross-Examination.

Cross-Examination by Counsel for Plaintiff:- I completed by B.Sc

Degree. I can read and write English. I have not given Door No or street

of my address in my chief examination affidavit. It is true I am not the

persons who signed vakalath and written statement filed by D1. I am

not the persons who gave instructions for the preparation of written

statements filed by D1. My chief examination affidavit is prepared

basing on contents of written statement filed by D1. I have been

working in D1 firm since the year 2008. The name of the partner of D1

firm is Soham Modi. I do not know the names of remaining two other

partners of D1 firm. I have not happened to see the partnership deed of

D1 firm. I have not filed any documents to show that I am working as

Manager, (Customer relations) of D1 firm. It is not true to say that ExB1

is invalid one. It is not true to say that I have no any authority to give

evidence on behalf of D1 firm. I am giving evidence basing on all the

documents and records relating this suit available in our office. I have

not personal with regard to transaction took place in the year 2005. I

never interacted with the plaintiff at any point of time. I have gone

through the documents relating to this suit such as Booking form, 2.

Agreement of sale, 3, Corresponding letters four of five in number. All

the above referred documents are available in our office. I have not filed

any one of the documents referred supra in this suit. It is not true to say

that there are not any documents referred by me supra in our firm and

that I have not seen them at any point of time. It is not true to say that

there is no any booking form as stated by me. It is not true to say that no

such booking form is given to the plaintiff at any point of time. I have

gone through the plaint and documents filed by the plaintiff. ExA1

to A18 are relating to us. ExA3 shows all particulars of the contract

between plaintiff and D1. ExA2 is concluded contract between plaintiff

and D1. It is not true to say that D1 has not authority to cancel ExA2

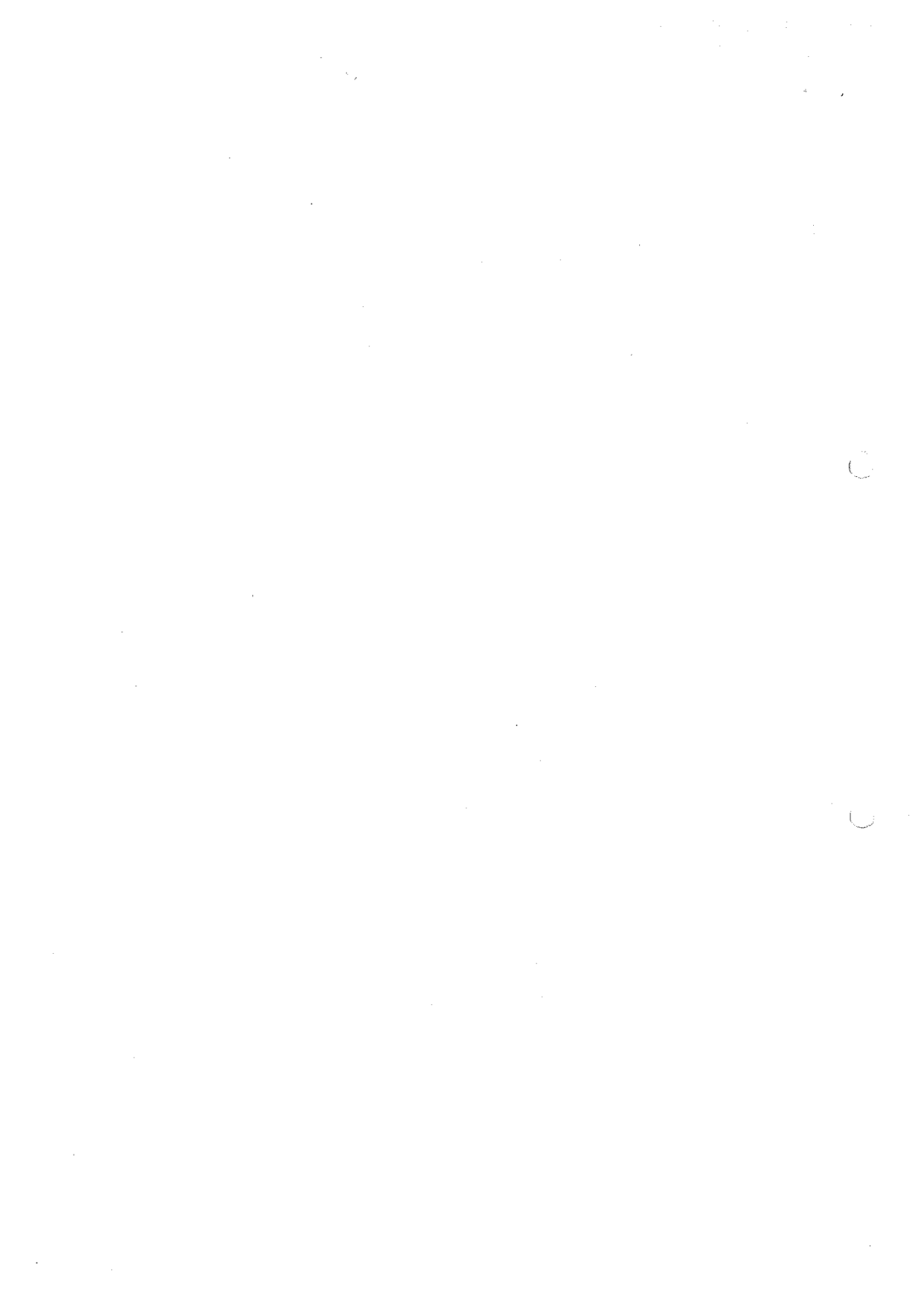
unilaterally. It is true plaintiff made all the payments referred in the

plaint to D1 firm. It is true D firm received all the money paid by

plaintiff voluntarily. D1 is bound by terms and conditions of ExA2. The cheque mentioned in ExA4 was encashed by D1 firm. We admitted the contract between plaintiff and D1 under ExA2 through ExA5. We received Original of ExA6 letter from the plaintiff so also with ExA8. We received original ExA8 subsequent to issuance of ExA7. We encashed the cheque mentioned in ExA9. It is true ExA9 is subsequent to ExA7. It is true we addressed ExA10 to the plaintiff asking him to visit the site to suggest changes in suit schedule property. We gave details of the payments for any changes. It is true ExA11 plan (in two sheets) of suit schedule property was given by us. I do not know whether plaintiff made any suggestions for changes in the suit schedule Flat. After ExA10 we have not addressed any letter to the plaintiff till we received ExA12 notice. It is not true to say that plaintiff informed us that he was obtaining loan from the Bank for the purchase of th suit schedule Flat. It is true in under ExA8 plaintiff informed D1firm that he made application for housing loan and his application was under process. It is true subsequent to issuance of ExA7 we received money from plaintiff. It is true ExA7 was not acted up on. It is true under ExA12 plaintiff agreed to pay balance sale consideration to D1 firm. It is true it was not mentioned in ExA13 as to when the agreement was canceled as mentioned by us in in it. It is not true to say that the agreement of sale is not canceled and it is in force even till today. It is not true to say that we executed ExA18 during the subsistence of ExA2. The witness volunteers that due to failure of plaintiff in paying the sale consideration as per booking form the agreement is automatically canceled. The cannot say that date when ExA2 was canceled or stands canceled. We have not issued any notice to th plaintiff cancelling ExA2. It is not true to say that ExA18 is invalid and illegal document and that it is not binding on the plaintiff. We have not filed any Caveat Petition before the plaintiff filed this suit. It is Soham Modi who negotiated the plot purchased sale transaction with the plaintiff. I am not brought the file relating to this suit to the court to day. It is not true to say that d1 has not power to terminate ExA2. It is not true to say that in spite of the plaintiff approached D1 for several times agreeing to pay balance sale

consideration and asking to register the suit schedule plot in his favour we fail in doing so purposefully. If really plaintiff visited our office with regard to suit schedule Flat our office records we reveal the same. As per our office records plaintiff visited our office only on two occasions. He came to the office at the time of the signing booking form and at the time of execution of agreement. But I can not say the dates. The payment made by plaintiff were collected by our executing by visiting the house of plaintiff. Our office records reveal the visits made by our executive to the house of plaintiff. Our executive might have visited the house of plaintiff more that ten times. The letters return by plaintiff were received by DI firm through post. And we have entries in respect of the letters received from the plaintiff. It is not true to say that there are no any records for noting the visits made by plaintiff to our office or visits made by our executive to the house of plaintiff or letters received by our firm. It is not true to say that I am deposing false. It is not true to say that plaintiff is entitle for relief of specific performance of contract.

Re-Examination Reported NIL.



IN THE COURT OF THE VIII ADDL. SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT COURTS: AT L.B.NAGAR

O.S.No. 1549 of 2007

Between:

Vinay Agarwal

... Plaintiff

And

M/s.Summit Builders & Another

... Defendant

ADDITIONAL WRITTEN STATEMENT OF DEFENDANT No.1

The Defendant No.1 humbly submits as under:

1. With regard to Para No.17 A it is true that the as the Sale Deed dated 31.01.2007 in favour of Defendant No.2 was executed by the Defendant No.1, which is much before the filing of the suit and more over, there were no orders from this Hon'ble Court restraining the Defendant No.1 in the execution of the registered Sale Deed and there is absolutely no illegality. The notice given by the Plaintiff was suitably replied to by the Defendant No.1 through its counsel on 28.03.2007. The Plaintiff had miserably failed to stick to the payment schedule as agreed upon and no rights have accrued to him as he has not carried out his part of contract.

2. In reply to para No.23ii(a) the prayer for cancellation of Registered Sale Deed dt.31.01.2007 is absolutely not tenable under Law as that would change the nature of the suit itself which is for specific performance of contract and more over, the Plaintiff has not paid the necessary court fee for seeking the cancellation of Registered Sale Deed. It is not true to say that the above Sale Deed is null and void and not binding on the Plaintiff.

3 The Plaintiff has failed miserably in carrying out his part of contract i.e., making payments as per schedule agreed upon between the Plaintiff and Defendant No.1. The amendment is contrary to the earlier allegation. Therefore the Defendant No.1 is reserving the right to answer all such false allegations at the appropriate time, during the course of the trial.

L.B.NAGAR
DATE: 01.11.2012

For SUMMIT BUILDERS


Partner
DEFENDANT No.1

IN THE COURT OF THE VIII ADDL.
SENIOR CIVIL JUDGE
RANGA REDDY DISTRICT COURTS:
AT L.B.NAGAR

O.S.No. 1549 of 2007

Between:

Vinay Agarwal

...

Plaintiff

And

M/s.Summit Builders & Another
...Defendant

ADDITIONAL WRITTEN STATEMENT
OF DEFENDANT NO.1

Filed on: 01.11.2012

FILED BY:

SRI C.BALAGOPAL
ADVOCATE

103, Suresh Harivillu Apartments,
Road No.11, West Marredpally,
Secunderabad.

DEFENDANT NO.1

IN THE COURT OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS ; AT L.B.NAGAR ; HYDERABAD

O.S.No. 1549 OF 2007

Between :

Sri Vinay Agarwal
S/o. Sri Vasudev, aged 42 years
Occ : business, R/o. Flat No.403
Susheel Residency, Opp. CDR Hospital
Hyderguda, Hyderabad – 500 029.

...Plaintiff

AND

1. M/s. Summit Builders
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, aged 37 years, Occ : business
having office at 5-4-187/3, III Floor
M.G. Road, Secunderabad – 500 003.

2. Smt. Subhashini S. Gade
W/o. Sri Shriram Mogallapalli
aged about 30 years, residing
at C/o. Sri Satyanarayana Murty Bondada,
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari district – 533 437

...Defendants

(defendant No.2 impleaded as per order dated 19-03-2010, passed in I.A.No.755/2008)

SUIT FOR SPECIFIC PERFORMANCE OF THE AGREEMENT OF SALE
AMENDED PLAINT PRESENTED UNDER SECTION 26, ORDER VII RULE 1 OF CIVIL
PROCEDURE CODE, 1908

1. The description of the plaintiff is the same as given in the above cause title and his address for the purpose of service of all notices, etc. is that of the counsel M/s. SHYAM S.AGRAWAL, L.Praveen Kumar, L. Pradhan Kumar, K. Shashirekha, Naresh Singh and Santosh Singh, advocates, having office at # 101, R.K.Residency, lane beside Minerva Coffee Shop, 3-6-237/1, Street No.15, Himayatnagar, Hyderabad - 500 029, Phone : 91-40-2322-2700.

(Inserted as per order dated 27-09-2012, passed in I.A.No.1533/2012)

2. The description and the address of the defendant No.1 for the purpose of service of all summons, notices, etc., are the same as mentioned in the above cause title.

3. The plaintiff submits that the defendant No.1 is the owner and developer of "Silver Oak" apartments on the land forming part of survey No.290, situated at Cherlapally village, Ghatkesar mandal, Ranga Reddy district. For the purpose of selling the flats to prospective purchasers, the defendant advertised for the same. As the plaintiff was interested in the venture taken up by the defendant No.1 and intended to purchase a flat therein, the plaintiff approached the defendant No.1 in that regard. The defendant No.1 showed to the plaintiff the brochure relating the proposed apartment and the plaintiff selected flat No.401 on fourth floor admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved two wheeler parking space bearing No.73, hereinafter referred to as the 'suit flat'.

PLAINTIFF

4. The plaintiff further submits that after negotiations, the sale consideration was fixed at Rs.649/- per square feet and in view of the extent of the suit flat being 725 square feet, the total sale consideration of the suit flat was arrived to at Rs.4,70,525/-. Apart from the sale consideration, the plaintiff was asked to pay a sum of Rs.50,000/- towards the charges for the amenities, Rs.5,000/- towards parking and Rs.15,000/- towards water & electricity charges. The plaintiff paid to the defendant No.1 a sum of Rs.10,000/- through cheque No.123098, dated 08-09-2005 drawn on M/s. IDBI Bank, under receipt No.1017, towards earnest money and part payment of sale consideration, which was encashed by the defendant No.1 in conclusion of the agreement.
5. The plaintiff also submits that the suit flat is more clearly described in the schedule of property of the plaint given below. The terms of contract were subsequently reduced into writing under a formal agreement of sale entered into between the parties on 15-12-2005. The plaintiff paid additional sum of Rs.15,000/- to the defendant No.1 through cheque No.619352, dated 01-03-2006 drawn on M/s. HDFC Bank, towards further part payment of sale consideration, which was encashed by the defendant No.1. The defendant No.1 had also informed the plaintiff that they would intimate to the plaintiff the progress of construction of the complex and accordingly would also inform the plaintiff about the payment of balance of sale consideration to be made by him.
6. The plaintiff submits that he was waiting patiently for the letter of the defendant No.1 informing him about the status and progress of the complex and also about the amounts to be paid by him, but he did not receive any correspondence or communication from the defendant No.1 as told by the defendant No.1. When the plaintiff visited the office of the defendant No.1 enquiring about the progress of the complex, he was told that that it would take some more time for the project to be completed and that they would intimate him further details later. To the utter shock and surprise of the plaintiff, instead of the intimation letter, he received a letter from the defendant No.1 dated 05-05-2006 calling for payment of three installments within seven days of receipt of the notice and warned of forfeiture, if the plaintiff fails to pay the installments.
7. The plaintiff further submits that he sent a suitable reply dated 15-05-2006 to the letter of the defendant No.1 informing that he had not received any reminders earlier for payment as alleged in the said letter and informed the defendant that the plaintiff would pay the amount in lump sum immediately on the sanction of loan, which was delayed in view of change of status of income from salaried to self employed and will also complete the payments in lump sum after sanction of housing loan. On receiving the reply of the plaintiff, the defendant No.1 sent a cancellation notice dated 09-06-2006 to the plaintiff informing that the plaintiff did not adhere to the payment schedule, not paid the installments as promised and as such the agreement entered into between the parties stood cancelled and that the payments made by the plaintiff were forfeited. The defendant No.1 further stated that they were at liberty to allot the said flat to any intending purchaser.

8. The plaintiff also submits that after receiving the said cancellation notice, the plaintiff sent a reply letter dated 23-06-2006 informing that he has already informed through his reply letter dated 15-05-2006 that there was a delay in the processing of loan and all the pending installment amounts will be paid shortly and requested to bear for some time. Apart from that the plaintiff visited the office of the defendant No.1 in person and discussed with the defendant No.1. The defendant No.1 had stated that they had issued the cancellation notice only to ascertain whether the plaintiff was really interested in purchasing the flat or not. The defendant No.1 assured the plaintiff that his interest in the flat would be safeguarded and the plaintiff can make the payment as and when the loan is sanctioned to the plaintiff.
9. The plaintiff submits that as per the discussions held between him and the defendant No.1, the plaintiff paid a further amount of Rs.75,000/- through cheque No.691784, dated 11-07-2006, drawn on M/s. HDFC Bank and the same was acknowledged by the defendant No.1 vide their receipt No.11-07-2006 towards part payment of the sale consideration. As the defendant No.1 was satisfied with the payments made by the plaintiff, the defendant No.1 addressed a letter dated 01-08-2006 to the plaintiff, asking to visit the site between 01-08-2006 and 08-08-2007 to have a look at the flat for any additions or alterations to be done to the suit flat, otherwise, the flat will be completed as per the standard specifications shown in the model flat. The plaintiff suggested some changes to the flat, for that the defendant No.1 assured that he would make the necessary changes to the said flat and would intimate the plaintiff the date of execution of document.
10. The plaintiff further submits that the plaintiff waited patiently for a response from the defendant No.1 but to the shock of the plaintiff there was no such intimation from the defendant No.1 and when the plaintiff contacted the defendant No.1 in person there was no proper response from the defendant No.1 and he avoided to meet the plaintiff. Getting vexed with the attitude of the defendant No.1 and lost hope of response, the plaintiff got issued a legal notice dated 19-02-2007 to the defendant No.1 through his advocate calling upon the defendant No.1 to execute and register the sale deed in respect of the suit flat by receiving the balance amount of sale consideration at the time of registration of sale deed on any day, within 15 days from the receipt of the legal notice.
11. The plaintiff also submits that the notice was served on the defendant on 22-02-2007 as is evident from the postal acknowledgement. The defendant No.1 addressed a reply dated 22-02-2007 with all false and baseless allegations, taking the stand that the agreement stood cancelled. Though the defendant No.1 admitted the agreement of sale in favour of the plaintiff and the receipt of part payment of sale consideration made on different dates, he alleged that he had addressed another cancellation notice dated 09-08-2006 to the plaintiff.

