

KACB610001652018



**IN THE COURT OF SENIOR CIVIL JUDGE & JMFC.,**  
**AT SIDLAGHATTA**

Dated this the 02<sup>nd</sup> day of December - 2021

**:: PRESENT ::**

**Shri. Yamanappa KareHanumanthappa B.A., LLB.,**  
Senior Civil Judge & JMFC.,  
Sidlaghatta.

**O.S. No.32/2017**

**APPLICANT/**  
**PLAINTIFF:**

Sri.B.R.Sridhar  
S/o. Late.B.R.Gundu Rao,  
Aged about 65 years,  
R/at. Krishna Nilaya,  
Door No.1054/3,  
Sahakara Nagara, A-Block,  
Main Cross, Bangalore-560092.

(R/by Sri.H.N.K., Advocate)

- V/s -

**RESPONDENT/**  
**DEFENDANT/S:**

Sri.B.A.Krishnamurthy  
S/o.Abbaiah,  
Aged about 60 years,  
R/at. Venugopal Swamy Temple,  
Belthur Village, Kadagodi Post,  
Bangalore-560067

(R/by Sri.E.N., Advocate)

**ORDER ON IA NO -5**

The advocate for defendant has filed IA No.5 under Order 11 Rule 5 and 16 of CPC., praying that court may direct the plaintiff for production of un registered sale agreement dated: 27/10/2016 which is in the custody of the plaintiff to take a notice that the plaintiff require produce for the inspection following documents refer to written statement, to know the controversy involved between the parties in the interest of justice and equity.

2. Along with application the defendant has filed the affidavit stating that, the contents of the written statement may be treated as affidavit facts for this application and further stated that, the plaintiff has filed the above suit against the defendant with respect to plaint schedule property for the relief of Specific Performance of Contract. After filing the suit after service of summons and notices to the defendant, he appeared before the court and engaged his counsel and filed his vakalath and written statement. In order to meet his family and legal necessities and also to discharge hand loan borrowed by the defendant, thereby the defendant offered to sell the suit schedule

property in favour of plaintiff in the month of October-2016. After due negotiation the sale consideration of said land fixed for Rs. 51,00,000/- to the said offer the plaintiff accepted and agreed to purchase the said land. To that effect the defendant executed an unregistered sale agreement dated: 27/10/2016 in favour of plaintiff, on the same day the defendant received Rs. 7,00,000/- by way of cash and Rs. 2,50,000/- through cheque totally the defendant received advance amount of Rs. 9,50,000/- being advance and only for security purpose and as per plaintiff will and wish the defendant executed registered sale agreement for meager amount and the plaintiff himself prepared the said document to avoid the stamp duty. But now the plaintiff relying on registered sale agreement, as per the contents of unregistered sale agreement dated: 27/10/2016 the defendant is ready and willing to perform his part of contract. The plaintiff knowing fully well that original unregistered sale agreement dated: 27/10/2016 is in the custody of the plaintiff which was executed by the defendant in favour of plaintiff. That fact intentionally suppressing by the plaintiff, hence, original unregistered sale agreement dated: 27/10/2016 has to be summoning to this court then truth will come out to show the conduct of the plaintiff. By allowing this application no injustice will be caused to the plaintiff. On the other hand by rejecting this

application the defendant will be put to great hardship, injury and loss which can not be compensated by any means. Hence, application may be allowed.

3. The plaintiff filed objection to the application filed by the defendant by contending that the application filed by the advocate for defendant is not maintainable either under law or on facts. Further denied the entire averments of affidavit. If the plaintiff and defendant entered into an un registered agreement then the burden lies upon the defendant to produce the document and the defendant filed this application for one or the other reasons to drag on the proceedings. Hence, application may be dismissed.

4. Heard perused the records and after going through the records, the following points which arise for my determination:

### **POINTS**

1. Whether the defendant has made out a ground to direct the plaintiff for production of un registered sale agreement dated: 27/10/2016 as prayed in the application?
2. What order?

5. After going through the records and hearing the counsels for parties, I answer the above points as follow:

Point No.1: In the Negative

Point No.2: As per final order for the following:

**REASONS**

6. **POINT No.1:** At the outset, the plaintiff has filed suit for specific performance of the contract against the defendants in respect of agreement of sale deed, at this stage the advocate for defendant has filed this application by contending that, court may direct the plaintiff to produce the un registered sale agreement dated: 27/10/2016 executed by the defendant in favour of plaintiff dated: 27/10/2016. First of all this agreement is in possession in the hands of the plaintiff though the defendant pleaded about the alleged agreement but, they have not the possession of the alleged agreement, when they are not the possessor the court can not compel them to production of alleged un registered agreement. Therefore, court can not direct the plaintiff for production of un registered sale agreement dated: 27/10/2016. Therefore, I answer the Point No.1 in the Negative.

7. **POINT No.2:** For the reasons stated and discussion made above, I pass the following:-

**ORDER**

***I.A.No.5 filed by the advocate for  
defendant under Order 11 Rule 5 and 16 of  
CPC., is hereby dismissed.***

***No order as to costs.***

(Dictated to the stenographer, typed by her, printout is revised, corrected, signed  
and then pronounced by me in the open court on 02<sup>nd</sup> day of December-2021.)

Sd/-  
(Yamanappa KareHanumanthappa  
Senior Civil Judge & JMFC.,  
Sidlaghatta.

