(2001) 01 KL CK 0075

High Court Of Kerala

Case No: A.S. 237/91 and Cross objection

Mulayathil Mohammed		APPELLANT
	Vs	
Kuttadan Velayudhan and Another		RESPONDENT

Date of Decision: Jan. 9, 2001

Acts Referred:

- Evidence Act, 1872 - Section 114

Citation: (2001) 1 KLJ 161

Hon'ble Judges: S. Sankarasubban, J; Lakshmikutty, J

Bench: Division Bench

Advocate: T.R. Govinda Warrier, P.V. Ramavarma and T.R. Ravi, for the Appellant; T.P. Kelu Nambiar Sr. Advocate, P.G. Rajagopalan and Narqyanankutty Chettur, for the Respondent

Judgement

S. Sankarasubban, J.

This appeal is filed against the judgment and decree in O.S. No. 175 of 1990 on the file of the Sub Court, Tirur. The suit was filed for specific performance of a agreement to sell the plaint schedule property. The agreement is produced as Ext. A-6. According to the Plaintiff, Ext. A-6 was executed by Defendants 1 and 2 for the sale of the plaint schedule property for a total consideration of Rs. 85,000, out of which, Rs. 70,000 had been paid on the day on which Ext. A-6 was executed. The balance amount was agreed to be paid within one month and the sale deed executed.

2. According to the Plaintiff, the Plaintiff is a person, who is employed in Gulf Countries. The suit was filed by the power of attorney holder of the Plaintiff. The balance amount was paid to the Defendants. But they refused to accept the amount and also execute the sale deed. Ext. A-1 notice was issued to the Defendants to which they replied stating that they did not execute the document. On the other hand, according to them, they had borrowed Rs. 15,000 from the Plaintiff when he

last came from abroad. They promised to repay the amount within two years. Since this was not paid within two years, the Plaintiff wanted the document of title of the Defendants and also he got one signed stamp paper and one signed blank paper as security for the repayment of the amount. The Plaintiff had fabricated the documents for sale. The Defendants had not executed the document.

3. The lower court raised relevant issues in this case and held that there is no satisfactory evidence to prove the execution of the agreement and the passing of the consideration. On the basis of the above, the court held that the Defendants was not entitled to specific performance and granted a decree for Rs. 15,000 in favour of the Plaintiffs from the Defendants. It is against the above judgment and decree refusing to grant specific performance that the present appeal has been filed by the Plaintiff. The Defendants filed Gross Objection against the judgment granting Rs. 15,000 in favour of the Plaintiff.

4. When the matter came before a learned Single Judge of this Court, the learned Single Judge referred the matter to a Division Bench doubting the correctness of the decision of Kalliath, J. in Ahamad v. Gangadharan 1990 (1) KLT 456. In that case, Kalliath, J. held that where there is a denial of the execution of the document the Plaintiff has got the obligation to discharge the burden of proof. How and in what manner that burden of proof can be discharged is a question depending upon the facts of each case. The court is bound to take note of the circumstance that it is not normal human conduct to give signed papers with other people, particularly to persons who cannot have any occasion to get such signed papers. It is more unusual to give signed blank stamp papers with other persons. In such a circumstance if the Defendant pleads that he has left a signed blank stamp paper with the Plaintiff he has got a duty to explain satisfactorily before the court what prompted him to do such an act, which is not a normal human conduct. Consequently, if any person wants to rely on an exceptional circumstance, if he wants to how that in some particular instance the ordinary rules was brought abrogated surely he must prove it and thus the burden shifts on him. The learned Judge relied on the decision of the Nagpur High Court reported in Dalchand Mulchand and Ors. v. Hasanbi, W/o Ali Kazakh an and Ors. AIR 1938 Nag 152.