PLAINTIFF

Contd..4

12. The plaintiff submits that he has not received any such cancellation notice from the defendant No.1 at any point of time except the one as stated above. In fact even if any such notice is given, the same cannot terminate the valid agreement of sale between the parties, under which the plaintiff has paid huge amount towards part payment of sale consideration under proper receipts. The plaintiff got issued a rejoinder notice on 12-03-2007 denying receipt of any cancellation notice and made it clear that the defendant No.1 cannot terminate the agreement unilaterally. The defendant No.1 got issued a reply notice on 28-03-2007 taking the same stand, which is false. It is pertinent to mention here that the defendant No.1 has lodged a caveat before the Hon'ble Court against the plaintiff, which proves the malafides on part of the defendant No.1.
13. The plaintiff further submits that having received money towards part payment of sale consideration and having agreed to execute and register the sale deed, the attitude and behavior of the defendant No.1 in not coming forward to fulfill his part of the contract prompted the plaintiff to suspect the bonafides on part of the defendant No.1. In fact, at the time of entering into the agreement, it was agreed between the parties that the defendant No.1 will inform the plaintiff about his readiness to execute and register the sale deed by receiving the balance of sale consideration after completion of the complex. The plaintiff has always been ready and willing to perform his part of the contract of making payment of balance of sale consideration and in fact on the promises of the defendant No.1, the plaintiff has already got sanctioned loan from the banker.
14. The plaintiff submits that the defendant No.1 has gone back his promises and failed to discharge the duty and burden cast upon him under the agreement. In fact the plaintiff is required to pay the loan instalments to the banker as the same has already been sanctioned. As stated above, the defendant No.1 has entered into the agreement by receiving money towards part payment of sale consideration from the plaintiff. Having agreed to sell the property to the plaintiff, having received the part payment of sale consideration, the defendant No.1 cannot go back the transaction nor does he have the right to terminate the same. As per the provisions of Law governing the contracts and properties, the defendant is bound to sell the property to the plaintiff by executing and registering the sale deed in his favour and he cannot part with it in favour of third party.
15. The plaintiff further submits that he has got every right to purchase the suit flat and get the sale deed executed and registered in his favour. Hence, the plaintiff is left with no other option but to approach this Hon'ble court for specific performance of the agreement of sale. The plaintiff has made efforts to convince the defendant No.1 and to settle the dispute amicably, but he has failed as the defendant No.1 is bent upon to cause harm to the plaintiff for illegal gains and make money in illegal manner. It would not be out of place to mention here that the defendant No.1 has gone back the promise demanding the plaintiff to enhance the sale consideration, which is not legal.

16. The plaintiff also submits that he has got money to pay the balance of sale consideration of Rs.4,40,525/- to the defendant No.1 as he has already got the loan sanctioned from the banker for the purpose of making payment of balance of sale consideration to the defendant No.1 in respect of the suit flat, payment of stamp duty, registration charges, etc. The plaintiff has always been ready and willing to perform his part of the contract. The plaintiff is ready to pay the balance of sale consideration and get the sale deed executed and registered in his favour. In a very illegal and highhanded manner, after entering to agreement of sale with the plaintiff and after receiving part of sale consideration, the defendant No.1 is trying to sell the suit flat to third parties, in order to cause harm to the plaintiff, which is not permissible in law.
17. The plaintiff submits that the agreement of the plaintiff is subsisting and it still holds good. From the facts of the case, it is very clear that the intention of the defendant No.1 in refusing to execute and register the sale deed in favour of the plaintiff is illegal and against all the morals also. The law of equity favours for sale of the property by the defendant No.1 to the plaintiff alone and the defendant No.1 has no exclusive and unilateral right to cancel or terminate the contract and forfeit the amount of part payment made by the plaintiff to him. It would not be out of place to mention here that the plaintiff has taken lot of pains in getting the housing loan sanctioned, for which he had got the site inspected and verified by a government registered valuer and submitted the valuation report to the banker, by spending good amounts.
- 17-A. **"The plaintiff submits that he has learnt that the defendant No.1 along with builder M/s. Sri Sai Builders sold the schedule property to the defendant No.2 under the sale deed dated 31-01-2007 registered as document No.1804/2007 of the Office of the Sub-Registrar, Uppal, Ranga Reddy district. However, in view of agreement between the plaintiff and the defendant No.1 being prior to the sale deed and it being in subsistence, the sale deed in favour of the defendant No.2 is illegal and liable to be cancelled".**

(Para No.17-A, inserted as per order dated 27-09-2012, in I.A. 1533/2012)

18. The cause of action for the present suit initially arose on 08-09-2005 when the defendant No.1 offered to sell the suit flat to the plaintiff, entered into an agreement for sale with the plaintiff, received part payment of sale consideration. It also arose on the dates when the parties exchanged letters, on 11-07-2006 when the defendant No.1 received further payment from the plaintiff, on the dates when the plaintiff demanded and requested the defendant No.1 to execute and register the sale deed, but the defendant failed.

PLAINTIFF

Contd..6

19. The cause of action further arose when the plaintiff got sanctioned loan from the banker for payment of balance of sale consideration to the defendant, on 19-02-2007 when the plaintiff got issued the legal notice to the defendant calling upon to execute and register the sale deed, on 22-02-2007 when the defendant No.1 replied with false allegations, on 12-03-2007 when the plaintiff got issued a rejoinder notice making the legal position clear to the defendant No.1 that he has to perform his part of contract and on 28-03-2007 when the defendant No.1 got issued a reply through advocate refusing to execute and register the sale deed. The cause of action is continuing.
20. This Hon'ble court has got jurisdiction to entertain the suit as the suit property is situated at Cherlapally village, Ghatkesar Mandal, Ranga Reddy district and the cause of action arose within the territorial jurisdiction of this Hon'ble court.

This Hon'ble court has also got pecuniary jurisdiction.
21. The plaintiff has not filed any other case in this regard and no suit or other proceedings are pending between the parties to the present suit before any other court. The suit is being filed within a period of three years from the date of refusal of the defendant No.1 to execute and register the sale deed in favour of the plaintiff and therefore the same is within the period prescribed by law and is not barred by limitation.
22. The plaintiff values the relief of specific performance of the agreement of sale for the purpose of court fee and jurisdiction at Rs.5,40,525/- under section 39 of the Andhra Pradesh Court fees and Suits Valuation Act and the proper court fee is Rs. /-. The relief of perpetual injunction is valued notionally at Rs.5,000/- under section 26 (c) and pays the proper Court fee is Rs.411 /-. Thus the total court fee of Rs. /- is paid under Article 1 (b) & (c) of Schedule I of the A.P.Court Fees and Suit Valuation Act, which is sufficient.
23. The plaintiff therefore prays that this Hon'ble court may pleased to pass judgment and decree
 - i. Directing the defendants to execute and register the sale deed in favour of the plaintiff or his nominee/s by receiving the balance of sale consideration of Rs.4,40,525/- in respect of all that the Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district, as given in the schedule and on failure of the defendants to come forward to execute and register the sale deed, this Hon'ble court may be pleased to execute and register the sale deed in favour of the plaintiff or his nominee/s, on behalf of the defendants.

- ii. Consequently pass a decree for perpetual injunction restraining the defendants from transferring, alienating, creating any third party interest or charge of the suit flat in favour of the third parties or parting with possession in respect of the Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district as given in the schedule.
- ii(a). **“consequently pass a decree, canceling the sale deed dated 31-01-2007 registered as document No.1804/2007 of the office of the Sub-Registrar, Uppal, Ranga Reddy district, executed by the defendant No.1 along with M/s. Sri Sai Builders in favour of the defendant No.2, declaring it as null and void and not binding on the plaintiff.**

(Para No. 23-ii (a) inserted as per order dated 27-09-2012, in I.A. 1533/2012)

- iii. Award the costs of the suit and grant such further relief or reliefs as this Hon'ble court may deem fit and proper in the circumstances of the case.

COUNSEL FOR THE PLAINTIFF

PLAINTIFF

Hyderabad
02-07-2007/31-03-2010.

SCHEDULE OF THE PROPERTY

All that the Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No.290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73, situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district and bounded by :

NORTH	:	Open to sky
SOUTH	:	Flat No.402
EAST	:	Open to sky
WEST	:	6 feet wide corridor

PLAINTIFF

Contd..8

VERIFICATION

I, Vinay Agarwal, S/o. Sri Vasudev, aged 42 years, Occ : business, R/o. Flat No.403, Susheel Residency, Opp : CDR Hospital, Hyderguda, Hyderabad do hereby declare that the contents of the above plaint and the schedule of property are true to the best of my knowledge, information, belief and legal advice, which I believe to be true and hence verify the same as true and correct on this the 29th day of June, 2007 at Hyderabad.

LIST OF DOCUMENTS FILED BY THE PLAINTIFF

S.No.	DATE	DESCRIPTION OF THE DOCUMENT
1.	08-09-2005	Original receipt issued by the defendant for Rs.10,000/-
2.	15-12-2005	Copy of agreement of sale between the plaintiff and defendant.
3.		Original pricing and payment terms of defendant.
4.	03-03-2006	Original receipt issued by the defendant for Rs.15,000/-.
5.	05-05-2006	Original reminder notice issued by defendant.
6.	15-05-2006	Reply to the reminder notice of the defendant with acknowledgment.
7.	09-06-2006	Original cancellation notice issued by defendant.
8.	23-06-2007	Reply to the cancellation notice of the defendant with acknowledgment.
9.	11-07-2006	Original receipt issued by the defendant for Rs.75,000/-.
10.	01-08-2006	Original letter addressed by the defendant.
11.		Plan of the Flat.
12.	19-02-2007	Office copy of legal notice issued to defendant.
13.	22-02-2007	Reply notice of the defendant.
14.	12-03-2007	Office copy of legal notice.
15.	28-03-2007	Original reply notice of the defendant.
16.	24-05-2007	Letter addressed to the Post Office by wife of the plaintiff.
17.	-05-2007	Caveat filed by the defendant.

Hyderabad
02-07-2007/31-03-2010/10-10-2012

PLAINTIFF

①

②

IN THE COURT OF THE VIII ASJ SENIOR
CIVIL JUDGE ; RANGA REDDY DISTRICT
COURTS ; AT L.B.NAGAR ; HYDERABAD

O.S.No. 1549 OF 2007

Between :

Sri Vinay Agarwal ...Plaintiff

AND

M/s. Summit Builders & another ...Defendants

SUIT FOR SPECIFIC PERFORMANCE

AMENDED PLAINT PRESENTED UNDER
SECTION 26. ORDER VII RULE 1 OF CIVIL
PROCEDURE CODE, 1908.

Filed on : 02-07-2007/31-03-2010/10-10-2012

Filed by :

M/s.SHYAM S.AGRawal (2374/1993)

L.Praveen Kumar

L.Pradhan Kumar

K.Shashirekha

Naresh Singh

Santosh Singh

COUNSEL FOR THE PLAINTIFF

IN THE COURT OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS ; AT L.B.NAGAR ; HYDERABAD

I.A.No. OF 2012

IN

O.S.No. 1549 OF 2007

Between:

Sri Vinay Agarwal

...Petitioner/Plaintiff

AND

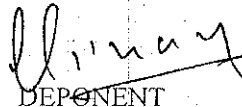
M/s. Summit Builders & another

...Respondents/Defendant

AFFIDAVIT

I, Vinay Agarwal, S/o. Sri Vasudev, aged about 47 years, Occ : business, R/o. Flat No.403, Susheel Residency, Hyderguda, Hyderabad do hereby solemnly affirm and state on oath as follows :

1. I am the petitioner herein and as such I am well acquainted with the facts of the case.
2. I submit that I have filed the above suit against the respondent No.1 for specific performance of the agreement of sale in respect of Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No. 290, admeasuring 725 square feet together with proportionate undivided share in land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73, situated at Cherlapally village, Ghatkesar mandal, Ranga Reddy district, as given in the plaint schedule and for other reliefs. The contents of the plaint may be read as part and parcel of this affidavit for proper appreciation of the facts of the case.
3. I further submit that the defendant No.1 filed written statement and contesting the case. Subsequently, on my verification I came to know that the defendant No.1 had already sold the schedule property to the defendant No.2 and on my application in I.A.No.775/2008, this Hon'ble Court was pleased to implead the defendant No.2 as a party to the case. The defendant No.2 has also filed written statement and the matter stands posted for commencement of trial.
4. I also submit that while preparing the affidavit to be filed in lieu of my chief examination, it is noticed that consequential changes in the plaint have not been carried subsequent to impleading the defendant No.2. In view of the defendant No.2 having been impleaded as a party to suit, it is required that consequential amendment is made to the plaint in view of the changes those have crept up in suit due to impleadment of the defendant No.2. That apart, it is also required that the relief in the suit is also amended to cover the said transaction between the defendants.


DEPONENT

Contd..2

5. I submit that in the stated circumstances, it is just and necessary that I am permitted to amend the plaint seeking consequential amendment subsequent to impleading the defendant No.2. If I am not permitted to carry out consequential amendments, I would suffer irreparable loss and injury and my very right of justice would be defeated. On the other hand proposed amendment would help the Hon'ble Court in resolving the dispute and rendering justice to the parties.

6. It is therefore prayed that this Hon'ble Court may be pleased to pass an order permitting the petitioner to amend the plaint in the following manner:

- i. To write 'defendant No.1' in the place of 'defendant' in para Nos.2 to 22.
- ii. To write 'defendants' in the place of 'defendant' in cause title and the relief portion under para No.23 (i) & (ii).
- iii. To add para No.17-A as follows:

"The plaintiff submits that he has learnt that the defendant No.1 along with builder M/s. Sri Sai Builders sold the schedule property to the defendant No.2 under the sale deed dated 31-01-2007 registered as document No.1804/2007 of the Office of the Sub-Registrar, Uppal, Ranga Reddy district. However, in view of agreement between the plaintiff and the defendant No.1 being prior to the sale deed and it being in subsistence, the sale deed in favour of the defendant No.2 is illegal and liable to be cancelled".

- iv. To add relief No. ii (a) in para No.23 of plaint as

"consequently pass a decree, canceling the sale deed dated 31-01-2007 registered as document No.1804/2007 of the office of the Sub-Registrar, Uppal, Ranga Reddy district, executed by the defendant No.1 along with M/s. Sri Sai Builders in favour of the defendant No.2, declaring it as null and void and not binding on the plaintiff.

in the interest of justice and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Sworn & signed before me on this the
21st day of August, 2012 at Hyderabad.

Identified by Sri Shyam S.Agrawal, Advocate


DEPONENT


ADVOCATE-HYDERABAD

IN THE COURT OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS ; AT L.B.NAGAR ; HYDERABAD

I.A.No. OF 2012

IN

O.S.No. 1549 OF 2007

Between:

Sri Vinay Agarwal
S/o. Sri Vasudev, aged about 47 years
Occ : business, R/o. Flat No.403
Sushel Residency, Opp. CDR Hospital
Hyderguda, Hyderabad – 500 029.

...Petitioner/Plaintiff

AND

1. M/s. Summit Builders
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, aged 41 years, Occ : business
having office at 5-4-187/3, III Floor
M.G. Road, Secunderabad – 500 003.
2. Smt. Subhashini S. Gade
W/o. Sri Shriram Mogallapalli, aged 34 years
residing at C/o. Sri Satyanarayana Murty Bondada
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari district – 533 437.

...Respondents/Defendants

PETITION FILED UNDER ORDER VI RULE 17 AND SECTION 151 OF THE CODE OF CIVIL
PROCEDURE, 1908 READ WITH RULE 28 OF THE CIVIL RULES OF PRACTICE

For the reasons stated in the accompanying affidavit, the petitioner prays that this Hon'ble Court may be pleased to pass an order permitting the petitioner to amend the plaint in the following manner:-

- i. To write 'defendant No.1' in the place of 'defendant' in para Nos.2 to 22.
- ii. To write 'defendants' in the place of 'defendant' in cause title and the relief portion under para No.23 (i) & (ii).

