



**IN THE COURT OF THE III ADDL. CIVIL JUDGE &
JMFC, KADUR.**

Present: Sri. THAHAKALEEL K.A., B.A., LL.B.
III Addl. Civil Judge & JMFC, Kadur.

OS.No.35/2015

Dated: This the 11th Day of November 2024

PLAINTIFF : **Sri.G.G.Manjunath**
S/o Gavirangappa,
Aged about 48 years,
Agriculturist,
R/o Govindapura Village,
Chikkingala Post,
Birur Hobli, Kadur Taluk,
Chikkamagaluru Taluk.
(Rep. by Sri.N.S., Advocate)

V/s.

DEFENDANT : **Sri. G.L. Venkataramaiah**
S/o Lakshmaiah,
Aged about 77 years,
R/o Govindapura Village,
Chikkingal Post,
Birur Hobli, Kadur Taluk,
Chikkamagaluru District.
(Rep. by Sri.M.M., Advocate)

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Parties to I.A No.XIV

Applicant : Sri. G.C.Manjunatha

V/S

Opponent : Sri. G.L.Venkataramaiah

Sl. No.	Subject	Remarks
1	Provision under which the application is filed	Order XXVI Rule 10(A) of CPC
2	Relief sought for	Appointment of commissioner
3	The date of which the application is filed	22.04.2021
4	Number of the application	I.A.No.XIV
5	The date of which the objections are filed by different opponents.	02.07.2021 by the Defendant
6	The date of Order.	11.11.2024

ORDERS ON I.A No.XIV FILED BY THE PLAINTIFF
UNDER ORDER XXVI Rule 10(A) of C.P.C.

I.A.No.XIV is filed by the Learned Counsel for the Plaintiff under Order 26 Rule 10(A) R/W Sec.151 of CPC for sending the below mentioned Documents the

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handwriting expert i.e, M/s. Truth Laboratories, No.101(A), 1st floor, Beside Bhabdan Bank, North Block, Manipal Centre, Bangalore 560042 Bangalore for their opinion regarding the disputed and admitted signatures of the Defendants for adjudication of the matter in issue more effectually.

- (a) Admitted Signature in the written statement
- (b) Admitted Signature in Vakalath
- (c) Disputed Signatures in document in Exhibit P1 at P1(a) and P1(b)

2. The Plaintiff sworn to an affidavit in support of the application, wherein he has stated that the Plaintiff has filed the suit for specific performance of contract as per agreement of sale/ Affidavit dated 13.07.1988 executed by the Defendant in favour of the Plaintiff. The Defendant has denied the execution of Ex.P1 in favour of

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the Plaintiff and also his signature on Ex. P1 i.e, Ex. P1(a) and Ex. P1(b). Hence it is incumbent on the Plaintiff to prove his case. Hence in order to prove the signature of the Defendant, it is just and necessary to appoint the Court Commissioner. Without the assistance of the handwriting expert it is not possible to adjudicate the matter regarding the alleged agreement of sale / Affidavit dt: 13.07.1988 It is stated that if the present application is allowed, no loss or hardship will be caused to other side and on the contrary if the said application is not allowed, then the Defendants will be put to hardship. **With these averments, the Defendant No.1 has sought for allowing the application.**

3. The Learned Counsel for the Defendant filed objections to I.A.No.XIV, wherein he has denied the contents of the affidavit sworn in support of the

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application as false, frivolous and vexatious one. Ex.P1 is the affidavit and not a reciprocal agreement therefore, suit for specific performance itself is not maintainable.

With these contentions, the Learned Counsel for the Defendant has sought for rejection of I.A.No.XIV.

4. Heard the arguments of the Learned Counsel appearing for the parties and perused the materials on record.

5. Now the following points arise for consideration of this Court are:

Point No.1: Whether the Plaintiff have made out grounds for allowing I.A. No.XIV and thereby appointing the Court Commissioner i.e., hand writing expert as stated in the application for the purpose of examination of the admitted and disputed signatures as sought for?

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**Point No.2 : What Order?**

6. The findings of this Court on the above points are as under:

Point No.1 : *In the Affirmative.*

Point No.2 : *As per the final order for the Following;*

REASONS

7. **Point No.1:-** The Learned Counsel for the Plaintiff vehemently submitted before the Court that the signatures of the Defendant on Ex.P1 and Ex.P2 are the signatures of the Defendant. The Defendant intentionally denied his signature, Hence, the Plaintiff has no other mode to prove the signatures of the Defendant except to send the documents for the purpose of comparison of disputed signature with the admitted signatures of the Defendant. Hence the present application may be

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allowed. Per contra the Learned Counsel for the Defendant argued that the Ex. P1 is not a sale agreement, therefore, filling the suit on the basis of the Ex.P1 itself is not maintainable. Hence the application may be rejected.

8. It is alleged that the Defendant has executed the sale Agreement on 13.07.1988. The plaintiff has produced original sale agreement dated 13.07.1988. The alleged signature of the Defendant is marked as Ex. P1(a) and Ex. P1(b). The Defendant denies his signature. In the vakaltnama as well as the written statement, the Defendant has put his signature. The other contention raised by the Defendant about the validity of Ex.P1 shall be considered during final adjudication of the suit. However, considering the facts and circumstance, it is just and necessary to order for appointment of Court

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Commissioner for scientific investigation of the signatures as Defendant which are found on vakalathnama and written statement. Therefore, I am of opinion that the plaintiff has made out case for appoint of Commissioner for the purpose of scientific investigation of the disputed signatures with the admitted signature and Thumb Impression. Hence, I answer point No.1 in the Affirmative.

9. Point No.2: In the light of the above discussion I pass the following:

ORDER

I.A No. XIV filed the plaintiff U/o XXVI Rule 10(a) R/w section 151 CPC is allowed.

The handwriting expert is hereby appointed as Court Commissioner for the purpose of scientific investigation by comparing the disputed signatures of defendant on Ex.P.1 at Ex. P1(a) and (b) with their admitted signatures in his

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written statement and Vakalath.

Office is directed to refer the Ex.P.1, which has the disputed signatures; and the Vakalath and written statement of the defendant which has his admitted signatures for the purpose of comparing and submit report to Truth Lab, Manipal Centre, Dickenson Road, No.101(A), North Block 1st floor, Beside Bhandhan Bank, Bangalore-560042.

The plaintiff shall deposit the commissioner fees as calculated by the above said agency, whenever directed by the Court.

Issue commissioner warrant to the above said agency along with the documents and copy of this order.

(Dictated to the Stenographer, typed by her on computer, corrected by me and then pronounced in the open Court on this **11th November 2024**)

Sd/-

(THAHAKALEEL K.A)
III Addl. Civil Judge & JMFC,
Kadur.

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