5. When the matter came before us, learned Counsel for the parties agreed that the decision of Kalliath, J. reported in Ahamad v. Gangadharan 1990 (1) KLT 456 referred to supra has not considered another decision of Justice Varadaraja Iyengar in Seithammarakkath Mammad v. Koyammatath Mammad 1957 KLT 328. It was further submitted that Kalliath, J. himself had taken a different view in the decision reported in Santha v. Rajappan Pillai 1986 KLT 1235. It was further submitted that in A. Pathu and Ors. v. Katheesa Umma and Ors. 1990 (2) K.L.J. 115. Padmanabhan, J. followed the decision in Dalchand Mulchand and Ors. v. Hasanbi, W/o Ali Razakhan and Ors. AIR 1938 Nag 152 . Thus, there are four decisions on this aspect by learned Single Judges; one by Iyengar, J. following Ramlakhan Singh Vs. Gog Singh, . The

learned Judge distinguished the decision in Dalchand Mulchand and Ors. v. Hasambi, W/o Ali Razakhan and Ors. AIR 1938 Nag 152. In Santha v. Rajappan Pillai 1986 KLT 1235 Kalliath, J. followed the decision in Seithammarakkath Mammad v. Koyammatath. Mammad 1957 KLT 328.

6. Hence, in this case, the controversy has to be resolved. Sri T.R. Govinda Warriyar, Senior counsel appearing for the Appellant and Sri P.G. Rajagopalan appearing for the Respondents brought to our notice various decisions of the various courts including this Court. When the matter being argued, we were informed by Sri N. Subramonian, who is appearing in A.F.A. No. 42 of 1993 that a similar question was involved in that appeal also. Hence, we allowed the counsel for the Appellant and Respondents in A.F.A. No. 42 of 1993 to address arguments on this question. We are happy to state that there was a full argument and according to us, most of the decisions on this quesition had been placed before us by the counsel appearing on both sides.

7. As we already stated, the Patna High Court was taking the view consistently that mere admission that a person has signed a document does not lead to a presumption that the execution of the document is admitted. This has been followed by the Madras High Court and Jammu and Kashmir High Court. The other view is taken by the decisions in Sahdeo Mauar Vs. Pulesar Nonia, , Lakshmamma and Ors. v. M. Jayaram AIR 1952 Mys 144 and also some other decisions. Certain Courts have taken the view that when evidence was adduced, there is no question of casting the burden that the issue should be decided on the basis of the facts and circumstances of the case and the evidence adduced.

8. During the discussion of this case, we found three types of cases: (1) When Defendants merely submitted that signed papers were entrusted to a person and those papers were made use of for the purpose of executing an agreement. (2) The signed papers were given on the understanding that a particular document will be made. But contrary to that assurance, a different document was fabricated. (3) There are third sets of cases where the Defendants even though have signed the documents, never intended to bring it in force. The Patna High Court while taking the view that presumption cannot be in favour of the Plaintiff held that presumption u/s 114 of the Evidence Act and the illustrations given there "are based on long experience and have been drawn so often by Judges in England as well as in this country that many of them have come to be regarded almost as rules of law. The same however cannot be said with regard to the presumption, which we are asked to draw in this case considering that it is not too uncommon in this country for ignorant people to put their thumb impression on blank pieces of paper". Further, it was held that Section 114 is a permissive and not a mandatory section and the court may, having regard to the circumstances of a particular case, refuse to raise a presumption in that cases such a presumption may be properly raised. On the other hand, the Nagpur High Court took the view that if nothing eke is known then the

mere fact that a document is proved to bear a certain signature and that it comes from proper custody ought to be enough to raise an inference that it was signed with the intention of execution. In our opinion, this inference arises in India directly from Section 114 of the Evidence Act.

9. To sign means to affix the signature. But when it comes to the signing of a written instrument, it implies more than the act of affixing a signature. It implies more than the clerical act of writing the name. The intention, of the person signing is important. The person should have affixed the signature to the instrument in token of an intention to be bound by its conditions. It has been said that for a signing consists of both the act of writing a person''s name and the intention in doing this to execute, authenticate or to sign as a witness. The execution of a deed or other instrument includes the performance of all acts which may be necessary to render it complete as a deed or an instrument importing the intended obligation of every act required to give the instrument validity, or to carry it into effect or to give it the forms required to tender it valid. Thus, the signature is an acknowledgement that the person signing has agreed to the terms of the document. This can be achieved only if a person signs after the document is prepared and the terms are known to the person signing. In that view of the matter, mere putting of signature cannot be said to be execution of the document.