Contd..2

iii. To add para No.17-A as follows:

“The plaintiff submits that he has learnt that the defendant No.1 along with builder M/s. Sri Sai Builders sold the schedule property to the defendant No.2 under the sale deed dated 31-01-2007 registered as document No.1804/2007 of the Office of the Sub-Registrar, Uppal, Ranga Reddy district. However, in view of agreement between the plaintiff and the defendant No.1 being prior to the sale deed and it being in subsistence, the sale deed in favour of the defendant No.2 is illegal and liable to be cancelled”.

iv. To add relief No. ii (a) in para No.23 of plaint as

“consequently pass a decree, canceling the sale deed dated 31-01-2007 registered as document No.1804/2007 of the office of the Sub-Registrar, Uppal, Ranga Reddy district, executed by the defendant No.1 along with M/s. Sri Sai Builders in favour of the defendant No.2, declaring it as null and void and not binding on the plaintiff.

in the interest of justice and pass such other orders as this Hon'ble Court deems fit in the circumstances of the case.

Hyderabad
Date 23-08-2008



COUNSEL FOR THE PETITIONER

IN THE COURT OF THE VIII ADDITIONAL
SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS ; AT L.B.NAGAR



I.A.No. OF 2012

IN

O.S.No. 1549 OF 2007

Between:

Sri Vinay Agarwal ...Petitioner/Plaintiff

AND

M/s. Summit
Builders & another ...Respondents/Defendants

PETITION FILED UNDER ORDER VI RULE 17
AND SECTION 151 OF THE CODE OF CIVIL
PROCEDURE, 1908 READ WITH RULE 28 OF THE
CIVIL RULES OF PRACTICE

Filed on : 22-08-2012

31/8

Filed by :

M/s.SHYAM S.AGRAWAL (2374/1993)
L.Praveen Kumar
L.Pradhan Kumar
K.Shashirekha
Naresh Singh

COUNSEL FOR THE PETITIONER

IN THE COURT OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS ; AT L.B.NAGAR ; HYDERABAD

O.S.No. 1549 OF 2007

Between :

Sri Vinay Agarwal

...Plaintiff

AND

M/s. Summit Builders and another

...Defendants

EVIDENCE AFFIDAVIT OF THE PLAINTIFF SRI VINAY AGARWAL AS P.W.-1. FILED UNDER
ORDER XVIII RULE 4 OF THE CODE OF CIVIL PROCEDURE, 1908

I, Vinay Agarwal, S/o. Sri Vasudev, aged about 47 years, Occ : business, R/o. Flat No.403, Susheel Residency, Opp : CDR Hospital, Hyderguda, Hyderabad, do hereby solemnly affirm and sincerely state on oath as follows :

1. I am the plaintiff herein and as such I am well acquainted with the facts of the case.
2. I submit that the defendant No.1 is the owner and developer of "Silver Oak" apartments on the land forming part of survey No.290, situated at Cherlapally village, Ghatkesar mandal, Ranga Reddy district and advertised it for the purpose of selling flats to prospective purchasers. I was interested in the venture taken up by the defendant No.1, intended to purchase a flat therein and approached the defendant No.1. The defendant No.1 showed me brochure relating proposed apartment and I selected flat No.401 on fourth floor admeasuring 725 square feet of super built up area together with proportionate undivided share of land and a reserved two wheeler parking space bearing No.73, hereinafter referred to as the 'suit flat'.
3. I further submit that after negotiations, the sale consideration was fixed at Rs.649/- per square feet and the total sale consideration of the suit flat was arrived to at Rs.4,70,525/- Apart from sale consideration, I was asked to pay Rs.50,000/- towards charges for amenities, Rs.5,000/- towards parking and Rs.15,000/- towards water & electricity charges. I paid to the defendant No.1 Rs.10,000/- by cheque No.123098, dated 08-09-2005 drawn on M/s. IDBI Bank, under receipt No.1017, towards earnest money and part payment of sale consideration, which was encashed by the defendant No.1 in conclusion of the agreement and contract between us.

DEPONENT

Contd..2

4. I also submit that the terms of contract were subsequently reduced into writing under a formal agreement of sale entered into between us on 15-12-2005, I paid additional sum of Rs.15,000/- to the defendant No.1 by cheque No.619352, dated 01-03-2006 drawn on M/s. HDFC Bank, towards further part payment of sale consideration, which was encashed by the defendant No.1. The defendant No.1 informed me that they would intimate to me the progress of construction and also about the payment of balance of sale consideration to be made by me.
5. I submit that I was waiting patiently for the letter of the defendant No.1 informing me the status and progress of complex and about the amounts to be paid by me, but I did not receive any correspondence or communication. When I visited the office of the defendant No.1 enquiring about the progress of the complex, I was told that it would take some more time for the project to be completed and that they would intimate me further details later. To my utter shock and surprise, instead of the intimation letter, I received letter dated 05-05-2006 from the defendant No.1 calling for payment of three installments within seven days of receipt of the notice and warned of forfeiture of the amounts already paid on my failure to pay the same.
6. I further submit that I sent a suitable reply dated 15-05-2006 to the letter of the defendant No.1 informing that I had not received any reminders earlier for payment as alleged in the said letter and also informed that I would pay the amount in lump sum immediately on the sanction of loan, which was delayed in view of change of status of income from salaried to self employed. On receiving the reply, the defendant No.1 sent to me cancellation notice dated 09-06-2006 informing that I did not adhere to the payment schedule, not paid the installments as promised, that as such the agreement entered into between the parties stood cancelled and that the payments made by me were forfeited.
7. I also submit that after receiving said cancellation notice, I sent reply letter dated 23-06-2006 informing that I had already intimated through reply letter dated 15-05-2006 that there was delay in processing of loan, that all pending installment amounts will be paid shortly and requested to bear for some time. I also visited office of the defendant No.1 in person and discussed the matter, who stated that they had issued the cancellation notice only to ascertain whether I was really interested in purchasing the flat or not. The defendant No.1 assured me that my interest would be safeguarded and I can make payment on getting loan sanctioned.
8. I submit that as per the discussions held between me and the defendant No.1, I paid a further amount of Rs.75,000/- by cheque No.691784, dated 11-07-2006, drawn on M/s. HDFC Bank and it was acknowledged by the defendant No.1 vide their receipt dated 11-07-2006.

DEPONENT

Contd..3

On being satisfied with my payments, the defendant No.1 addressed me the letter dated 01-08-2006, asking me to visit site between 01-08-2006 and 08-08-2007 to have a look at the flat for any additions or alterations to be done in it otherwise flat will be completed as per standard specifications shown in the model flat. I had suggested some changes to the flat, for that the defendant No.1 assured that they would make necessary changes to the flat and would intimate me the date of execution of document of sale deed.

9. I further submit that I waited patiently for response from the defendant No.1 but there was no such intimation from them and when I contacted them in person there was no proper response from the defendant No.1 and they avoided meeting me. Getting vexed with their attitude and losing hope of response, I got issued legal notice dated 19-02-2007 to the defendant No.1 through advocate calling upon to execute and get registered the sale deed in respect of the suit flat by receiving the balance amount of sale consideration within 15 days of its receipt.

10. I also submit that the notice was served on the defendant No.1 on 22-02-2007 and they addressed reply dated 22-02-2007 with all false and baseless allegations, taking stand that the agreement stood cancelled. Though the defendant No.1 admitted the agreement of sale in my favour and the receipt of part payment of sale consideration made on different dates, the defendant No.1 alleged that they addressed another cancellation notice dated 09-08-2006 to me. I have not received any such cancellation notice from the defendant No.1 at any point of time.

11. I submit that even if any such notice is given, it cannot terminate the agreement of sale between the parties, under which I had paid huge amount towards part payment of sale consideration under proper receipts. I got issued a rejoinder notice on 12-03-2007 denying receipt of any cancellation notice and made it clear that the defendant No.1 cannot terminate the agreement unilaterally. The defendant No.1 got issued a reply notice dated 28-03-2007 taking same stand, which is false. It is pertinent to mention here that the defendant No.1 has lodged a caveat before the Hon'ble Court against me, which proves the malafides on their part.

12. I further submit that I have always been ready and willing to perform my part of the contract of making payment of balance of sale consideration of Rs.4,40,525/- and in fact on the promises of the defendant No.1, I already got sanctioned loan from the banker. The defendant No.1 has gone back the promises and failed to discharge the duty and burden cast upon under the agreement. I have to pay the loan installments to the banker as the same was already sanctioned. Having agreed to sell the flat and received part payment of sale consideration, the defendant No.1 cannot go back the contract nor does he have right to terminate it.

DEPONENT

Contd. 4

13. I also submit that originally suit was filed against the defendant No.1 alone, who filed written statement dated 05-12-2007 denying my claim while admitting that I proposed to purchase Flat No.401 and other details thereof. The defendant No.1 contended that I signed a booking form, that the booking was tentative and that it was not final contract. The defendant No.1 denied the consideration as Rs.4,70,525/- and pleaded it to be Rs.5,40,525/-. The defendant No.1 admitted payment of Rs.75,000/- on 11-07-2006 and receipt of legal notice. However, the defendant No.1 suppressed the fact of alienation of the flat to the defendant No.2 which was done by it way back on 31-01-2007 prior to filing of the written statement.
14. I submit that I came to know about the alienation of the suit flat by the defendant No.1 to the defendant No.2 subsequently and on my application the Hon'ble Court permitted me to implead the defendant No.2 in the suit. The defendant No.2 filed the written statement contending that she is not a party to the suit. As per the settled law, the transaction between the defendants which took place during pendency of the suit is hit by doctrine of lis-pendence as per the provision of Transfer of Property Act. In view of the agreement between me and the defendant No.1 being prior to the sale deed and it being in subsistence, the sale deed in favour of the defendant No.2 is illegal and liable to be cancelled.
15. I wish to mark the following documents as exhibits in my evidence:
- | | | |
|--------|---|---------|
| i. | Original receipt issued by the defendant for Rs.10,000/-, dated 08-09-2005 as | Ex.A-1 |
| ii. | Copy of agreement of sale between the plaintiff and defendant, dt. 15-12-2005 as | Ex.A-2 |
| iii. | Original pricing and payment terms of defendant as | Ex.A-3 |
| iv. | Original receipt issued by the defendant for Rs.15,000/-, dated 03-03-2006 as | Ex.A-4 |
| v. | Original reminder notice issued by defendant, dated 05-05-2006 as | Ex.A-5 |
| vi. | Reply to notice of the defendant with acknowledgment dated 15-05-2006 as | Ex.A-6 |
| vii. | Original cancellation notice issued by defendant, dated 09-06-2006, as | Ex.A-7 |
| viii. | Reply to notice of the defendant with acknowledgment dated 23-06-2007, as | Ex.A-8 |
| ix. | Original receipt issued by the defendant for Rs.75,000/-, dated 11-07-2006 as | Ex.A-9 |
| x. | Original letter addressed by the defendant, dated 01-08-2006 as | Ex.A-10 |
| xi. | Plan of the Flat, as | Ex.A-11 |
| xii. | Office copy of legal notice issued to defendant, dated 19-02-2007 as | Ex.A-12 |
| xiii. | Reply notice of the defendant, dated 22-02-2007 as | Ex.A-13 |
| xiv. | Office copy of legal notice, dated 12-03-2007 as | Ex.A-14 |
| xv. | Original reply notice of the defendant, dated 28-03-2007 as | Ex.A-15 |
| xvi. | Letter addressed to the Post Office by wife of the plaintiff, dated 24-05-2007 as | Ex.A-16 |
| xvii. | Caveat filed by the defendant as | Ex.A-17 |
| xviii. | Certified copy of the sale deed document No.1804/2007 dated 31-01-2007 as | Ex.A-18 |

DEPONENT

Contd..5

16. I therefore prays that this Hon'ble court may pleased to pass judgment and decree directing the defendants to execute and get registered the sale deed in my favour by receiving the balance of sale consideration in respect of suit flat and in their failure, this Hon'ble court may be pleased to do the same on their behalf, to pass a decree for perpetual injunction restraining the defendants from dealing with suit flat, consequently cancel the sale deed dated 31-01-2007 registered as document No.1804/2007 of the office of the Sub-Registrar, Uppal, Ranga Reddy district, executed by the defendant No.1 along with M/s. Sri Sai Builders in favour of the defendant No.2, declaring it as null and void and not binding on the plaintiff, award the costs of the suit and grant such further relief or reliefs as this Hon'ble court may deem fit and proper in the circumstances of the case.

Sworn & signed before me on this the
20th day of November, 2012 at Hyderabad.

DEPONENT

Identified by Sri Shyam S.Agrawal, Advocate

ADVOCATE-HYDERABAD

IN THE COURT OF THE VIII ADDITIONAL
SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT COURTS ; AT L.B.NAGAR

O.S.No. 1549 OF 2007

Between :

Sri Vinay Agarwal ... Plaintiff

AND

M/s. Summit Builders & another ... Defendant

EVIDENCE AFFIDAVIT OF THE PLAINTIFF SRI
VINAY AGARWAL AS P.W.-1, FILED UNDER
ORDER XVIII RULE 4 OF THE CODE OF CIVIL
PROCEDURE, 1908

Filed on : 20-11-2012

29/11

Filed by :

M/s. SHYAM S.AGRAWAL
L.Praveen Kumar
E.Pradhan Kumar
K.Shashirekha
Naresh Singh

COUNSEL FOR THE PLAINTIFF

HIGH COURT OF JUDICATURES AT HYDRABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

NO. 101 of 2015

Between:

SR) VINAY AGARWAL, HYDRABAD

APPELLANT(S)

AND

M/S. SLAMIT BUILDERS, SEC 240 & ANR

RESPONDENT(S)

Appeal from the decree and Judgement dated 10.02.2015 of 2002 of
the Court of Mr. Addl. Senior Civil Judge, P. D. District

Take notice that appeal petition from the above decree/order has
been presented by the above named appellant and registered in this Court, and
that if you intend to defend the same you must enter an appearance in this court
and give notice to the appellant or his pleader within 30 days from service of this
notice on you

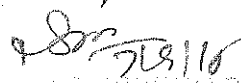
If no appearance is entered on your behalf by yourself or your
pleader or someone by law authorized to act for you in this appeal it will be heard
and decided in your absence.

The address for service of the appellant is that of his
Advocate SHYAM S AGRAWAL

A copy of the Memorandum of what is herein contained is

by order of the Court

Date: 07/09/2015,
Hyderabad


Shyam S Agrawal, Advocate
MC 7/9/15

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

TUESDAY, THE EIGHTH DAY OF SEPTEMBER,
TWO THOUSAND AND FIFTEEN

:PRESENT:
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

ASMP.No. 1848 of 2015
IN
AS.No. 631 of 2015



Between:
Sri Vinay Agarwal, S/o. Sri Vasudev

Petitioner
(Appellant in AS.No. 631/2015
on the file of the High Court)

AND

1. M/s. Summit Builders, rep. by its Partner Sri Soham Modi, S/o. Sri Satish Modi, Occ: Business, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.
2. Smt. Subhashini S.Gade, W/o. Sri Shriram Mogallapalli, Residing at C/o. Sri Satyanarayana Murty Bondada, H.No. 6-10-30/A, Raja Street, Peddapuram, East Godavari District – 533 437.

Respondents
(Respondents in –do-)

COUNSEL FOR PETITIONER: Sri Shyam S.Agrawal

Petition under Order 39 Rules 1 & 2 R/w. Sec 151 of CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to pass an order of temporary injunction restraining the respondents from transferring, alienating or parting with possession or creating any third party interest or charge of the below given schedule of property in favour of the third parties

SCHEDULE OF THE PROPERTY

Flat No. 401 on fourth floor in Silver Oak Apartments, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate 36.25 square yards undivided share of land and a reserved parking space for two wheeler bearing No. 73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy District and, bounded by:

NORTH	:	Open to Sky
SOUTH	:	Flat No. 402
EAST	:	Open to Sky
WEST	:	6' wide corridor

pending disposal of AS.No.631/2015 preferred to the High Court against the Judgment and decree of the Court of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad made in OS.No. 1549/2007 dt. 15-10-2014.

The Court while directing issue of urgent notice to the Respondents herein to show cause why this petition should not be complied with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

“ Issue urgent notice to the respondents.

Learned counsel for the petitioner is permitted to take out personal notice to the respondents by RPAD and file proof of service within three weeks.

Meanwhile, there shall be ad interim injunction restraining the respondents from alienating the subject property during pendency of the appeal. Post after three weeks."

Sd/- K.M.RAMESH BABU
ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The Chief Judge, City Civil Court, Secunderabad.
(in duplicate with a copy of Injunction to serve on Respondent No.1 and return)
2. The District Judge, East Godavari District at Rajahmundry.
(in duplicate with a copy of Injunction to serve on Respondent No.2 and return)
3. The VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.
4. Sri Soham Modi, S/o. Satish Modi, Partner, M/s. Summit Builders, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.
5. Smt. Subhashini S.Gade, W/o. Sri Shriram Mogallapalli, Residing at C/o. Sri Satyanarayana Murty Bondada, H.No. 6-10-30/A, Raja Street, Peddapuram, East Godavari District – 533 437.
(4 & 5 by RPAD)
6. One CC to Sri Shyam S.Agarwal, Advocate(OPUC)
7. One spare copy.

