

**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL
JUDGE, HUBBALLI**

Present:

Sri. Yamanappa Karehanumantappa,
Prl. Senior Civil Judge, Hubballi.

O.S. No.114/2018

Dated this the 29th day of November - 2024

Plaintiff : Ravindra S/o. Yallanagouda Patil.

.Vs.

Defendants : Raju Hiremath and Crew and another.

PARTIES TO I.A. No.III

Applicant : Ravindra S/o. Yallanagouda Patil.

.Vs.

Opponents : Raju Hiremath and Crew and another.

ORDER ON IA No.III

The counsel for plaintiff has filed this I.A. U/s.65 of Indian Evidence r/w. Section 151 of C.P.C. to permit the plaintiff to lead evidenced on secondary evidence.

2. The plaintiff has sworn affidavit stating that this case is fixed for his evidence. The defendants No.1 and 2 have filed written statement after his examination as PW.1 and they have denied the reciting of part of sale consideration amount and issuance of receipt. They themselves have received the part consideration amount and issued receipt on 02.11.2011. The original receipt and power of attorney has been handed over to Sri.

Chandrashekar Aramani who was father of his wife. He was expired. The said documents have been misplaced and due to diligence the said documents are not traced out till today. The defendants No.1 and 2 have intentionally and deliberately hiding the document. The copy of said receipt is already on record. Therefore, there is no chance to lead the evidence on secondary evidence. It is very much necessary and helpful in deciding the case. Hence, prayed to allow the application.

3. The counsel for defendants No.1 and 2 has filed objection to the application denying the contents of the affidavit. They have contended that the alleged receipt issued by the defendant is a concocted and fabricated document. It could be seen with bare eyes that there is a lot of difference between the signature of the defendant on the written statement, vakalathnama, affidavit, verifying affidavit and alleged receipt produced by the plaintiff. The receipt shows that the word "for" is mentioned on the alleged receipt. Since the defendant has not admitted the alleged receipt, the same cannot be treated as secondary evidence. The provisions of Section 65 of Indian Evidence Act is not at all applicable to the present case. Hence, prayed to dismiss the application.

4. Heard both side and perused the records. The following points arise for my consideration:

1. Whether the plaintiff has made out a ground to allow the application?
2. What order?

5. My findings on the above points are as under:
 1. In the Negative.
 2. As per final order, for the following:

REASONS

6. **Point No.1:** At the outset the plaintiff have filed a suit for specific performance of contract. Based on the pleadings of the parties issues have been framed. The plaintiff has led his evidence. Now the case is posted for further evidence. The counsel for plaintiff has filed this application seeking permission of the court to lead secondary evidence and marking the receipt dated 02.11.2011. The said receipt is zerox copy. The defendants have denied the contents of receipt and signature. The Advocate for plaintiff has relied the judgment of Hon'ble Supreme Court wherein Hon'ble Supreme Court in para No.16 held that in view of aforesaid factual situation prevailing in the case in hand, it is clear that the factual foundation to establish the right to give secondary evidence was laid down by the appellants. In the present case the plaintiffs has not led foundation in his plaint about the original receipt. Therefore, the judgment of Hon'ble Supreme Court is not applicable to this case. The another judgment relied by the advocate for plaintiff of our own High Court in

WP No.16505/2018, Munireddy -vs- Sarojamma, wherein Hon'ble High Court in para No.12 held that a conjoint reading of Section 65 of the Indian Evidence shows that when the existence of original document is not disputed by the person against whom it is proved and the provisions of Section 65 of Indian Evidence Act is applicable in the present peculiar facts and circumstances of the case. In the present case the defendants have not admitted the receipt of consideration dated 02.11.2011. Moreover, the plaintiff has not stated that as per judgment of Hon'ble Supreme Court in supra the alleged copy is in fact a true copy of the original in his affidavit. Therefore, the plaintiff has not made out grounds to lead secondary evidence. The name in the alleged receipt is not tallying with the name of the party of bank statement produced by the plaintiff before this court. Hence, I answer point No.1 in **Negative**.

7. **Point No.2**: In view of my answer to point No.1 in Negative, I proceed to pass the following:

ORDER

I.A. No.III filed by the plaintiff U/s.65 of Indian Evidence Act r/w. Section 151 of C.P.C. is hereby rejected.

The costs shall follow the events.

(Dictated to the Stenographer directly on computer, computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **29th day of November - 2024**)

(Yamanappa Karehanumantappa)
Pri. Senior Civil Judge, Hubballi.