10. In Ramlakhan Singh Vs. Gog Singh, , a Division Bench of the Patna High Court held that the onus cannot be discharged merely proving the identity of the thumb impression. It must be further proved that the thumb impression was given on the document after it had been written out and completed. The fact that the Defendant''s thumb impression appears on the paper is a strong piece of evidence in favour of the Plaintiff and in the majority of cases very slight evidence would be necessary to prove that the thumb impression was given on the document after it had been written out and completed. But the fact remains that if the evidence offered by the Plaintiff to prove that the document was duly executed or in other words, that the thumb impression was given on the document after it had been written out and completed is found to be unreliable, he cannot be deemed to have discharged the onus properly. Regarding the presumption u/s 114 of the Evidence Act, the court held that although a certain presumption may arise in favour of the Plaintiff, yet it may be rebutted at the same time by circumstances brought into light in the Plaintiffss own evidence by means of cross-examination or otherwise and independently of the evidence adduced by the Defendant. Thus, the court held that the mere admission of the thumb-impression or signature does not shift the burden from the Plaintiff. In the same volume-in Chulhai Lal Dass Vs. Kuldip Singh and Others, another Division Bench took the view that where the Defendant admits only that he had put a thumb mark or signature on a document which was not hand-note sued upon, the admission does not amount to admission of the execution of the hand-note and consequently the burden of proving that the particular hand-note sued upon was duly executed by the Defendant is upon the person issuing upon the

same.

11. The case reported in Sundar Chaudhari v. Lalji Chaudhari and Ors. AIR 1933 Pat 129 was a case where after signing the document, the Defendants, never allowed it to depart from them or to come into the possession of any other person. In that context, the court held that the execution does not mean mere signing, but it means all acts necessary to make the parties to the contract bound thereby. If a man merely signs a contract and puts it in his pocket and does not allow it to depart from him as his act, it is not execution Abdul Hasan Vs. Mt. Wajih-un-nissa and Others, , it was held that a mere signature does hot necessarily and automatically render effective and operative the document to which it is appended. The signature of a document under a complete misapprehension as to the nature of the transaction therein set out, that is to say, under a mistake, does not render the document effective or operative. So also where there is an antecedent oral agreement between the parties to a written agreement that some or any obligation thereunder shall not arise until the fulfilment of some condition precedent, the document although signed, will not become operative until the fulfilment of the condition precedent. Therefore, the term ''execution'' in relation to a written document means the placing by the executant of his signature or other identification mark such as a thumb-print thereon in or accompanied then or later by circumstances which sufficiently demonstrate the intention of the executant to give effect and operation to the instrument signed by him. The case Ram Pragas Singh Vs. Gajendra Prasad Singh and Another, is a judgment by a learned Single Judge. There, the suit was on a hand-note. The admission made by the Defendant was that the Defendant gave his thumb impression on a blank paper to a third person from whom he took certain loan. Dealing with the contention, the court below, considering the earlier decisions in Chulhai Lal Dass Vs. Kuldip Singh and Others, and other decisions took a different view. The decision reported in Sahdeo Mauar Vs. Pulesar Nonia, , was cited before the learned Single Judge. In that decision, it was held that the burden of proof was on the defence to explain how the hand-note bearing the Defendant''s thumb impression came into existence. The learned Single Judge took the view that the decision in Sahdeo Mauar Vs. Pulesar Nonia, has been impliedly overruled in the decis on in Chulhai Lal Dass Vs. Kuldip Singh and Others, . This line of reasoning has been followed by the Madras High Court in the decisions reported in Sayyaparaju Surayya Vs. Koduri Kondamma, , N. Ethirajulu Naidu Vs. K.R. Chinnikrishnan Chettiar, , Brij Mohan Bakhshi Vs. Amar Nath Bakhshi and Others, and the Allahabad High Court in Ch. Birbal Singh Vs. Harphool Khan and Another, .