SAH



HIGH COURT

MSMJ

DATED: 08-09-2015

NOTE: POST AFTER THREE WEEKS

ORDER

**ASMP.NO. 1848 OF 2015
IN
AS.NO. 631 OF 2015**

**INTERIM INJUNCTION
AND NOTICE**

Shyam S. Agrawal

ADVOCATE

Standing Counsel for Tirumala Tirupathi Devasthanams

Phone : 91 40 2322 2700
101, R.K. Residency, Opp CPI Office
3-6-237/1, Street No. 15, Himayatnagar
Hyderabad-500 029, India.

REGD. POST ACK. DUE



To

1. M/s. Summit Builders
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, having office at 5-4-187/3
III Floor, M.G. Road, Secunderabad – 500 003.
2. Smt. Subhashini S. Gade
W/o. Sri Shriram Mogallapalli
residing at C/o. Sri Satyanarayana Murty Bondada
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari district – 533 437.

Sir/ Madam,

My client Sri Vinay Agarwal, S/o. Sri Vasudev, R/o. Flat No.403, Susheel Residency, Opp. CDR Hospital, Hyderguda, Hyderabad, has filed A.S.No.631/2015 before the Hon'ble High Court of Judicature at Hyderabad, for the state of Telangana and the state of Andhra Pradesh, against the judgment and decree of dismissal dated 15-10-2014 passed in O.S.No.1549/2015 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy district.

Along with appeal, my client filed petition for interim order in A.S.M.P.No.1848/2015 and when the case came up for hearing on 08-09-2015, the Hon'ble High Court ordered passed interim order and also notice to the respondents and directed us to take personal notice.

Sufficient Number of copies of grounds of appeal, miscellaneous petition and material papers are already filed before the Hon'ble Court and you can collect the same. Therefore, you are required to make arrangements for appearance before the Hon'ble Court.

Place : Hyderabad
Date : 10-09-2015


COUNSEL FOR THE PETITIONER



1

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

NO: 631 of 2015

Between:

SRI VINAY AGARWAL, HYDERABAD

..... APPELLANT(S)

AND

M/S. SUMMIT BUILDERS, SEC'BAD & ANR

..... RESPONDENT(S)

Appeal from the decree and Judgment dated 16-10-2014, OS 1540 of 2002 of
the Court of VIII Addl. Senior Civil Judge, R.R. District

Take notice that appeal petition from the above decree/order has
been presented by the above named appellant and registered in this Court, and
that if you intend to defend the same you must enter an appearance in this court
and give notice to the appellant or his pleader within 30 days after service of this
notice on you.

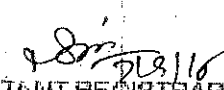
If no appearance is entered on your behalf by yourself, your
pleader or someone by law authorised to act for you in this appeal it will be heard
and decided in your absence.

The address for service of the appellant is that of his
Advocate SHYAM S AGRAWAL

A copy of the Memorandum of which is annexed here to - A

By order of the Court

Date: 07/09/2015;
Hyderabad


ASSISTANT REGISTRAR

NC 7/9/15

2

MEMORANDUM OF FIRST APPEAL

(under section 96 of the Code of Civil Procedure, 1908)

IN THE COURT OF THE VII ADDITIONAL SENIOR CIVIL JUDGE ; RANGA REDDY
DISTRICT ; AT L.B. NAGAR ; HYDERABAD

O.S.No. 1549 OF 2007

IN THE HON'BLE HIGH COURT OF JUDICATURE ; AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

A.S.No. 631 OF 2015

Between :

Sri Vinay Agarwal
S/o. Sri Vasudev, aged about 50 years
Occ : business, R/o. Flat No.403
Susheel Residency, Opp. CDR Hospital
Hyderguda, Hyderabad – 500 029.

...Appellant/Plaintiff

AND

1. M/s. Summit Builders
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, aged about 45 years, Occ : business
having office at 5-4-187/3, III Floor
M.G. Road, Secunderabad – 500 003.
2. Smt. Subhashini S. Gade
W/o. Sri Shriram Mogallapalli
aged about 38 years, residing
at C/o. Sri Satyanarayana Murty Bondada,
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari district – 533 437.

...Respondents/Defendants ..

The address of the appellant for the purpose of service of all notices, etc. is that of the
counsel M/s. SHYAM S.AGRAWAL - 5099, Smt. BABITA AGRAWAL - 7563, L.Praveen
Kumar, L.Pradhan Kumar, K.Shashirekha, Naresh Singh and Har Rachan Kaur, Advocates,
having office at # 101, R. K. Residency, lane beside Minerva Coffee Shop, 3-6-237/1, Street
No.15, Himayatnagar, Hyderabad - 500 029, Phone : 91-40-2322-2700.

Contd..2

3

-: 2 :-

Being aggrieved by the judgment and decree of dismissal dated 15-10-2014 passed in O.S.No.1549/2007 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy district, the appellant prefers this Memorandum of first appeal on the following among other :

GROUND S

1. The judgment and decree of the court below in dismissing the suit of the appellant filed seeking the relief of specific performance of the agreement of sale dated 15-12-2005, is illegal, arbitrary, high handed, unreasonable and not based on proper appreciation of the facts of the case and the material on record.
2. The judgment of the court below has resulted in grave injustice to the appellant and has taken away his right of justice, thereby giving encouragement to the respondent No.1 to enter into contract for sale of immovable property, take money towards part payment of sale consideration promising to transfer the property and then not coming forward to fulfill their part of the contract and also of selling the property to others on higher rate.
3. The judgment of the court below refusing to grant decree of specific performance in respect of flat No. 401, on fourth floor in Silver Oak Apartments, forming part of Survey No.290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73, situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district, is incorrect and has resulted in miscarriage of justice.
4. The court below has utterly failed to draw adverse inference against the defendant No.1 in view of the defendant No.1 taking pleas, which are against the documentary evidence and also the attempts made by the witnesses of the defendants deposed as DWs.1 & 2, during their cross examination. The evidence of DWs.1 & 2 and more particularly their cross examination makes it crystal clear that the defendant No.1 acted in unfair manner and made attempt to mislead the Hon'ble Court having played fraud on the appellant.
5. The court below has utterly failed to appreciate contents of legal notice under Ex.A-12 and rejoinder notice under Ex.A-14, where under the plaintiff had expressed willingness to pay balance of sale consideration, but the defendant No.1 had contended the agreement to have been cancelled, which was not so admittedly. In view of the alleged cancellation under Ex.A-7 having already been withdrawn and waived of, the agreement was in force and offer of the plaintiff to make payment of balance sale consideration under legal notice and rejoinder of the notice of Exs.A-12 and A-14 clearly make out the case of the readiness and willingness of the plaintiff to pay the balance of sale consideration.

Contd..3

6. When the defendant stated to have terminated contract under Ex.A-7 dated 09-06-2006, but in view of the defendant No.1 subsequently receiving payment and more particularly under Ex.A-9 dated 11-07-2006 and also addressing letter under Ex.A-10 on 01-08-2006, the alleged cancellation under Ex.A-7 stood waived and withdrawn.
7. The very conduct on part of the defendant No.1 in selling the schedule property to the defendant No.2 without terminating/cancelling agreement of sale in favour of the plaintiff itself exposes the mischief on their part and strengthens the case of the plaintiff that in view of escalation of prices, the defendant No.1 did not honour the commitment/contract and to have illegal and unlawful gain, they sold the flat to defendant No.2. In fact, by the date of issuing reply notices under Ex.A-13 and A-15, the defendant No.1 had already sold the schedule property to the defendant No.2, but the same was suppressed and was not disclosed, which aspect strengthens further mischief on part of the defendant No.1.
8. The observation of the court below and extraction of the schedule of payment under para No.11 of the judgment is of no consequence and incorrect, as admittedly, the defendant No.1 though issued letter of cancellation complaining non adherence thereto, but later accepted payment and admittedly deviated from said schedule whereby giving consent to the plaintiff to make payment as per the convenience and hence all the observations and the findings of the court below in that regard are prima facie illegal.
9. The court below has also not appreciated that originally the plaintiff had plan to obtain housing loan for purchase of schedule property, but later as he could not get the same, he planned to pay it on his own and accordingly he made payments deviating from the schedule, which was duly accepted by the defendant No.1 and hence it is clear that the plaintiff was ready and willing to perform his part of the contract.
10. The court below has grossly erred in law in attributing wrongs to the appellant instead of appreciating truth in his case, which is very clear from the record as well as the evidence.
11. The court below ought to have seen that the appellant is a businessman and does not know the technicalities relating to execution of the agreement and other aspects thereof and also other formalities to be completed in relation thereto and therefore even if there were any discrepancies in his approach, the same cannot wipe of the contract.
12. From the judgment, it is clear that the court below proceeded with the matter with pre-determination to dismiss the suit. Though the defendant No.1 admitted the execution of contract, transaction of agreement of sale, receipt of part payment of sale consideration, etc., which are sufficient to decree the suit in favour of the appellant, but court below has gone to the extent of attributing wrongs to the appellant and caused harm.

13. The court below has overlooked and ignored the very admitted fact of receipt of part payment of sale consideration by the respondent No.1 in order to dismiss the suit.
14. The very conduct on the part of the court below in not highlighting the admissions made by the defence witnesses is sufficient to come to the conclusion that the court below was determined to dismiss the suit and in the process, on its own it went on searching for the defects if any in the suit and on the part of the appellant.
15. Another observation of the court below that the plaintiff has not placed any material to show his ready and willingness or capacity to pay the balance of sale consideration is also the result of pre-determination to dismiss the suit. Numerous judicial precedents have laid down clear law that the statement of the plaintiff in that regard is sufficient to say that the plaintiff has been ready and willing to fulfill his part of the contract.
16. The court below has passed the judgment in an unusual manner and the findings thereof are not heard of nor expected of from any judicial authority.
17. It appears the court below has passed the judgment in a hurried, mechanical and predetermined manner and for that reason, it has committed grave errors.
18. The judgment of the court below is not tenable in any view of law.
19. The other grounds will be urged at the time of final hearing.
20. The appellant values the present first appeal for the purpose of jurisdiction and court fee as in the suit at Rs.5,46,525/- under section 49 and the ad-volerum and proper court fee of Rs. 8337/- is paid under article 1 (b) & (c) of Schedule I of the Andhra Pradesh Court fees and Suits Valuation Act, 1956, which is sufficient.
21. It is therefore prayed that this Hon'ble court may be pleased to call for the records in O.S.No.1549/2007 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy district, examine the same for the purpose of considering the correctness, legality and propriety of the judgment dated 15-10-2014, allow the appeal and consequently the suit of the appellant with costs in the interest of justice and grant such other relief or reliefs as this Hon'ble Court deems fit and proper in the circumstances of the case.

Hyderabad
Date : 03-07-2015

COUNSEL FOR THE APPELLANT

RANGA REDDY DISTRICT
HIGH COURT OF JUDICATURE; HYDERABAD
FOR THE STATE OF TELANGANA AND THE
STATE OF ANDHRA PRADESH

A.S.No. OF 2015

Against

O.S.No. 1549 OF 2007

(On the file of the VIII Additional Senior Civil Judge,
Ranga Reddy District, L.B. Nagar)

GROUNDS OF FIRST APPEAL

FILED BY :

M/s. SHYAM S.AGRAWAL - 5099
Smt. BABITA AGRAWAL - 7563
L. Praveen Kumar
L. Pradhan Kumar
K.Shashirekha
Naresh Singh
Har Rachan Kaur

COUNSEL FOR THE APPELLANT

DECREE

IN THE COURT OF THE VIII ADDL. SENIOR CIVIL JUDGE, R.R.DISTRICT
AT L.B.NAGAR.

Present: Sri. M.Venkataramana
VIII Addl. Senior Civil Judge
Ranga Reddy District.

Dated on this the 15th day of October, 2014.

OS.NO. 1549 of 2007

BETWEEN:

Sri. Vinay Agarwal S/o. Vasudev, aged 42 yrs.
Occ: Business, R/o. Flat No. 403,
Susheel Residency, Opp: CDR Hospital
Hyderguda, Hyderabad- 500 029.

AND

- 1) M/s. Summit Builders
rep. by its Partner Sri Soham Modi
S/o. Sri Satish Modi . Aged 37 yrs.
Occ: Busienss, having Office at 5-4-187/3,
III Floor, M.G. Road, Secudnerabad – 500 003.
- 2) Smt. Subhashini S. Gade S/o. Sri Shriram Mogallapalli
aged about 30 yrs. Resideing at C/o. Sri Satyanarayana Murty Bondada,
H.No. 6-10-30/A, Raja street, Peddapuram
Eas Godavari District – 533 437. Defendants

COURT OF THE DISTRICT & SESSIONS JUDGE Ranga Reddy District	
C.A.No. 4267	of 2015
Application Filed on :	25/2/15
Charges Called on :	31/3/15
Charges Deposited on :	1/4/15
Recd. Plaintiff	5/1/15 Rs.: 64/-
Copy made Ready on :	9/4/15
Copy Delivered on :	18/5/15
Superintendent Central Copying Superintendent Ranga Reddy District	

Claim: This is a suit filed for Specific performance of the agreement date: 15-12-2005 praying for direction to the defendants to execute the sale deed in favour of the plaintiffs in respect of the lands plot premises of All that piece of land ad measuring 4375 Sq.yards in Sy.No. 290 Apartment No. 401 Admeasuring 725 Sq. feet and 36.25 540525/- and perpetual Injunction restraining not alienate.

Valuation: The suit is valued at Rs. 5,40,525/- and a C.F. Of Rs. 7,926/- is paid under Section 39 of APCF & SV Act and the relief of Injunction is valued at Rs. 5000/- on which a C.F. Of Rs. 411/- is paid u/s 26 ©. Thus the total court fee of Rs. 8,337/- is paid under Article 1 (b) & © of schedule 1 of the A.P court fees and suit valuation Act.

Cause of Action: The cause of action arose on 15-12-2005, 19-02-2007.

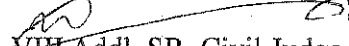
Suit presented on: 03-07-2007 Suit filed on: 03-07-2007.

This suit is coming before me on 15-10-2014 for final disposal, in the presence of Sri. Shyam S. Agrawal, Counsle for plaintiff and Sri C. Bala Gopal, Counsel Defendant No.1 and Sri. Ashok Reddy, Counsel for defendant No.2: and the matter having stood over for consideration till this day this court doth order and decree as following:



1) That the suit of the plaintiff be and the same is hereby Dismissed without costs.

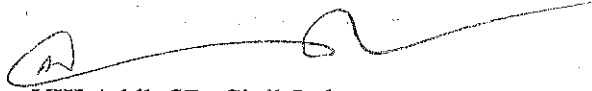
Given under my hand and the seal of this Court on this day of 15th October, 2014.


VIII Addl. SR. Civil Judge
R.R. District.

VIII Addl. Senior Civil Judge
Ranga Reddy Dist.

COST OF THE SUIT

	For Plaintiffs	For Defendants
1) Stamp on Plaint	Rs. 8,337-00	---
2) stamp on power	Rs. 2-00	2-00
3) Stamp on Exhibits	Rs. -	-
4) Advocate fee	Rs. -	-
5) Stamp on Petitions	Rs. -	-
6) Publication charges	Rs. -	-
7) Mis. Charges	Rs. -	-
Total	8,339-00	2-00


VIII Addl. SR. Civil Judge
R.R. District.

VIII Addl. Senior Civil Judge
Ranga Reddy Dist.

SCHEDULE OF THE PROPERTY



All that the Flat No. 401 on fourth floor in silver Oak apartments, forming part of survey No. 290, admeasuring 725 square feet fo super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No. 73, situated at cherlapally village, Ghatkesar Ranga Reddy District and bounded by:




NORTH: Open to Sky
EAST: Open to sky

SOUTH: Flat No. 402

WEST: 6 feet wide corridor

COMPARED BY: 
Certified to be Xerox True Copy

Copyists Superintendent.


VIII Addl. SR. Civil Judge
R.R. District.

VIII Addl. Senior Civil Judge
Ranga Reddy Dist.

IN THE COURT OF THE VIII ADDITIONAL SENIOR CIVIL JUDGE,
RANGAREDDY DISTRICT, AT L.B.NAGAR, HYDERABAD

Present : Sri M. Venkata Ramana,
VIII Addl. Senior Civil Judge
Rangareddy District

On this the 15th day of October, 2014

O.S.No.1549 Of 2007

Between :

Sri Vani Agarwal
S/o Sri Vasudev, aged 42 yrs.
Occ : Business, R/o Flat No.403,
Susheel Residency, Opp : CDR Hospital
Hyderguda, Hyderabad - 500 029. ...Plaintiff

AND

1. M/s.Summit Builders
rep. by its Partner Sri Soham Modi
S/o Sri Satish Modi, aged 37 yrs.
Occ : Business, Having office at 5-4-187/3,
III Floor, M.G.Road, Secunderabad - 500 003.

