



**IN THE COURT OF THE II ADDITIONAL CIVIL JUDGE
AND JMFC, KADUR.**

Present: - Sri. Thahakaleel K.A., B.A., LL.B.,
II Additional Civil Judge & JMFC.,
Kadur.

Dated: This 8th Day of September 2025

O.S.No.697/2019

PLAINTIFF/S: Smt. Swarna Gowramma
W/o Chandrashekharappa,
D/o Rajappa,
Aged about 51 years, Housewife,
R/o #11, 3rd Cross, Near D.M. Public
School, Bhyraveshwara Nagara,
Laggeri, Bangalore.

(Rep. By Sri. B. Raju., Advocate)

V/S

DEFENDANT/S

1. **Kalleshappa**
S/o Rajappa,
Aged about 46 years,
Agriculturist,
R/o S.Naranapura Village,
Singatagere Hobli, Kadur Taluk,
Chikkamagaluru District.
2. **Smt. Nethravathi**
W/o Sadashivappa,
D/o Rajappa,

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Aged about 54 years, Teacher,
R/o Opp: KEB, Sakrepatna
Village, Kadur Taluk,
Chikkamgaluru District.

(Rep. By Sri.G.H. Kantharaj., Advocate)

Parties to I.A No.XVI

Applicant/s : D-1 Sri. Kalleshappa

V/S

Opponent/s : Smt. Swarna Gowramma.

Sl. No.	Subject	Remarks
1	Provision under which the application is filed	Order XXVI Rule 10-A R/w Section 151 CPC
2	Relief sought for	Comparison of signatures
3	The date of which the application is filed	30.10.2024
4	Number of the application	I.A.No.XVI
5	The date of which the objections are filed by the different opponents.	I.A.No.XVI 05.11.2024 By the plaintiff
6	The date of Order.	08.09.2025

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ORDERS ON I.A No.XVI FILED BY THE
DEFENDANT No.1 UNDER ORDER XXVI
Rule 10-A R/w Section 151 C.P.C R/w Sec.45 of
EVIDENCE ACT

Learned counsel for the defendant no.1 has filed this I.A. under Order XXVI Rule 10A read with Section 151 of Civil Procedure Code, praying to send Exhibit D1, Exhibit D2, Exhibit D11 to 14, along with the plaint and vakalath of the deceased plaintiff to the fingerprint expert for the purpose of comparing the signatures of the plaintiff put upon the plaint, Vakalath and aforesaid documents.

2. In the affidavit sworn by defendant No.1, it is stated that, plaintiff is the father of defendant No.1 and he had filed the above suit against him and other defendants for the relief of partition and separate possession of his share in the plaint schedule properties. During the pendency of the above suit, the plaintiff died and the defendant no. 3 has been transposed as plaintiff. It is further stated that defendant No.1 and his father had

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availed loan from the private persons for their family benefit and they invested the said amount to develop the joint family properties and executed promissory note and consideration receipts. As per Exhibit D1, 2, 11 to D14. But now the transposed plaintiff namely Swarna Gowramma has denied the execution of said documents and also disputed the signature of the Rajappa put up on Exhibit D1,2, D11 to D14 to have wrongful gain. Hence it is just and necessary to send the said documents to handwriting expert to compare the same with the admitted signature of the Rajappa, which is available on plaint and vakalath. Hence prayed to allow this option.

3. On the other hand, learned counsel for the plaintiff has filed objection to this IA, contending that the application is not maintainable. The Exhibits D1, D2, D11 to D14 are created document with the help of his brother-in-law of the Defendant No.1. Even if the parties have

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borrowed the loan and same is not questioned by the lender and one can't get any relief in the presence of Hence pray to dismiss the IA.

4. Heard arguments from both sides, perused materials available on record.

5. The following points would arise for consideration of this court.

1. Whether the applicant/defendant no. 1 made out grounds to send aforesaid documents to the hand writing expert for the purpose of comparison of signature?
2. What order?

6. My answers to the above points are as follows;

Point No.1	:	In the negative,
Point No.2	:	As per final order for the following,

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:: REASONS ::

7. **Point No.1:-** The plaintiff i.e. one Sri Rajappa has filed present suit against. Defendant Nos. 1 to 3 for the relief of partition and separate possession of 1/3rd share in the plaint schedule properties. During the pendency of the suit, plaintiff died and as such defendant No. 3 transposed herself as a plaintiff and prosecuting the suit. On the other hand, it is the contention of defendant no. 1 is that, the deceased plaintiff Rajappa along with the Defendant No.1 borrowed loan for the development of suit schedule properties from the bank and private person as well. For the security of the loan transaction, he has executed Exhibit D1, D2, D11 to D14 documents in favour of the lender. Therefore the defendant Nos.1 and 2 are liable to repayment of the said loan. However, the transposed plaintiff by name Smt. Swarna Gawramma has denied the execution of promissory note and consideration to receipts. Exhibit D1,

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2, 11 to 14 are the on demand promissory note and consideration receipts executed by the earsthwile plaintiff Sri. Rajappa and Defendant No.1. Those documents are produced before this court by the defendant no. 1 himself in his chief examination. Till today the lender not initiated any legal action to recover the amount covered under on demand promissory note i.e. Exhibit P1 and 2, Exhibit P11 to 14 and no decree against the plaintiff or defendants has been passed for the payment of amount covered under Exhibit D1, D2, D11 to 14. It is the duty of the lender to prove the transaction as alleged by initiating appropriate civil suits and to prove the documents as per law. Therefore, sending of these documents to the fingerprint expert does not serve any purpose, since there is no specific decree this court cannot direct the plaintiff to contribute the loan amount to the lender as alleged by the Defendant No.1. Accordingly, I answer No. 1 in the **Negative**.

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8. **Point No.2:-** For the reasons and discussion made above, I proceed to pass following;

ORDER

IA No.16 filed by the defendant No.1 under Order XXVI Rule 10A CPC read with Section 45 of Indian Evidence Act is hereby rejected.

(THAHAKALEEL K.A)
II Addl. Civil Judge and JMFC
Kadur.

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