12. As already stated, a learned Judge of this Court in the decision reported in Seithammarakkath Mammad v. Koyommatath Mammad 1957 KLT 328 considered the Patna decisions, viz Ramlakhan Singh Vs. Gog Singh, and Sahdeo Mauar Vs. Pulesar Nonia, and preferred the decision of the Division Bench in Ramlakhan Singh Vs. Gog Singh, . The learned Judge held that the onus in a case of this type rests on the Plaintiff to prove both the fact of execution and the advance of consideration.

The other line of reasoning has been adopted in the decision reported in Dalchand Mulchand and Ors. v. Hasanbi, W/o Ali Razakhan and Ors. (2) A.I.R 1938 Nag 152. There is also a Division Bench decision. There, the question arose whether the documents of title obtained by the Plaintiff are the result of sham transaction entered into with a view to deprive two of the transferor''s sons of their inheritance. The contention was that the documents were not meant to be acted on and were never given effect to. The court below threw the burden of proof on the Plaintiffs and held that they had not proved the execution of these documents. The contentions of Defendants 3, 4 and 5 in the written statement "were extracted in the above case, which are as follows:

The recitals of the mortgage deed that their houses were assigned to Hasanbi in lieu of her Mehr by registered deed of transfer dated 2nd October 1912 and 31st August 1920 are not true. That since before the year 1910 there was illfeeling between Khan Bahadur Ali Raza Khan and his sons Walayat Ali Khan and Umardaras Khan due to certain family affairs. Khan Bahadur Ali Raza Khan with a view to deprive these people from inheritance of his property executed the above two bogus assigned deeds in favour of Mt. Hasanbi which were never intended to be acted upon by anybody.

According to the court below, the above pleading is an admission on the part of the Defendants, which throws the burden of proving the sham nature of the transaction upon the Defendants who assert it. Their Lordships considered the various decisions with regard to the admission of the documents. Their Lordships relied on the decision in Devidas v. Mamooji 20 N.L.R 7 , wherein it was held that admission by the Defendant that a document bears his signature coupled with the assertion that it had been placed upon a blank piece of paper upon which the rest of the document was fraudulently scribed was not an admission of execution and so the burden of proof lies upon the Plaintiff. It seems, Vivian Bose, J., one of the parties to the decision came to the opposite conclusion in another Second Appeal. The Division Bench at page 154 held as follows: "We have no quarrel with the general proposition that proof of signature is rot necessarily proof of execution and that an admission that a document bears a man''s signature is not necessarily an admission of execution. The circumstances of the case may negative such an inference." Thus, the Division Bench considered that it was a case where after signing the document it was never acted upon and held that it would not amount to, not even to conditional execution. It would not create even a contingent interest in the subject-matter of the instrument. Then the court added as follows: "But surely if nothing else is known then the mere fact that a document is proved to bear a. certain signature and that it comes from proper custody ought to be enough to raise an inference that it was signed with the intention of execution". Then the Division Bench relied on Section 114 of the Evidence Act and held that that is not the common course of human conduct, nor yet the common course of either public or private business. Another decision, Sahdeo Mauar Vs. Pulesar Nonia, says that if a person has admitted his

signature, then the burden shifts on to him as to the circumstances under which he put the signature. To the same effect is the decision in Alapati Sivaramakrishnyya v. Alapati Kasiviswanadhan and Ors. AIR 1957 AP 584. But there, it was a case of a letter and the Division Bench held that there is nothing with regard to the execution of the letter and held that if a signature of a person appears in a letter, then that person has to explain that it was not written by him. The decision reported in Lakshmamma and Ors. v. M. Jayaram AIR 1952 Mys 114 takes the view that when the signature or thumb impression is admitted, a presumption will arise that the document was executed by such person. The above are the important decisions taking two different views.