2. Smt.Subhashini S. Gade
W/o Sri Shriram Mogallapalli
aged about 30 yrs. Residing at
C/o. Sri Satyanarayana Mury Bondada,
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari District - 533 437 ...Defendants

This suit is coming before me for final disposal in the presence of Sri Shyam S. Agarwal, Counsel for plaintiff and Sri C. Bala Gopal, Counsel for defendant No.1 and Sri Ashok Reddy, Counsel for defendant No.2; and upon perusing the material papers on record, this court delivered the following :

J U D G M E N T

This suit is filed seeking relief of Specific Performance of Contract. Initially the suit is filed against the 1st defendant. Subsequently 2nd defendant was impleaded as party as per orders passed in I.A.No.755/2008 dt.19.3.2010. The gist of the contents of the plaint is as follows :



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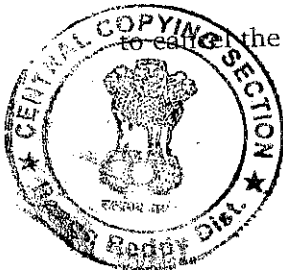
That the defendant is owner and developer of Silver Oak apartments on the land forming part of Sy.No.290 situated at Cherlapally village, and they made an advertisement in the news papers. It is further contended that as plaintiff intended to purchase the flat in that apartments, approached 1st defendant and the 1st defendant showed the plaintiff the brochure relating to proposed apartments and plaintiff entered into an agreement to purchase flat bearing No.401 on the fourth floor admeasuring 725 sq.feet with super built up area along with proportionate undivided share of land to the extent of 36.25 sq.yards and a reserved two wheeler parking space bearing No.73. The property hereinafter is referred to as suit schedule property. After negotiations the consideration was fixed at Rs.6,49,000/- for sq.ft., and agreed total sale consideration was Rs.4,70,525/- and apart from sale consideration the plaintiff was asked to pay sum of Rs.50,000/- towards charges for amenities and Rs.5,000/- towards parking and Rs.15,000/- towards water and electricity charges. The plaintiff paid Rs.10,000/- to 1st defendant through a cheque dt.8.9.2005 towards earnest money and part payment of sale consideration. It is further contended that the terms of the contract was subsequently reduced into writing and agreement of sale was entered into by plaintiff and 1st defendant on 15.12.2005 and plaintiff paid additional sum of Rs.15,000/- to the defendant through a cheque. It is further contended that 1st defendant informed the plaintiff that they would intimate the plaintiff about the progress of construction of complex. It is nextly contended that when plaintiff was waiting patiently for the letter of defendant informing about status and progress of the complex, but he



did not receive any correspondence from the 1st defendant. When plaintiff visited the office of 1st defendant to enquire about progress of complex, he was told that it would take some more time for the project to be completed. Be that as it may, to utter shock and surprise of the plaintiff, he received a letter from 1st defendant on 5.5.2006 calling for payment of three installments within seven days of the receipt of notice and warning the forfeiture. It is further contended that on that he sent suitable reply on 15.5.2006 to the 1st defendant informing that he has not received reminder earlier for payment as alleged in the letter and informed the defendant that plaintiff would pay amount in lumpsum immediate after sanction of loan which was delayed in view of change of status of plaintiff (sic income) from the salaried to self employed and he will also complete payment after sanction of housing loan. It is further contended that on receiving of reply, 1st defendant sent cancellation letter dt.9.6.2006 informing that plaintiff did not adhere to payment schedule not paid installments as promised. As such the agreement stood cancelled. It is further contended that after receiving of said cancellation notice the plaintiff sent reply letter dt.23.6.2006 informing that he has already informed through his letter dt.15.5.2006 that there was a delay in processing of loan and all the pending installments will be paid shortly and requested to bear for some time. It is further contended that as per discussions held between himself and 1st defendant, the plaintiff paid further amount of Rs.75,000/- through a cheque dt.11.7.2006 towards part payment of sale consideration and the 1st defendant addressed a letter to the plaintiff on 1.8.2006 asking him to visit the site to have a look at the



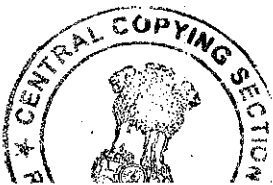
flat and to tell any additions or alterations to be done. It is further contended that the plaintiff patiently waited for response from 1st defendant, but to the shock of the plaintiff there was no such intimation from 1st defendant. It is further contended that getting vexed with attitude of 1st defendant and having lost hope of response plaintiff got a notice issued on 19.2.2007 through his Advocate calling upon the 1st defendant to execute sale deed. The 1st defendant addressed a letter with false contentions. It is further contended that Cancellation notice cannot terminate valid agreement of sale between parties and the plaintiff got a rejoinder notice issued on 12.3.2007 and again 1st defendant issued a reply notice. It is further contended that having received money towards part payment of sale consideration, 1st defendant failed to execute the sale deed in favour of the plaintiff. It is further contended that the 1st defendant is under obligation to execute sale deed in favour of the plaintiff. He nextly contended that plaintiff was ready and willing to perform his part of contract and he was ready to pay Rs.4,40,525/- towards balance sale consideration and it is further contended that the 1st defendant has any exclusive right to cancel the contract. After the 2nd defendant was impleaded as party, the plaint was also amended and it is further contended in the plaint that the 1st defendant sold the suit schedule property to the 2nd defendant under sale deed dt.31.1.2007, but the said sale deed is illegal and it is liable to be cancelled. As such it is prayed to direct the 1st defendant to execute and register the sale deed in favour of the plaintiffs. After taking balance sale consideration of Rs.4,40,000/- and



of 1st defendant in favour of 2nd defendant.

02. Defendant Nos.1 and 2 filed written statements. Defendant No.1 denied each and every material contention of plaintiff. Defendant No.1 admitted about entering into agreement of sale by plaintiff and 1st defendant in respect of the suit schedule property. The main contention of the 1st defendant is that the plaintiff did not adhere to payment schedule and committed default in paying the installments amount. He admitted about the payments made by the plaintiff to him. However, he denied remaining contentions of the plaintiff with regard to his readiness and willingness to perform his part of contract. It is mainly contended that only because of failure of plaintiff in paying the installments of the sale consideration the agreement was cancelled by the 1st defendant. It is further contended that the plaintiff is aware about the schedule of payments. But he did not choose to pay the installments as per schedule. It is further contended that as agreement was cancelled, the plaintiff is not entitled to claim any relief in the suit.

03. Defendant No.2 filed written statement denying each and every material contention of the plaintiff. Defendant No.2 denied the contentions of plaintiff in parwise. It is nextly contended that agreement of sale between plaintiff and 1st defendant is null and void and it was already cancelled for default of the plaintiff and it is further contended that plaintiff failed to perform his part of contract. It is further contended that plaintiff and 1st defendant colluded together to extract money from 2nd defendant and she



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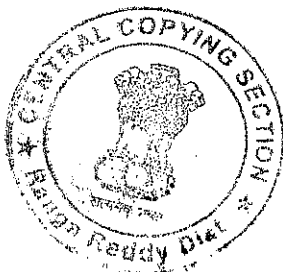
further told that the 2nd defendant is a bonafide purchaser and her sale deed cannot be cancelled.

03. Basing on the above pleadings of both the sides, the court framed the following issues :

- i. *Whether the plaintiff made the payments to the defendant according to the terms and conditions of the agreement ?*
- ii. *Whether the plaintiff is ready and willing to perform his part of contract ?*
- iii. *Whether the plaintiff is entitled for the relief to direct the defendant to execute the registered sale deed in favour of the plaintiff in respect of suit property ?*
- iv. *Whether the plaintiff is entitled for consequential relief of permanent injunction restraining the defendant from alienating or creating any third party interest over the suit property ?*
- v. *To what relief ?*

04. To prove the claim of plaintiff PWs-1 and 2 are examined. Exs.A1 to A18 are marked.

05. On behalf of 1st defendant, DW-1 is examined Exs.B1 is marked. Though chief examination affidavit of DW-2 is filed, he was sworn, subsequently DW-2 did not appear before the court for subjecting him to cross-examination. As such the defence evidence of defendant no.2 is closed and chief examination affidavit of DW-2 is deemed to have been eschewed from the record. As such the evidence of PW-1, PW.2 and DW-1 is available on record.



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06. PW-1 filed chief examination affidavit wherein he stated in support of all contents of the plaint. He stated about entering into agreement of sale by himself and 1st defendant with regard to suit schedule property, payments made by him, terms and conditions of the agreement of sale, exchange of notices and letters between himself and 1st defendant, unilateral cancellation of agreement of sale by 1st defendant, failure of 1st defendant in execution of the sale deed in his favour, his readiness and willingness to perform his part of contract, delay for payment of installments due to delay in processing of loan by bank, demands made by him with 1st defendant to execute sale deed, his offer to pay balance sale consideration, execution of sale deed by the 1st defendant in favour of 2nd defendant. He prayed the court to direct the 1st defendant to execute registered sale deed and to cancel the sale deed executed by the 1st defendant in favour of 2nd defendant.

07. PW-2 filed chief examination affidavit wherein he stated that he was aware that, plaintiff entered into agreement of sale with 1st defendant for purchase of land in Silver Apartments and fixing of sale consideration at Rs.649/- per sq.ft. He further stated that the plaintiff paid Rs.75,000/- through a cheque in the month of July, 2006 and he was present at that time. He further stated that after entering into agreement, plaintiff obtained loan from ICICI Bank.

08. DW-1 filed chief examination affidavit wherein he stated in chief examination affidavit wherein he stated in support of all contentions of 1st



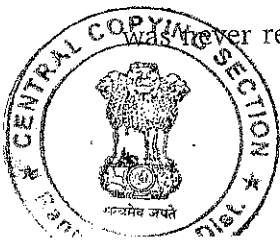
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defendant. He stated that he is Manager and Customer Relations Officer of 1st defendant, as such he is acquainted with the facts of the suit. He stated about entering of agreement between plaintiff and 1st defendant, payment of Rs.10,000/- by plaintiff to the 1st defendant, terms and conditions of agreement. He further stated that after initial payment of Rs.10,000/- the plaintiff did not make any further payments until a letter addressed by 1st defendant and thereafter also he has not complied with the requirements for completion of valid contract. He further stated about addressing of letter by 1st defendant to the plaintiff cancelling the agreement. It is further stated that the plaintiff issued a reply with false and baseless allegations and he nextly stated that 1st defendant executed a sale deed in favour of 2nd defendant much before the suit is filed that is on 31.1.2007 and he nextly stated that there were no orders from the court restraining 1st defendant from executing the registered sale deed. He nextly stated that plaintiff miserably failed to stick to the payment schedule as agreed upon and no rights were accrued to him as he has not carried out his part of contract. He further stated that the payer for cancellation of registered sale deed dt.31.1.2007 is absolutely not tenable under law as that would change the nature of suit itself. He further stated that the plaintiff has not paid necessary court fee seeking cancellation of registered sale deed. He nextly stated that the plaintiff cannot seek for equitable relief of Specific Performance of Contract as he has relied on false averments suppressing all facts and he failed to perform his part of contract. He prayed the court to dismiss the suit.



09. Issue Nos. 1 to 3: Heard counsel for plaintiff. He contended that the plaintiff sufficiently established his claim and he made payments according to terms of the agreement of sale. He nextly contended that the plaintiff is always ready and willing to perform his part of contract and he is ready to pay balance sale consideration of Rs.4,40,525/- and 1st defendant miserably failed to perform its part of contract. He nextly contended that instead of executing sale deed in favour of the plaintiff, the 1st defendant sold away the property to the 2nd defendant and that the sale deed executed by 1st defendant in favour of 2nd defendant is liable to be cancelled. He further contended that as the 1st defendant received part payment of Rs.75,000/- under Ex.A9 the 1st defendant cannot cancel the agreement of sale executed in favour of the plaintiff. He nextly contended that the suit is entitled to be decreed.

10. On the other hand, counsel for 1st defendant vehemently opposed the contention of counsel for plaintiff. He mainly contended that the plaintiff miserably failed to establish that he was always ready and willing to perform his part of contract and he committed default in paying the installments as agreed in Ex.A2. It is further contended that the plaintiff miserably failed to perform his part of contract. As such he is not at all entitled to claim relief of the Specific Performance of Contract. He further argued that the plaintiff came to the court with unclean hands and the discretionary relief sought for that is relief of Specific Performance of Contract cannot be granted to him. He further contended that the plaintiff was never ready and willing to perform his part of contract. As such he is



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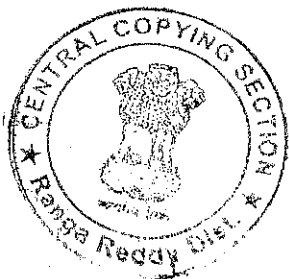
not at all entitled for any relief and the suit is liable to be dismissed.

11. Perused the entire material on record consisting of pleadings of both the sides, oral and documentary evidence adduced by both the sides. After thorough, careful and cautious examination and scrutiny of entire material on record, I am of the view there is no force in the contention of counsel for plaintiff. As rightly contended by counsel for 1st defendant, the plaintiff failed to stick to terms and conditions of Ex.A2 agreement of sale. As per terms and conditions of Ex.A2 a schedule for payment of installments is prescribed. For better appreciation para 4 of the Ex.A2 is reproduced which is as hereunder :

"The Buyer agrees to pay the balance sale consideration amount of Rs.5,30,525/- to the Vendor in installments as stated below :

Installments	Amount	Due Date of Payment
I Installment	50,000-00	9th October 2005
II installment	96,105-00	1st December 2005
III installment	96,105-00	1st March, 2006
IV installment	96,105-00	1st July, 2006
V installment	96,105-00	1st October, 2006
VI installment	96,105-0	31st December, 2006

12. As per the above schedule the plaintiff has to pay entire sale consideration of Rs.5,30,525/- by 31st December, 2006. The plaintiff committed default in respect of the 1st installment itself. As per Ex.A4 he paid Rs.15,000/- on 3.3.2006. As per schedule of the payment the plaintiff was expected to pay Rs.50,000/- on or before 9.10.2005. The entire material on record shows that the plaintiff committed several defaults in payment of the installments. He never adhered to terms and conditions of

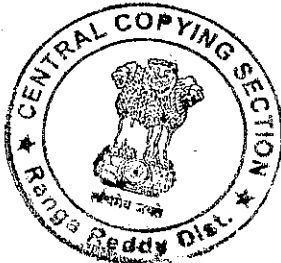


the agreement of sale. As per material on record and as per admitted facts the plaintiff paid Rs.15,000/- on 3.3.2006 and Rs.75,000/- on 11.7.2006. Thereafter, he did not choose to pay any pie towards balance sale consideration. Moreover, it is not the case of plaintiff that he paid any other amounts other than three amounts covered by Ex.A1 (Rs.10,000/-), Ex.A4 (Rs.15,000/-) and Ex.A9 (Rs.75,000/-). Other than these amounts he has not paid any other pie. After careful and cautious scrutiny and examination of entire material on record it can be safely said that the plaintiff has not made payments to the defendant according to the terms and conditions of agreement of sale that is Ex.A2. Though the plaintiff contended in the plaint that he has been always ready and willing to perform his part of contract, he miserably failed in doing so. When the plaintiff failed to pay the installments as per schedule given in Ex.A2 he cannot say that he proved his readiness and willingness to perform his part of contract. Mere making averment in the plaint about his readiness and willingness to perform his contract is not at all sufficient. The plaintiff has to adduce sufficient and convincing, cogent and trustworthy evidence which shows that he has been always ready and willing to perform his part of contract. When the plaintiff failed to show that balance amount of sale consideration was kept ready and available, mere averment about his readiness is not sufficient to show that he was ready and willing to perform his part of contract. My view has support of the decision of Hon'ble High Court of A.P which is given in B.Rajamani vs. Azhar Sultana reported in 2005 AP 260. Readiness means financial capacity of plaintiff to perform his part of contract to pay entire sale consideration. The plaintiff miserably



A handwritten signature or scribble in black ink, consisting of a long horizontal line with a small loop at the end.


failed in establishing his financial capacity to pay entire sale consideration. When he failed to adhere to the payment schedule, he cannot claim that he was always ready and willing to perform his part of contract. When plaintiff is seeking relief of Specific Performance of Contract she has to prove his continuous readiness and willingness to perform his part of contract from the date of the contract till the date of hearing. Even as per contents of the plaint he was unable to get housing loan due to change in his financial capacity. The plaintiff has to prove that all throughout he was willing to perform his part of contract. But he failed in doing so. Mere payment of three amounts referred supra cannot be based to say that he was always willing and ready to perform his part of contract. He made payment of Rs.75,000/- only subsequent to notice issued by the 1st defendant. Only because of the payment of Rs.75,000/- made by plaintiff, he cannot argue that he was always ready and willing to perform his part of contract. It may be true there are some discrepancies and infirmities in the evidence of DW-1. Those discrepancies and infirmities cannot be taken as advantage by the plaintiff. As it is the plaintiff who filed the suit seeking for Specific Performance of Contract it is his burden to establish his claim. In view of the foregoing discussion I am of the view plaintiff miserably failed to establish that he is ready and willing to perform his part of contract and in view of the foregoing findings and discussion I hold that the plaintiff is not at all entitled for relief of Specific Performance of Contract and a direction to 1st defendant to execute registered sale deed in favour of the plaintiff. Thus, I decided all three issues against the plaintiff.



