

**ORDERS ON I.A.NO.9 FILED BY THE DEFENDANT NO.1  
UNDER ORDER XXVI RULE 10-A R/W SEC.151 OF CPC**

This application is filed by the defendant No.1 under Order 26 Rule 10-A r/w Sec.151 of CPC, seeking for appointment of a commissioner for scientific investigation into the admitted and disputed signatures of the 1<sup>st</sup> defendant, and to report thereon to this Court, for the ends of justice.

2. In the annexed affidavit, the 1<sup>st</sup> defendant stated that being the owner of schedule 'A' property, 1<sup>st</sup> defendant had entered into a joint development agreement with the 2<sup>nd</sup> defendant, but the latter has failed to adhere to the terms and conditions of the joint development agreement and has committed irreparable breach thereof. Except entering into the joint development agreement with the 2<sup>nd</sup> defendant, she has

not executed any other agreement including the alleged sharing agreement or the alleged supplemental agreement or any other agreement. The 2<sup>nd</sup> defendant has failed to construct the building as per the sanctioned plans and the prevailing building Bye-laws under the Karnataka Municipal Corporations Act, 1976. Because of the said misdeeds and also because of the breach of the joint development agreement, she has suffered huge losses, hardship and injury. The plaintiff has brought this suit to enforce an alleged agreement of sale dated March 18, 2013. The alleged agreement (which is hereinafter referred to as such) is a fabricated document, and the signatures therein alleged to be those of her are not her and are outright forgeries. The plaintiff is playing a fraud on this Court. She has not entered into any agreement, much less the alleged agreement, with the plaintiff for the sale of schedule B property. In order to know the truth or otherwise, a commissioner for scientific investigation into her admitted and disputed signatures requires to be investigated and to report thereon to this Court. For comparison of signatures by such commissioner and his report would facilitate throw light on the matter and

enable a just decision in the case. The plaintiff will not suffer any hardship or prejudice if this Court allows the application, while a rejection of the same will put 1<sup>st</sup> defendant to irreparable loss and injury, which cannot be compensated in terms of money. Therefore, prays to allow the application.

3. On the other hand, the plaintiffs have filed their objections stating that the application filed by the 1<sup>st</sup> defendant is false and frivolous, same is tainted with malafides only to procrastinate the proceedings. This Court was pleased to post the above case cross examination of D.W.1 on 11.07.2025. Thereafter, the case was posted to 16.07.2025 for cross examination of D.W.1 and on that D.W.1 was absent therefore, posted to 01.08.2025. Again the case was posted 23.08.2025. It is submitted that on 23.08.2025, the Advocate for 1<sup>st</sup> defendant submitted that D.W.1 is suffering from cancer no documents was produced therefore, the case was posted 30.08.2025 for Cross of D.W.1. On 30.08.2025, D.W.1 was absent and therefore, the case was posted to 18.09.2025 for arguments on main. This Court was pleased to hear the arguments of plaintiff and thereafter, posted the case for final arguments of

defendant No.1. On 01.12.2025, the defendant No.1 addressed arguments on merits and the case was posted to 06.12.2025 for reply and thereafter, the case was adjourned to 11.12.2025 for reply. On 11.12.2025, since the presiding officer was on leave the case was posted to 08.01.2026 for reply of plaintiff. On 08.01.2026, the defendant No.1 was filed the above application. The plaintiff submits that the defendant No.1 has not subjected herself for cross examination and has not disputed the signature by tendering herself for cross examination and therefore the question of sending the documents for comparison of the signature does not arise. The present application is filed at the stage of reply arguments and therefore, the same is not maintainable and is filed only with a view to delay and procrastinate the proceedings. The claim of the 1<sup>st</sup> defendant that she is suffering from cancer is false since she has visited the Court and has sworn to the affidavit filed in support of I.A.No.9. Therefore, it is very clear that the defendant No.1 is evading to subject herself for cross examination. This Court had already dismissed the application filed by D.W.1 for recall of

D.W.1 for cross examination on 18.03.2025. Therefore, to dismiss the application.

4. On perusal of records, it is true that the defendant No.1 examined as D.W.1 and even after giving sufficient opportunity she has not tendered herself for cross-examination. She has specifically stated that she is suffering from cancer, but unfortunately failed to produce a single document to show that she is a cancer patient. If she would have tender herself for cross-examination, then case would be different as she has failed to tender herself for cross-examination and knowing fully well the learned counsel for defendant No.1 has not tendered D.W.1 for cross-examination. Therefore, I pass the following:-

**ORDER**

I.A.No.9 filed by the defendant No.1 under Order 26 Rule 10-A r/w Sec.151 of CPC is hereby rejected.

For arguments by 06.03.2026.

**(Nisharani A.C)**  
**III A.C.C. & S.J., Bengaluru.**