13. In Seithamxnarakkath Mammad v. Koyommatath Mammad 1957 KLT 328 Varadaraja Iyengar, J. had occasion to consider this question. The case relates to promissory note. The Defendant by his written statement denied the execution of Ext. A-l promissory note. According to the Defendant, he bad sought the good services of the Plaintiff to intervene on his behalf with one Mohammad Kunhi for the grant of a lease of immovable property while he was urgently entraining for Madras, entrusted with the Plaintiff a blank half sheet of paper with his thumb impression for beeing filled up as a Kychit for the purpose, as the Plaintiff had desired. Mohammad Kunhi refused to accept any such make shift arrangement. So, the blank paper remained with the Plaintiff, the Defendant not having claimed it back. Subsequently, the Plaintiff fell out with the Defendant''s elder brother to consummate his marriage with the Plaintiff''s niece. The Plaintiff in his enmity had taken advantage of the existence of the blank sheet with him to fill it up as the promissory note. The decisions in Ramlakhan Singh Vs. Gog Singh, were cited before the learned Judge. The learned Judge accepted the reasoning of the Patna Case. With regard to the Nagpur Case, the learned Judge held as follows:

But the learned Judges themselves say that the presumption will arise only if nothing else is known and further that:

''The initial burden of proving execution of a document when it is denied is upon the person alleging execution''.

The learned Judge also held that for the admission by the Defendant as to his having affixed his thumb impression as well as signature in a blank paper without stamp cannot amount to an admission as to the execution of the promissory note. The learned Judge also relied on the decision in AIR 1933 394 (Oudh) and also the decision in Pirbhu Dayal v. Tularam 68 Indian Cases 1235.

14. In the decision in Santha v. Rajappan Pillai 1986 KLT 1235 Kaliiath, J. followed the decision in 1957 KLT 328 putting the burden on the Plaintiff. In 1990 (1) KLT 456, Kaliiath, J, took a different view following the decision reported in 1938 Nag 152. The learned Judge gave importance to the observations in AIR 1938 Nag 152 that persons do Hot ordinarily sign documents without intending to execute them; that

is not the common course of human conduct, nor yet the common course of either public or private business. In the case reported in A. Pathu and Ors. v. Katheesa Umma and Ors. 1990 (2) K.L.J. 115 Padmanabhan, J. followed the views of the decision in AIR 1938 Nag 152 and held that the burden is on the person, who says that he put the signature on the blank paper. It is worth noting that in both the above decisions, the opposite views were not considered. Then, there are other cases where it was held that if the executant is by pardanasion lady or illiterate lady, the burden is on the person who wants to show that the document is not executed by such person. In some cases, it was held that when both parties had adduced evidence, the question of burden of proof vanishes.

15. After considering the above decisions, we prefer to follow the decision in Seithammarakkath Mammad v. Koyommatath Mammad 1957 KLT 328 and the decision in Ramlakhan Singh Vs. Gog Singh, . According to us, mere putting of signature does not amount to admission of the execution of the document. Ordinarily, signature merely means putting one''s name or any other mark to identify a person making the mark. But when a word ''signature'' is attributed with regard to the written document, which creates obligation on the person signing it, it can only mean signing the document after the document is prepared and completed. There, the signature is put to show that the person who signed has agreed the terms and conditions of that document. The intention with regard to the acknowledgement of the term should be there. When the person signs the same, then only it can be said that the person has executed the document. Hence, according to us, when a person says that he put the signature on a blank paper that does not mean that he had admittedly executed the document. According to us, the decision in AIR 1938 Nag 152 does not deal with a case where the signature was put on a blank paper. That decision related to the case where a document was executed, but it was stated that it was not intended to be acted upon. It was in that circumstances that the court held that when a signature appears on a document that amounts to admission of the execution of the document and the burden is on the person disputing that the document has not come into effect, to prove that it has not come into effect.

16. It was then argued that a person will not entrust a signed blank paper to another person without any intention. It is argued that a person signing a blank paper would have agreed that he agrees for all the terms which the Plaintiff puts in the document and that it was in token thereof that he has put his signature and hence, the burden should be shifted to the person, who had signed the papers. According to us, this contingency will not shift the burden of proof. We cannot ignore the circumstances under which where a person may be compelled to give signed blank paper to another person. Person who signs the paper may not know what are the conditions, which will be imposed by the other side. Hence, in such circumstances, a general proposition cannot be laid down that the burden should be on the person, who has subscribed his signature to a blank paper. As it was stated in