13. Issue No.4 : In view of the findings and decisions given in Issue Nos.1 to 3, I hold that the plaintiff is not at all entitled for consequential relief of Permanent Injunction as prayed for. Thus, I answered this issue.

14. Issue No.5 : In the result, suit is dismissed without costs.

Dictated to the Senior Assistant/Personal Assistant,
transcribed by her, corrected and pronounced by me
in the open court on this the 15th day of October, 2014.


VIII ADDL.SENIOR CIVIL JUDGE
RANGAREDDY DISTRICT

APPENDIX OF EVIDENCE

WITNESSES EXAMINED ON BEHALF OF PLAINTIFFS:

PW-1 : Vinay Agarwal
PW-2 : R. Ravichander

WITNESSES EXAMINED ON BEHALF OF DEFENDANTS:

DW-1 : K. Krishna Prasad
DW-2 : M. Jagan Mohan Reddy

EXHIBITS MARKED ON BEHALF OF PLAINTIFFS :

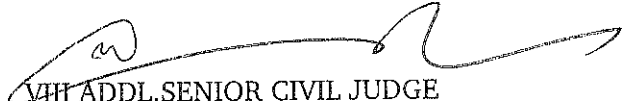
Ex.A1 : Original receipt dt.8.9.2005.
Ex.A2 : Original agreement dt.15.12.2005.
Ex.A3 : Original pricing and payment terms of defendants.
Ex.A4 : Original receipt dt.3.3.06.
Ex.A5 : Original reminder notice issued by defendant dt.5.5.06.
Ex.A6 : Office copy of reply to notice with acknowledgment dt.15.5.06.
Ex.A7 : Original Cancellation notice dt.9.6.06.
Ex.A8 : Office copy of reply dt.23.6.07.
Ex.A9 : Original receipt dt.11.7.06.
Ex.A10 : Original letter dt.1.8.06.
Ex.A11 : Plan of the flat.
Ex.A12 : Office copy of legal notice dt.19.2.07.
Ex.A13 : Reply notice dt.22.2.07.
Ex.A14 : Office copy of legal notice dt.12.3.07.
Ex.A15 : Original reply notice dt.28.3.2007.

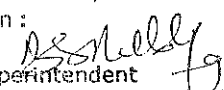




- Ex.A16 : letter dt.24.5.07.
- Ex.A17 : Caveat filed by the defendants.
- Ex.A18 : CC of sale deed dt.31.1.2007.

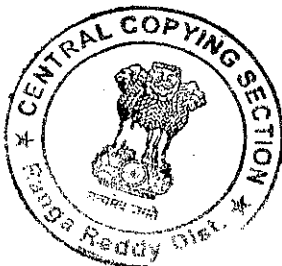
EXHIBITS MARKED ON BEHALF OF DEFENDANTS:

Ex.B1 : Authorization letter issued by D1 in favour of DW-1.


VH ADDL.SENIOR CIVIL JUDGE
RANGAREDDY DISTRICT

**COURT OF THE DISTRICT &
SESSIONS JUDGE
Ranga Reddy District**
C.A.No. 4267 of 2015
Application Filed on : 25/2/15
Charges Called on : 31/3/15
Charges Deposited on : 1/4/15
Receipt No. 51/15 Rs.: 64/-
Copy made Ready on : 9/4/15
Copy Delivered on :

Superintendent
Central Copying Superintendent
Ranga Reddy District

READ BY:
COMPARED BY: 
Certified to be Xerox True Copy

Copyists Superintendent.



IN THE HON'BLE HIGH COURT OF JUDICATURE ; AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

A.S.M.P.No. 1848 OF 2015

IN

A.S.No. 631 OF 2015

Between :

Sri Vinay Agarwal

...Petitioner/Appellant

AND

M/s. Summit Builders & another

...Respondents/Respondents

AFFIDAVIT

I, Vinay Agarwal, S/o. Sri Vasudev, aged about 50 years, Occ : business, R/o. Flat No.403, Susheel Residency, Opp. CDR Hospital, Hyderguda, Hyderabad – 500 029, do hereby solemnly affirm and state on oath as follows :

1. I am the petitioner herein and as such I am well acquainted with the facts of the case.
2. I submit that I have filed the above first appeal aggrieved by the judgment and decree dated 15-10-2014 passed in O.S.No.1549/2007 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy district. The suit was filed by me for specific performance of the agreement of sale entered into between me and the respondents. The grounds of appeal may be read as part of this affidavit for proper appreciation of the facts of the case.
3. I further submit that I filed the said suit against the respondents for specific performance of the agreement of sale dated 15-12-2005. The respondent No.1 is the owner and developer of "Silver Oak" apartments on the land forming part of survey No.290, situated at Cherlapally village, Ghatkesar mandal, Ranga Reddy district. For the purpose of selling the flats to prospective purchasers, the respondent advertised for the same.
4. I also submit that as I was interested in the venture taken up by the respondent No.1 and intended to purchase a flat therein, I approached the respondent No.1 in that regard. The respondent No.1 showed to me brochure relating proposed apartment and I selected flat No.401 on fourth floor admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved two wheeler parking space bearing No.73, hereinafter referred to as the 'suit flat'.

DEPONENT

Contd 2

5. I submit that after negotiations, sale consideration was fixed at Rs.649/- per square feet and in view of the extent of the suit flat being 725 square feet, the total sale consideration of the suit flat was arrived to at Rs.4,70,525/-. Apart from the sale consideration, I was asked to pay a sum of Rs.50,000/- towards the charges for the amenities, Rs.5,000/- towards parking and Rs.15,000/- towards water & electricity charges. I paid to the respondent No.1 Rs.10,000/- by cheque No.123098, dated 08-09-2005 drawn on M/s. IDBI Bank, under receipt No.1017, towards earnest money and part payment of sale consideration, which was encashed by the respondent No.1 in conclusion of agreement.
6. I further submit that suit flat is more clearly described in schedule of property of the plaint. Terms of the contract were subsequently reduced into writing under an agreement of sale entered into between the parties on 15-12-2005. I paid an additional amount of Rs.15,000/- to the respondent No.1 by cheque No.619352, dated 01-03-2006 drawn on M/s. HDFC Bank, towards further part payment of sale consideration, which was encashed by the respondent No.1. The respondent No.1 had also informed me that they would intimate to me the progress of construction of the complex and accordingly would also inform me about the payment of balance of sale consideration to be made by me.
7. I also submit that I was waiting patiently for the letter of the respondent No.1 informing me about the status and progress of the complex and also about the amounts to be paid by me, but I did not receive any correspondence or communication from the respondent No.1 as told by them. When I visited the office of the respondent No.1 enquiring about the progress of the complex, I was told that that it would take some more time for the project to be completed and that they would intimate me further details later.
8. I submit that to my utter shock and surprise, instead of the intimation letter, I received a letter from the respondent No.1 dated 05-05-2006 calling for payment of three installments within seven days of receipt of the notice and warned of forfeiture, if I fail to pay the installments. I sent suitable reply dated 15-05-2006 to the letter of the respondent No.1 informing that I had not received any reminders earlier for payment as alleged in the said letter and informed the respondent No.1 that I would pay the amount in lump sum immediately on sanction of loan, which was delayed in view of change of status of income from salaried to self employed and will also complete the payments in lump sum.
9. I further submit that on receiving my reply, the respondent No.1 sent a cancellation notice dated 09-06-2006 to me informing that I did not adhere to the payment schedule, not paid the installments as promised and as such the agreement entered into between the parties stood cancelled and that the payments made by me were forfeited.

10. I also submit that in said reply, the respondent No.1 further stated that they were at liberty to allot said flat to any intending purchaser. After receiving reply, I sent reply letter dated 23-06-2006 stating that I had already informed by reply letter dated 15-05-2006 that there was delay in processing of loan and all pending installment amounts will be paid shortly and requested to bear for some time. Apart from that, I visited office of the respondent No.1 in person and discussed with the respondent No.1. The respondent No.1 had stated that they had issued cancellation notice only to ascertain whether I was really interested in purchasing flat or not. The respondent No.1 assured me that my interest in flat would be safeguarded and I can make the payment as and when the loan is sanctioned to me.
11. I submit that as per discussions held between me and the respondent No.1, I paid further amount of Rs.75,000/- by cheque No.691784, dated 11-07-2006, drawn on M/s. HDFC Bank and it was acknowledged by the respondent No.1 vide receipt dated 11-07-2006 towards part payment of sale consideration. As the respondent No.1 was satisfied with the payments made by me, they addressed letter dated 01-08-2006, asking me to visit the site between 01-08-2006 and 08-08-2007 to have a look at flat for additions or alterations to be done to it and accordingly I suggested some changes to suit flat, for which the respondent No.1 agreed and stated to intimate me date of execution of document.
12. I further submit that I waited patiently for response from the respondent No.1, but did not receive any information and when I contacted them in person, there was no proper response and they avoided to meet me. Getting vexed with their attitude and losing hope of response, I got issued legal notice dated 19-02-2007 to the respondent No.1 calling upon to execute and get registered sale deed in respect of suit flat by receiving balance sale consideration at the time of registration of sale deed.
13. I also submit that the notice was served on the respondent No.1 on 22-02-2007 and they gave reply dated 22-02-2007 with all false and baseless allegations, taking the stand that the agreement stood cancelled. The respondent No.1 admitted the agreement of sale in my favour and receipt of part payment of sale consideration made on different dates, but alleged that he had addressed cancellation notice dated 09-08-2006 to me. I was not served with any such notice at any time and it appears they fabricated the same.
14. I submit that even if any such notice is given, it cannot terminate valid agreement of sale between the parties, under which I paid huge amount towards part of sale consideration under proper receipts. I got issued rejoinder notice on 12-03-2007 denying receipt of any cancellation notice and made it clear that they cannot terminate agreement unilaterally. The respondent No.1 got issued reply notice on 28-03-2007 taking the same false stand.

DEPONENT

Contd 4

It is pertinent to mention here that the respondent No.1 lodged caveat before the Hon'ble Court against me, which proves the malafides on their part.

15. I further submit that I have always been ready and willing to perform my part of the contract of making payment of balance of sale consideration and in fact on the promises of the respondent No.1, I have already got sanctioned loan from the banker. Having agreed to sell the property to me and having received part payment of sale consideration, the respondent No.1 cannot go back from the transaction nor does he have the right to terminate the same. Hence, I filed the suit for specific performance of agreement of sale. It is pertinent to mention here that the respondent No.1 has gone back the promise demanding me to enhance the sale consideration, which is not legal.
16. I also submit that I got money to pay balance of sale consideration of Rs.4,40,525/- to the respondent No.1 as I have already got loan sanctioned from the banker for the purpose of making payment of balance of sale consideration to the respondent No.1 in respect of suit flat, payment of stamp duty, registration charges, etc. My agreement of sale is subsisting and it still holds good. It is clear that intention of the respondent No.1 in refusing to execute and register the sale deed in my favour is illegal and against all the morals also.
17. I submit that originally suit was filed against the respondent No.1 alone, who filed written statement dated 05-12-2007 denying my claim while admitting that I proposed to purchase Flat No.401 and other details thereof. The respondent No.1 contended that I signed a booking form, that booking was tentative and that it was not final contract. The respondent No.1 denied consideration as Rs.4,70,525/- and pleaded it to be Rs.5,40,525/-. The respondent No.1 admitted payment of Rs.75,000/- on 11-07-2006.
18. I further submit that the respondent No.1 suppressed the fact of alienation of the flat to the respondent No.2 way back on 31-01-2007 prior to filing of the written statement. In order to frustrate my agreement, the respondent No.1 sold suit flat to the respondent No.2 and on coming to know about the same, I got the respondent No.2 impleaded in the suit. The respondent No.2 filed the written statement contending that she is not a party to the suit transaction. As per settled law, the transaction between the respondents which took place during subsistence of suit contract between me and the respondent No.1 is hit by doctrine of lis-pendence as per the provision of Transfer of Property Act.
19. I also submit that in view of the agreement of sale between me and the respondent No.1 being prior to the sale deed in favour of the respondent No.2 and it being in subsistence, sale deed in favour of the respondent No.2 is illegal and liable to be cancelled.

Thus I have prima facie case in my favour in view of my holding agreement of sale and having paid money towards part payment of sale consideration. Balance of convenience is also in favour of granting order of injunction to me as the respondents have indulged in unethical activities to cause harm to me and to deprive me of my legitimate rights.

20. I submit that unfortunately the court below dismissed the suit on false grounds. Now taking advantage of the dismissal of the suit, the respondents have been making attempts to create further encumbrance on the suit property. If injunction order is not granted, I would be put to irreparable loss and injury which cannot be compensated by any other means. Further the order of injunction was subsisting in my favour during the pendency of the suit before the court below and was not challenged by the respondents.
21. I further submit that in the event of the respondents succeeding in their illegal acts of selling the suit property to third parties, I would suffer irreparable loss and injury, which cannot be compensated by any other means. As such, there is every necessity that this Hon'ble court passes an order restraining the respondents from doing so. If an order of injunction is not passed, the acts of the respondents would not only lead to multiplicity of proceedings but also would cause heavy loss and hardship to several persons. The third party purchasing the property will also be subjected to sufferance.
22. I therefore pray that the Hon'ble court may be pleased to pass an order of temporary injunction restraining the respondents from transferring, alienating, or parting with possession or creating any third party interest or charge in respect of all that the Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No.290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73, situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district as given in the schedule of the property of the petition in favour of the third parties pending disposal of above appeal. in the interest of justice and pass such other orders as this Hon'ble court deems fit and proper in the circumstances of the case.

Sworn and signed before me on this the
day of August, 2015 at Hyderabad

DEPONENT

Identified by Sri Shyam S.Agrawal, Advocate

ADVOCATE - HYDERABAD



MEMORANDUM OF APPEAL SUIT MISCELLANEOUS PETITION

(under order XXXIX Rules 1 & 2 read with section 151 of the Code of Civil Procedure, 1908)

IN THE HON'BLE HIGH COURT OF JUDICATURE ; AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

A.S.M.P.No. OF 2015

IN

A.S.No. OF 2015

Between:

Sri Vinay Agarwal
S/o. Sri Vasudev, aged about 50 years
Occ : business, R/o. Flat No.403
Susheel Residency, Opp. CDR Hospital
Hyderguda, Hyderabad – 500 029.

...Petitioner/Appellant

AND

1. M/s. Summit Builders
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, aged 45 years, Occ : business
having office at 5-4-187/3, III Floor
M.G. Road, Secunderabad – 500 003.

2. Smt. Subhashini S. Gade
W/o. Sri Shriram Mogallapalli
aged about 38 years, residing
at C/o. Sri Satyanarayana Murty Bondada,
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari district – 533 437.

...Respondents/Respondents

INJUNCTION PETITION

For the reasons stated in the accompanying affidavit the petitioner prays that the Hon'ble court may be pleased to pass an order of temporary injunction restraining the respondents from transferring, alienating, creating any third party interest or charge of the below given schedule of property in favour of the third parties pending above appeal, in the interest of justice and pass such other orders as this Hon'ble court deems fit and proper in the circumstances of the case.

Contd..2

SCHEDULE OF THE PROPERTY

Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No.290, admeasuring 725 square feet of super built up area together with proportionate 36.25 square yards undivided share of land and a reserved parking space for two wheeler bearing No.73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district and, bounded by :

NORTH	:	Open to sky
SOUTH	:	Flat No.402
EAST	:	Open to sky
WEST	:	6' wide corridor

Hyderabad
Date : -08-2015

COUNSEL FOR THE PETITIONER

RANGA REDDY DISTRICT
HIGH COURT OF JUDICATURE; HYDERABAD
FOR THE STATE OF TELANGANA AND THE
STATE OF ANDHRA PRADESH

A.S.M.P.No. OF 2015

IN

A.S.No. OF 2015

INJUNCTION PETITION

Filed by :

M/s. SHYAM S.AGRawal – 5099

L.Praveen Kumar

L.Pradhan Kumar

K.Shashirekha

Naresh Singh

Har Rachan Kaur

COUNSEL FOR THE PETITIONER

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

A.S.M.P. No. 1848 of 2015

IN

AS. No. 631 of 2015

Between:

Sri Vinay Agarwal, S/o. Sri Vasudev

Petitioner
(Appellant in AS.No. 631/2015
on the file of the High Court)

AND

1. M/s. Summit Builders, rep. by its Partner Sri Soham Modi, S/o. Sri Satish Modi, Occ: Business, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.
2. Smt. Subhashini S.Gade, W/o. Sri Shriram Mogallapalli, Residing at C/o. Sri Satyanarayana Murty Bondada, H.No. 6-10-30/A, Raja Street, Peddapuram, East Godavari District – 533 437.

Respondents
(Respondents in –do-)

To

Sri Soham Modi, S/o. Sri Satish Modi, Partner, Summit Builders, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.

Whereas upon motion made unto this Court this day by Sri Shyam S.Agrawal, Advocate for the Petitioner, this court hath directed that an ad-interim injunction shall be issued restraining the respondents from alienating the subject property.

SCHEDULE OF THE PROPERTY

Flat No. 401 on fourth floor in Silver Oak Apts, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate 36.25 square yards undivided share of land and a reserved parking space for two wheelers bearing No. 73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy District and, bounded by:

NORTH	:	Open to Sky
SOUTH	:	Flat No. 402
EAST	:	Open to Sky
WEST	:	6' wide corridor

during pendency of the appeal.

You namely,

Sri Soham Modi, S/o. Sri Satish Modi, Partner, Summit Builders, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.

are hereby restrained either by yourself; or by your servants, agents or assignees from alienating the subject property during pendency of the appeal.



SCHEDULE OF THE PROPERTY

Flat No. 401 on fourth floor in Silver Oak Aprtments, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate 36.25 square yards undivided share of land and a reserved parking space for two wheeler bearing No. 73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy District and, bounded by:

NORTH : Open to Sky
SOUTH : Flat No. 402
EAST : Open to Sky
WEST : 6' wide corridor
during pendency of the appeal.

Given under my hand and the seal of this court, this Tuesday, the 8th day of September, 2015.


ASSISTANT REGISTRAR

HIGH COURT

MSMJ

DATED: 08-09-2015

NOTE: POST AFTER THREE WEEKS

INJUNCTION ORDER

**ASMP.NO. 1848 OF 2015
IN
AS.NO. 631 OF 2015**

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

TUESDAY, THE EIGHTH DAY OF SEPTEMBER,
TWO THOUSAND AND FIFTEEN

:PRESENT:
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

ASMP.No. 1848 of 2015
IN
AS.No. 631 of 2015

Between:
Sri Vinay Agarwal, S/o. Sri Vasudev

Petitioner
(Appellant in AS.No. 631/2015
on the file of the High Court)

AND

1. M/s. Summit Builders, rep. by its Partner Sri Soham Modi, S/o. Sri Satish Modi, Occ: Business, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.
2. Smt. Subhashini S.Gade, W/o. Sri Shriram Mogallapalli, Residing at C/o. Sri Satyanarayana Murty Bondada, H.No. 6-10-30/A, Raja Street, Peddapuram, East Godavari District – 533 437.

Respondents
(Respondents in –do-)

COUNSEL FOR PETITIONER: Sri Shyam S.Agrawal

Petition under Order 39 Rules 1 & 2 R/w. Sec 151 of CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to pass an order of temporary injunction restraining the respondents from transferring, alienating or parting with possession or creating any third party interest or charge of the below given schedule of property in favour of the third parties

SCHEDULE OF THE PROPERTY

Flat No. 401 on fourth floor in Silver Oak Aprtments, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate 36.25 square yards undivided share of land and a reserved parking space for two wheeler bearing No. 73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy District and, bounded by:

NORTH : Open to Sky
SOUTH : Flat No. 402
EAST : Open to Sky
WEST : 6' wide corridor

pending disposal of AS.No.631/2015 preferred to the High Court against the Judgment and decree of the Court of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad made in OS.No. 1549/2007 dt. 15-10-2014.

The Court while directing issue of urgent notice to the Respondents herein to show cause why this petition should not be complied with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

“ Issue urgent notice to the respondents.

Learned counsel for the petitioner is permitted to take out personal notice to the respondents by RPAD and file proof of service within three weeks.

Meanwhile, there shall be ad interim injunction restraining the respondents from alienating the subject property during pendency of the appeal. Post after three weeks."

**Sd/- K.M.RAMESH BABU
ASSISTANT REGISTRAR**

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The Chief Judge, City Civil Court, Secunderabad.
(in duplicate with a copy of Injunction to serve on Respondent No.1 and return)
2. The District Judge, East Godavari District at Rajahmundry.
(in duplicate with a copy of Injunction to serve on Respondent No.2 and return)
3. The VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.
4. Sri Soham Modi, S/o. Satish Modi, Partner, M/s. Summit Builders, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.
5. Smt. Subhashini S.Gade, W/o. Sri Shriram Mogallapalli, Residing at C/o. Sri Satyanarayana Murty Bondada, H.No. 6-10-30/A, Raja Street, Peddapuram, East Godavari District – 533 437.
(4 & 5 by RPAD)
6. One CC to Sri Shyam S.Agarwal, Advocate(OPUC)
7. One spare copy.

SAH

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

A.S.M.P. No. 1848 of 2015

IN

AS. No. 631 of 2015

Between:

Sri Vinay Agarwal, S/o. Sri Vasudev

Petitioner

(Appellant in AS.No. 631/2015
on the file of the High Court)

AND

1. M/s. Summit Builders, rep. by its Partner Sri Soham Modi, S/o. Sri Satish Modi, Occ. Business, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.
2. Smt. Subhashini S.Gade, W/o. Sri Shriram Mogallapalli, Residing at C/o. Sri Satyanarayana Murty Bondada, H.No. 6-10-30/A, Raja Street, Peddapuram, East Godavari District – 533 437.

Respondents

(Respondents in –do–)

To

Sri Soham Modi, S/o. Sri Satish Modi, Partner, Summit Builders, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.

Whereas upon motion made unto this Court this day by Sri Shyam S.Agrawal, Advocate for the Petitioner, this court hath directed that an ad-interim injunction shall be issued restraining the respondents from alienating the subject property.

SCHEDULE OF THE PROPERTY

Flat No. 401 on fourth floor in Silver Oak Apts, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate 36.25 square yards undivided share of land and a reserved parking space for two wheeler bearing No. 73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy District and, bounded by:

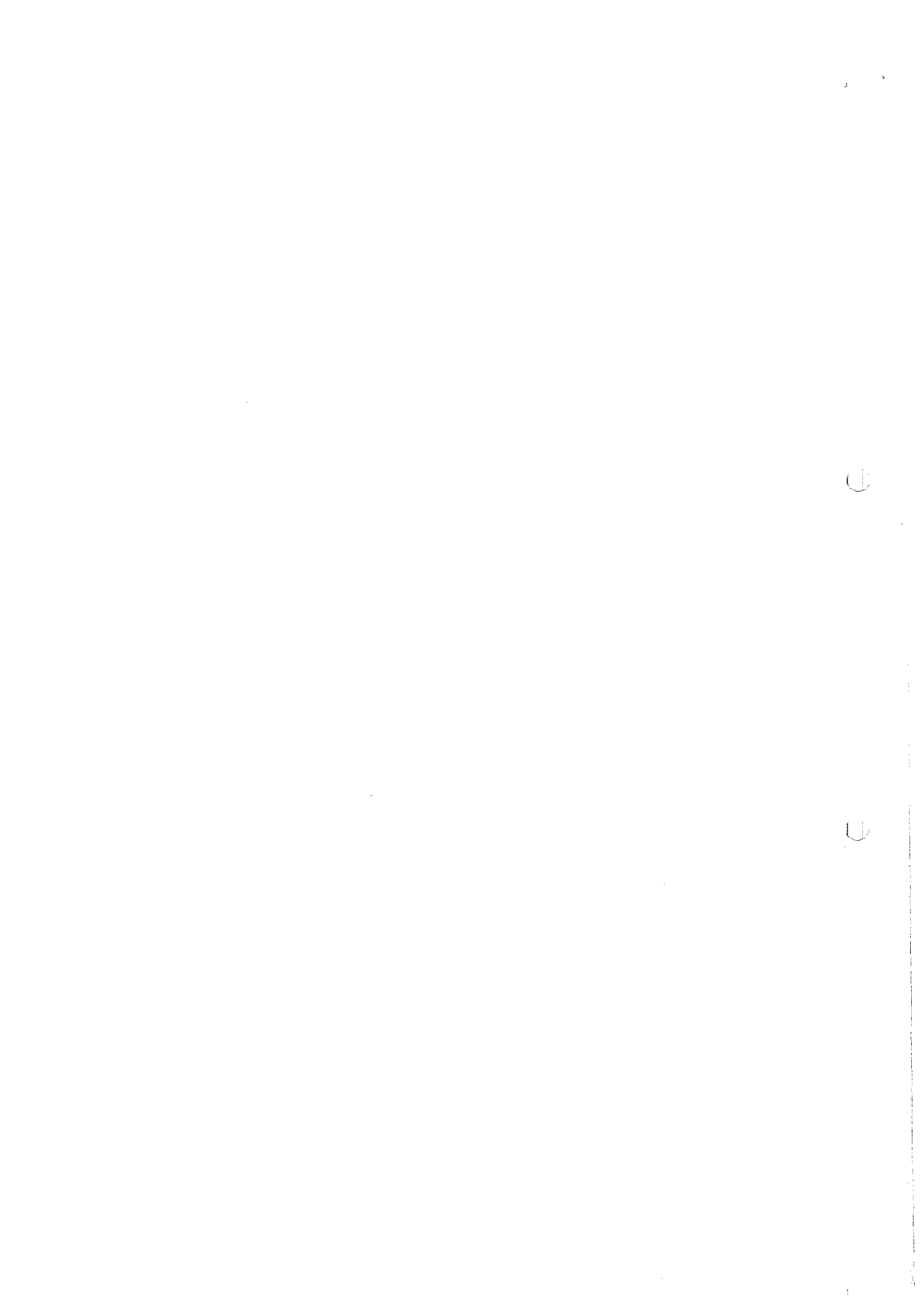
NORTH	:	Open to Sky
SOUTH	:	Flat No. 402
EAST	:	Open to Sky
WEST	:	6' wide corridor

during pendency of the appeal.

You namely,

Sri Soham Modi, S/o. Sri Satish Modi, Partner, Summit Builders, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.

are hereby restrained either by yourself; or by your servants, agents or assignees from alienating the subject property during pendency of the appeal.



SCHEDULE OF THE PROPERTY

Flat No. 401 on fourth floor in Silver Oak Aprtments, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate 36.25 square yards undivided share of land and a reserved parking space for two wheeler bearing No. 73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy District and, bounded by:

NORTH : Open to Sky
SOUTH : Flat No. 402
EAST : Open to Sky
WEST : 6' wide corridor
during pendency of the appeal.

Given under my hand and the seal of this court, this Tuesday, the 8th day of September, 2015.


ASSISTANT REGISTRAR

HIGH COURT

MSMJ

DATED: 08-09-2015

NOTE: POST AFTER THREE WEEKS

INJUNCTION ORDER

**ASMP.NO. 1848 OF 2015
IN
AS.NO. 631 OF 2015**

IN THE HON'BLE HIGH COURT OF JUDICATURE ; AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

A.S.M.P.No. 1848 OF 2015

IN

A.S.No. 631 OF 2015

Between :

Sri Vinay Agarwal

...Petitioner/Appellant

AND

M/s. Summit Builders & another

...Respondents/Respondents

AFFIDAVIT

I, Vinay Agarwal, S/o. Sri Vasudev, aged about 50 years, Occ : business, R/o. Flat No.403, Susheel Residency, Opp. CDR Hospital, Hyderguda, Hyderabad – 500 029, do hereby solemnly affirm and state on oath as follows :

1. I am the petitioner herein and as such I am well acquainted with the facts of the case.
2. I submit that I have filed the above first appeal aggrieved by the judgment and decree dated 15-10-2014 passed in O.S.No.1549/2007 on the file of the VIII Additional Senior Civil Judge, Ranga Reddy district. The suit was filed by me for specific performance of the agreement of sale entered into between me and the respondents. The grounds of appeal may be read as part of this affidavit for proper appreciation of the facts of the case.
3. I further submit that I filed the said suit against the respondents for specific performance of the agreement of sale dated 15-12-2005. The respondent No.1 is the owner and developer of "Silver Oak" apartments on the land forming part of survey No.290, situated at Cherlapally village, Ghatkesar mandal, Ranga Reddy district. For the purpose of selling the flats to prospective purchasers, the respondent advertised for the same.
4. I also submit that as I was interested in the venture taken up by the respondent No.1 and intended to purchase a flat therein, I approached the respondent No.1 in that regard. The respondent No.1 showed to me brochure relating proposed apartment and I selected flat No.401 on fourth floor admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved two wheeler parking space bearing No.73, hereinafter referred to as the 'suit flat'.

DEPONENT

Contd. 2

5. I submit that after negotiations, sale consideration was fixed at Rs.649/- per square feet and in view of the extent of the suit flat being 725 square feet, the total sale consideration of the suit flat was arrived to at Rs.4,70,525/-. Apart from the sale consideration, I was asked to pay a sum of Rs.50,000/- towards the charges for the amenities, Rs.5,000/- towards parking and Rs.15,000/- towards water & electricity charges. I paid to the respondent No.1 Rs.10,000/- by cheque No.123098, dated 08-09-2005 drawn on M/s. IDBI Bank, under receipt No.1017, towards earnest money and part payment of sale consideration, which was encashed by the respondent No.1 in conclusion of agreement.
6. I further submit that suit flat is more clearly described in schedule of property of the plaint. Terms of the contract were subsequently reduced into writing under an agreement of sale entered into between the parties on 15-12-2005. I paid an additional amount of Rs.15,000/- to the respondent No.1 by cheque No.619352, dated 01-03-2006 drawn on M/s. HDFC Bank, towards further part payment of sale consideration, which was encashed by the respondent No.1. The respondent No.1 had also informed me that they would intimate to me the progress of construction of the complex and accordingly would also inform me about the payment of balance of sale consideration to be made by me.
7. I also submit that I was waiting patiently for the letter of the respondent No.1 informing me about the status and progress of the complex and also about the amounts to be paid by me, but I did not receive any correspondence or communication from the respondent No.1 as told by them. When I visited the office of the respondent No.1 enquiring about the progress of the complex, I was told that that it would take some more time for the project to be completed and that they would intimate me further details later.
8. I submit that to my utter shock and surprise, instead of the intimation letter, I received a letter from the respondent No.1 dated 05-05-2006 calling for payment of three installments within seven days of receipt of the notice and warned of forfeiture, if I fail to pay the installments. I sent suitable reply dated 15-05-2006 to the letter of the respondent No.1 informing that I had not received any reminders earlier for payment as alleged in the said letter and informed the respondent No.1 that I would pay the amount in lump sum immediately on sanction of loan, which was delayed in view of change of status of income from salaried to self employed and will also complete the payments in lump sum.
9. I further submit that on receiving my reply, the respondent No.1 sent a cancellation notice dated 09-06-2006 to me informing that I did not adhere to the payment schedule, not paid the installments as promised and as such the agreement entered into between the parties stood cancelled and that the payments made by me were forfeited.

DEPONENT

Contd..3

10. I also submit that in said reply, the respondent No.1 further stated that they were at liberty to allot said flat to any intending purchaser. After receiving reply, I sent reply letter dated 23-06-2006 stating that I had already informed by reply letter dated 15-05-2006 that there was delay in processing of loan and all pending installment amounts will be paid shortly and requested to bear for some time. Apart from that, I visited office of the respondent No.1 in person and discussed with the respondent No.1. The respondent No.1 had stated that they had issued cancellation notice only to ascertain whether I was really interested in purchasing flat or not. The respondent No.1 assured me that my interest in flat would be safeguarded and I can make the payment as and when the loan is sanctioned to me.
11. I submit that as per discussions held between me and the respondent No.1, I paid further amount of Rs.75,000/- by cheque No.691784, dated 11-07-2006, drawn on M/s. HDFC Bank and it was acknowledged by the respondent No.1 vide receipt dated 11-07-2006 towards part payment of sale consideration. As the respondent No.1 was satisfied with the payments made by me, they addressed letter dated 01-08-2006, asking me to visit the site between 01-08-2006 and 08-08-2007 to have a look at flat for additions or alterations to be done to it and accordingly I suggested some changes to suit flat, for which the respondent No.1 agreed and stated to intimate me date of execution of document.
12. I further submit that I waited patiently for response from the respondent No.1, but did not receive any information and when I contacted them in person, there was no proper response and they avoided to meet me. Getting vexed with their attitude and losing hope of response, I got issued legal notice dated 19-02-2007 to the respondent No.1 calling upon to execute and get registered sale deed in respect of suit flat by receiving balance sale consideration at the time of registration of sale deed.
13. I also submit that the notice was served on the respondent No.1 on 22-02-2007 and they gave reply dated 22-02-2007 with all false and baseless allegations, taking the stand that the agreement stood cancelled. The respondent No.1 admitted the agreement of sale in my favour and receipt of part payment of sale consideration made on different dates, but alleged that he had addressed cancellation notice dated 09-08-2006 to me. I was not served with any such notice at any time and it appears they fabricated the same.
14. I submit that even if any such notice is given, it cannot terminate valid agreement of sale between the parties, under which I paid huge amount towards part of sale consideration under proper receipts. I got issued rejoinder notice on 12-03-2007 denying receipt of any cancellation notice and made it clear that they cannot terminate agreement unilaterally. The respondent No.1 got issued reply notice on 28-03-2007 taking the same false stand.

DEPONENT

Contd. 4

It is pertinent to mention here that the respondent No.1 lodged caveat before the Hon'ble Court against me, which proves the malafides on their part.