AIR 1931 Patna 219, the fact that the Defendant''s thumb impression appears on the paper is a strong piece of evidence in favour of the Plaintiff and in the majority of cases very slight evidence would be necessary to prove that the thumb impression was given on the document after it had been written out and completed. Thus, evidence that has to be adduced by the Plaintiff in such case will be less onerous than in cases where there is complete denial of signature and execution. But if the Plaintiff''s evidence is not sufficient or unreliable that onus cannot be said to be discharged. We may further say that always the burden of proof is on the person, who wants to get relief in the suit. As always stated, onus of proof shifts during the pendency of the litigation depending upon the nature of the evidence given by either side. The Plaintiff may give evidence regarding the execution of the document. If the fact of thumb impression or signature is admitted, that will give more reliability to the Plaintiff''s evidence. If such evidence adduced by the Plaintiff is reliable and if the Plaintiff is able to discharge his burden sufficiently, then onus will shift on the Defendant to show that he had not executed the document. We only say that the Plaintiff cannot succeed in the case without giving evidence. Because the Defendant had admitted his signature, he had to give some evidence to show that the document has been properly executed. Further things depend upon the evidence adduced and on facts and circumstances of each case. When both sides have adduced evidence, the question of burden of proof vanishes into the air. Hence, we are of the view that the decisions given in 1990 (1) KLT 456 and 1990 (2) K.L.J. 115 putting the burden on the Defendant have not laid down the correct law.

17. So far as the present case is concerned, the suit was filed on the basis of Ext. A-6 agreement for specific performance. As per that agreement, the Defendants had agreed to sell the property described thereunder for a consideration of Rs. 85,000 to the Plaintiff. It is stated in that document that on the date of the document, an amount of Rs. 70,000 was paid as advance and that document will be executed and the Plaintiff will be put in possession of the property within one year thereof, According to the Plaintiff, he was working in Gulf Countries. After the execution of Ext. A-6, he went back and through his power of attorney, P.W. 4, he requested the Defendants to execute the document after paying the balance amount. But they refused to execute the document. Thereafter, Ext. A-7 lawyer notice was issued to the Defendant. In reply, Ext. A-8 notice was issued in which the contention taken is that they did not execute Ext. A-6 document. They had borrowed an amount of Rs. 15,000 from the Plaintiff two years back and when the Plaintiff came subsequently, he wanted security for the same and towards the security, they gave the document with regard to their property as well as they gave signed stamp paper and also signed blank paper. Making use of these signed papers, the Plaintiff had fabricated an agreement for sale. The Plaintiff has denied these allegations in the plaint and has stated that he was always ready and willing to perform his part of the contract. In the written statement, the Defendants had specifically taken the contention that they did not execute the agreement. They have taken the strong contention that

they had only signed the stamp paper and the blank paper. They also set up the case of loan transaction.

18. Oral evidence was adduced. P.Ws. 1 to 4 were examined on the side of the Plaintiff and D.W.1 was examined on the side of the Defendants. The Defendants also have taken the contention that both of them are illiterate. The lower court, on the basis of the decision in N. Ethirajulu Naidu Vs. K.R. Chinnikrishnan Chettiar, held that the Plaintiff had not discharged his burden properly. On the side of the Defendants, the first Defendant was examined as D.W.1. P.Ws. 2 and 3 are the witness to Ext. A-6. It has come out in evidence that the Plaintiff had earlier purchased portions of the property belonging to the Defendants. The document with regard to that was also produced. So, it is a case where the Plaintiff had dealings with the Defendants earlier. Further, P.Ws. 2 and 3 have given evidence to show that the Defendants wanted to sell their property and the Plaintiff also was particular in purchasing the property. This may be so because, portions of the same property was purchased by him. It is also come in evidence that the Defendants are in need of money (of course only Rs. 15,000 admitted by them). The document was prepared and it was signed at the shop of the first Defendant. P.Ws. 2 and 3 speak that the Defendants signed the document in front of them after it was prepared. According to us, on going through the evidence of P.Ws. 2 and 3, it cannot be said that their evidence cannot be accepted. The only case made against P.W. 3 is that he was involved in a criminal case. Ext. B-2 is an order passed by the Judicial First Class Magistrate, Tirur in S.T. 1448/87. The accused was directed to pay a fine of Rs. 100. The offence is not stated in the order. It is stated by P.W. 2 that he was fined for gambling. We don''t think, because of this incident, P.W''s evidence can be disbelieved. On going through the evidence of P.Ws. 2 and 3, it is found that they have given the details of the execution of the agreement. The lower court pointed out certain infirmities showing that one witness has said that the document was given at the time of execution of the agreement, while the other witness has said that it was given earlier. Further, according to the court below, P.W. 3 has stated that the entire amount was given at the time of execution of the agreement. We went through the evidence of these witnesses. We are of the view that on the whole, their evidence can be accepted. It is not stated that the document was given at the time of execution of the agreement. What is stated is that for the preparation of the ''karar'' it was given. It does not mean that the document was given at the time of execution of the ''karar''.