15. I further submit that I have always been ready and willing to perform my part of the contract of making payment of balance of sale consideration and in fact on the promises of the respondent No.1, I have already got sanctioned loan from the banker. Having agreed to sell the property to me and having received part payment of sale consideration, the respondent No.1 cannot go back from the transaction nor does he have the right to terminate the same. Hence, I filed the suit for specific performance of agreement of sale. It is pertinent to mention here that the respondent No.1 has gone back the promise demanding me to enhance the sale consideration, which is not legal.
16. I also submit that I got money to pay balance of sale consideration of Rs.4,40,525/- to the respondent No.1 as I have already got loan sanctioned from the banker for the purpose of making payment of balance of sale consideration to the respondent No.1 in respect of suit flat, payment of stamp duty, registration charges, etc. My agreement of sale is subsisting and it still holds good. It is clear that intention of the respondent No.1 in refusing to execute and register the sale deed in my favour is illegal and against all the morals also.
17. I submit that originally suit was filed against the respondent No.1 alone, who filed written statement dated 05-12-2007 denying my claim while admitting that I proposed to purchase Flat No.401 and other details thereof. The respondent No.1 contended that I signed a booking form, that booking was tentative and that it was not final contract. The respondent No.1 denied consideration as Rs.4,70,525/- and pleaded it to be Rs.5,40,525/-. The respondent No.1 admitted payment of Rs.75,000/- on 11-07-2006.
18. I further submit that the respondent No.1 suppressed the fact of alienation of the flat to the respondent No.2 way back on 31-01-2007 prior to filing of the written statement. In order to frustrate my agreement, the respondent No.1 sold suit flat to the respondent No.2 and on coming to know about the same, I got the respondent No.2 impleaded in the suit. The respondent No.2 filed the written statement contending that she is not a party to the suit transaction. As per settled law, the transaction between the respondents which took place during subsistence of suit contract between me and the respondent No.1 is hit by doctrine of lis-pendence as per the provision of Transfer of Property Act.
19. I also submit that in view of the agreement of sale between me and the respondent No.1 being prior to the sale deed in favour of the respondent No.2 and it being in subsistence, sale deed in favour of the respondent No.2 is illegal and liable to be cancelled.

Thus I have prima facie case in my favour in view of my holding agreement of sale and having paid money towards part payment of sale consideration. Balance of convenience is also in favour of granting order of injunction to me as the respondents have indulged in unethical activities to cause harm to me and to deprive me of my legitimate rights.

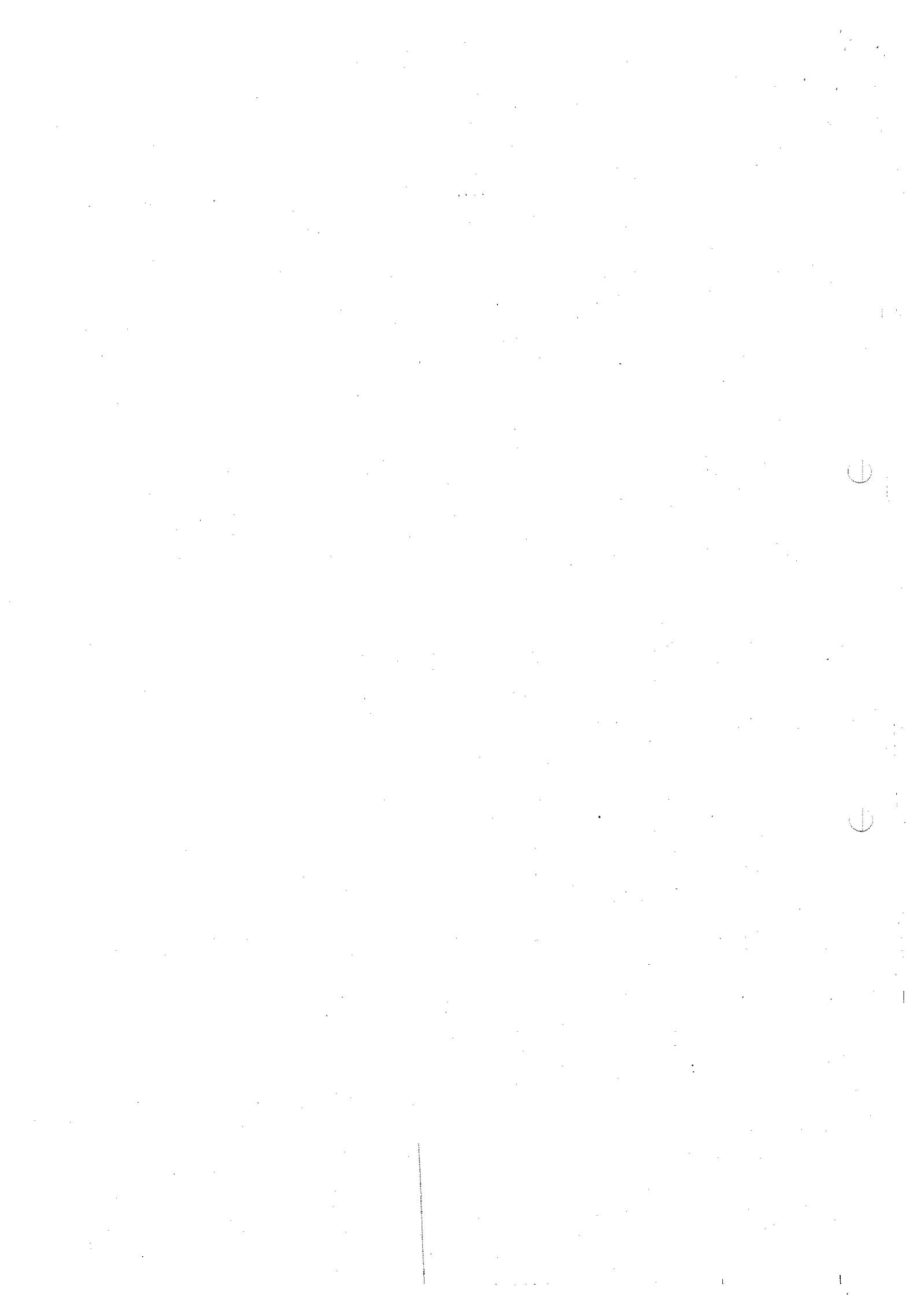
20. I submit that unfortunately the court below dismissed the suit on false grounds. Now taking advantage of the dismissal of the suit, the respondents have been making attempts to create further encumbrance on the suit property. If injunction order is not granted, I would be put to irreparable loss and injury which cannot be compensated by any other means. Further the order of injunction was subsisting in my favour during the pendency of the suit before the court below and was not challenged by the respondents.
21. I further submit that in the event of the respondents succeeding in their illegal acts of selling the suit property to third parties, I would suffer irreparable loss and injury, which cannot be compensated by any other means. As such, there is every necessity that this Hon'ble court passes an order restraining the respondents from doing so. If an order of injunction is not passed, the acts of the respondents would not only lead to multiplicity of proceedings but also would cause heavy loss and hardship to several persons. The third party purchasing the property will also be subjected to sufferance.
22. I therefore pray that the Hon'ble court may be pleased to pass an order of temporary injunction restraining the respondents from transferring, alienating, or parting with possession or creating any third party interest or charge in respect of all that the Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No.290, admeasuring 725 square feet of super built up area together with proportionate undivided share of land to the extent of 36.25 square yards and a reserved parking space for two wheeler bearing No.73, situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district as given in the schedule of the property of the petition in favour of the third parties pending disposal of above appeal. in the interest of justice and pass such other orders as this Hon'ble court deems fit and proper in the circumstances of the case.

Sworn and signed before me on this the
day of August, 2015 at Hyderabad

DEPONENT

Identified by Sri Shyam S.Agrawal, Advocate

ADVOCATE - HYDERABAD



MEMORANDUM OF APPEAL SUIT MISCELLANEOUS PETITION

(under order XXXIX Rules 1 & 2 read with section 151 of the Code of Civil Procedure, 1908)

IN THE HON'BLE HIGH COURT OF JUDICATURE ; AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

A.S.M.P.No. OF 2015

IN

A.S.No. OF 2015

Between:

Sri Vinay Agarwal
S/o. Sri Vasudev, aged about 50 years
Occ : business, R/o. Flat No.403
Susheel Residency, Opp. CDR Hospital
Hyderguda, Hyderabad – 500 029.

...Petitioner/Appellant

AND

1. M/s. Summit Builders
represented by its partner Sri Soham Modi
S/o. Sri Satish Modi, aged 45 years, Occ : business
having office at 5-4-187/3, III Floor
M.G. Road, Secunderabad – 500 003.

2. Smt. Subhashini S. Gade
W/o. Sri Shriram Mogallapalli
aged about 38 years, residing
at C/o. Sri Satyanarayana Murty Bondada,
H.No.6-10-30/A, Raja Street, Peddapuram
East Godavari district – 533 437.

...Respondents/Respondents

INJUNCTION PETITION

For the reasons stated in the accompanying affidavit the petitioner prays that the Hon'ble court may be pleased to pass an order of temporary injunction restraining the respondents from transferring, alienating, creating any third party interest or charge of the below given schedule of property in favour of the third parties pending above appeal, in the interest of justice and pass such other orders as this Hon'ble court deems fit and proper in the circumstances of the case.

Contd..2

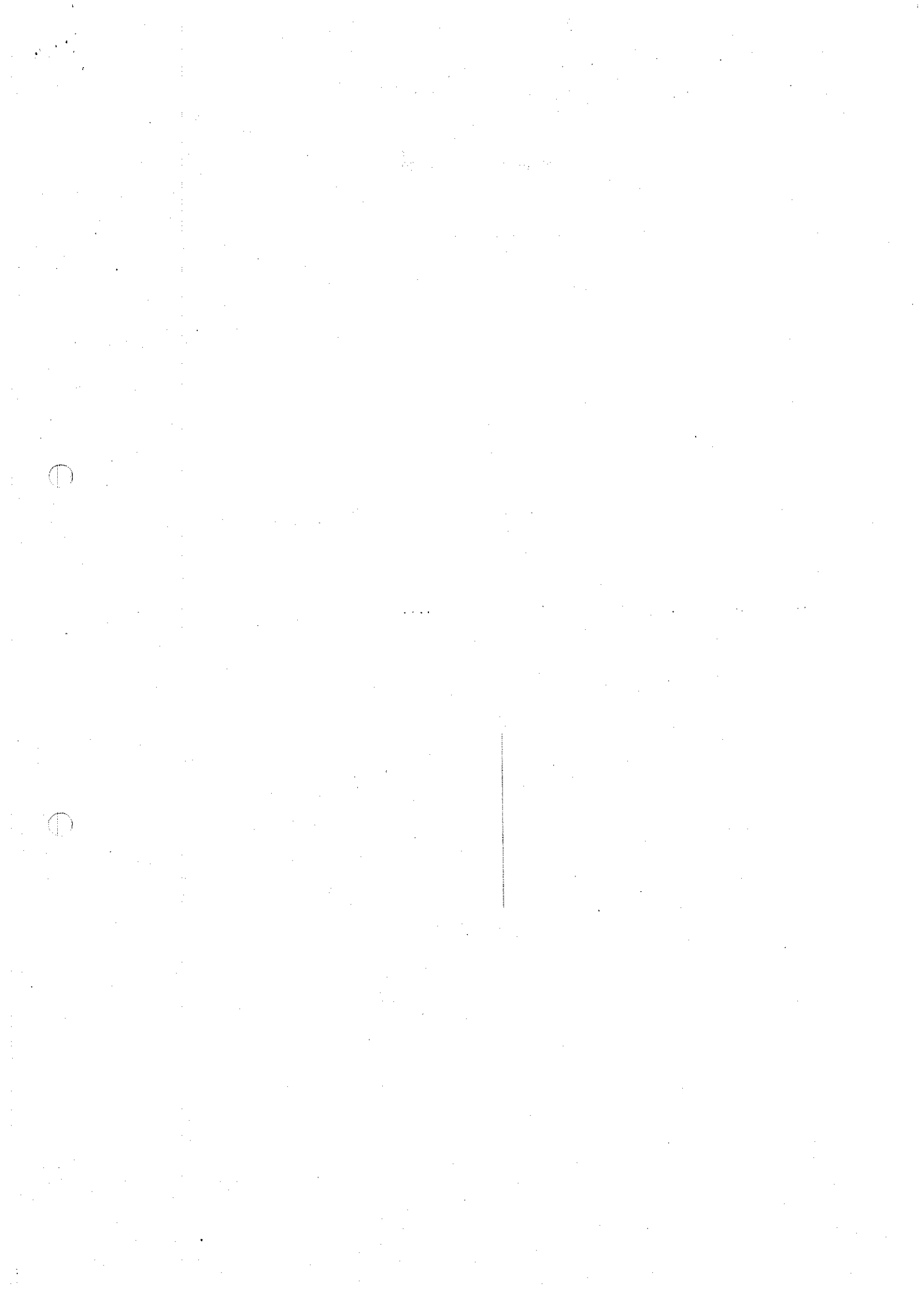
SCHEDULE OF THE PROPERTY

Flat No.401 on fourth floor in Silver Oak Apartments, forming part of Survey No.290, admeasuring 725 square feet of super built up area together with proportionate 36.25 square yards undivided share of land and a reserved parking space for two wheeler bearing No.73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy district and, bounded by :

NORTH	:	Open to sky
SOUTH	:	Flat No.402
EAST	:	Open to sky
WEST	:	6' wide corridor

Hyderabad
Date : -08-2015

COUNSEL FOR THE PETITIONER



RANGA REDDY DISTRICT
HIGH COURT OF JUDICATURE; HYDERABAD
FOR THE STATE OF TELANGANA AND THE
STATE OF ANDHRA PRADESH

A.S.M.P.No. 1848 OF 2015

IN

A.S.No. 631 OF 2015

INJUNCTION PETITION

Filed by :

M/s. SHYAM S.AGRAWAL - 5099
L.Praveen Kumar
L.Pradhan Kumar
K.Shashirekha
Naresh Singh
Har Rachan Kaur

COUNSEL FOR THE PETITIONER

**HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

TUESDAY, THE EIGHTH DAY OF SEPTEMBER,
TWO THOUSAND AND FIFTEEN

:PRESENT:
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

ASMP.No. 1848 of 2015
IN
AS.No. 631 of 2015



Between:
Sri Vinay Agarwal, S/o. Sri Vasudev

Petitioner
(Appellant in AS.No. 631/2015
on the file of the High Court)

AND

1. M/s. Summit Builders, rep. by its Partner Sri Soham Modi, S/o. Sri Satish Modi, Occ: Business, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.
2. Smt. Subhashini S.Gade, W/o. Sri Shriram Mogallapalli, Residing at C/o. Sri Satyanarayana Murty Bondada, H.No. 6-10-30/A, Raja Street, Peddapuram, East Godavari District – 533 437.

Respondents
(Respondents in –do–)

COUNSEL FOR PETITIONER: Sri Shyam S.Agrawal

Petition under Order 39 Rules 1 & 2 R/w. Sec 151 of CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to pass an order of temporary injunction restraining the respondents from transferring, alienating or parting with possession or creating any third party interest or charge of the below given schedule of property in favour of the third parties

SCHEDULE OF THE PROPERTY

Flat No. 401 on fourth floor in Silver Oak Apts, forming part of Survey No. 290, admeasuring 725 square feet of super built up area together with proportionate 36.25 square yards undivided share of land and a reserved parking space for two wheeler bearing No. 73 situated at Cherlapally Village, Ghatkesar Mandal, Ranga Reddy District and, bounded by:

NORTH : Open to Sky
SOUTH : Flat No. 402
EAST : Open to Sky
WEST : 6' wide corridor

pending disposal of AS.No.631/2015 preferred to the High Court against the Judgment and decree of the Court of the VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad made in OS.No. 1549/2007 dt. 15-10-2014.

The Court while directing issue of urgent notice to the Respondents herein to show cause why this petition should not be complied with, made the following order. (The receipt of this order will be deemed to be the receipt of notice in the case).

ORDER:

**“ Issue urgent notice to the respondents.
Learned counsel for the petitioner is permitted to take out personal notice to the respondents by RPAO and file proof of service within three weeks.**



Meanwhile, there shall be ad interim injunction restraining the respondents from alienating the subject property during pendency of the appeal. Post after three weeks."

Sd/- K.M.RAMESH BABU
ASSISTANT REGISTRAR

// TRUE COPY //

for ASSISTANT REGISTRAR

To

1. The Chief Judge, City Civil Court, Secunderabad.
(in duplicate with a copy of Injunction to serve on Respondent No.1 and return)
2. The District Judge, East Godavari District at Rajahmundry.
(in duplicate with a copy of injunction to serve on Respondent No.2 and return)
3. The VIII Additional Senior Civil Judge, Ranga Reddy District at L.B.Nagar, Hyderabad.
4. Sri Soham Modi, S/o. Satish Modi, Partner, M/s. Summit Builders, Having Office at 5-4-187/3, III Floor, M.G.Road, Secunderabad – 500 003.
5. Smt. Subhashini S.Gade, W/o. Sri Shriram Mogallapalli, Residing at C/o. Sri Satyanarayana Murty Bondada, H.No. 6-10-30/A, Raja Street, Peddapuram, East Godavari District – 533 437.
(4 & 5 by RPAD)
6. One CC to Sri Shyam S.Agarwal, Advocate(OPUC)
7. One spare copy.

SAH



HIGH COURT

MSMJ

DATED: 08-09-2015

NOTE: POST AFTER THREE WEEKS

ORDER

**ASMP.NO. 1848 OF 2015
IN
AS.NO. 631 OF 2015**

**INTERIM INJUNCTION
AND NOTICE**