19. D.W. 1 gave evidence. According to him, he borrowed an amount of Rs. 15,000 from the Plaintiff. It is difficult to believe that at the time when the loan was taken, he was the only person who was present and further he stated that it was for him alone that the loan was taken. Further, he stated that he had borrowed the amount of Rs. 15,000 for payment to another person who was going to be examined. But that person was not examined. In the above circumstances, we are of the view that the Plaintiff has proved execution of the document. Another circumstance pointed

out against the Plaintiff is that it is not stated in the ''karar'' that the previous documents were given. We are of the view that the absence of mention of the earlier documents will not take away the validity regarding the execution of the document. The court below then took the view that the Plaintiff has not discharged his burden and that the Plaintiff has not got the entire amount to pay at the time of the agreement. The Plaintiff stated that he sold certain articles, which were bought from abroad and made up the entire amount of Rs. 75,000. There is no case for the other side that the Plaintiff is not a person, who will not be able to pay the amount. The Plaintiff could have produced the Bank pass book before the court below. According to us, once we find that the execution of the document is proved, we are of the view that the Plaintiff has also paid the amount and it was not necessary to prove further that he was in possession of money. Hence, we accept the evidence of P.Ws. 2 and 3 and hold that the Plaintiff had necessary funds. It has also come in evidence that the Plaintiff was ready and willing to perform his part of the contract.

20. The next question is whether specific performance should be granted to the Plaintiff. According to the Defendants, the area is more than what is mentioned in the plaint. The property mentioned in the agreement as well as in the plaint is having an extent of 12.25 cents5 which is comprised in R.S. No. 285/14 and includes shop buildings. The boundaries of the property are definite. According to the Defendant, the property was not measured and the price of the property was not fixed on the basis of centage. We are not able to accept this argument. As already stated, the Plaintiff had purchased portions of the property. He was aware of the nature of the property. The Defendants wanted to sell the balance portion on the basis of the previous document. The parties knew what was the total extent of the property and what was the balance with the Defendants. It is not necessary that the property should be valued on the basis of the centage. The value can be fixed for the entire property. Hence, according to us, we cannot accept the contentions raised by the Defendants.

21. Then the another contention raised by the Defendants is that in one of the rooms, they are conducting business in rationed articles and if it is sold., they will be put to great hardship. We are of the view that this contention cannot be accepted. Once it is found that the document has been executed, normally, the rule is that the agreement will be specifically enforced. The mere fact that it will cause hardship to the Defendants cannot prevent this Court from passing any decree for specific performance. The Defendants have not brought to our notice any circumstance, which necessitate non-granting of specific performance.

22. In the above, view of the matter, we set aside the judgment and decree of the lower court. We allow this appeal and decree the suit as follows:

The Plaintiff is given a decree of specific performance of Ext. A-6 -agreement and is also directed to deposit the balance amount of Rs. 15,000 within a period of four months from today. On such deposit, the Defendants- shall execute the sale deed in

favour of the Plaintiff with regard to the plaint schedule property. In default of the Defendants executing such document, the Plaintiff shall request the court to cause the document to be executed in favour of the Plaintiff with regard to the plaint schedule property. Both sides are directed to suffer costs. Cross objection is dismissed.