IN THE COURT OF THE ADDL. SENIOR CIVIL JUDGE, GADAG.

Present: Sri. Prakash Channappa Kurabett
(B.SC., L.L.B.)
Addl. Senior Civil Judge, Gadag.

O.S.No.192/2017

Dated this the 27th day of March 2024

PLAINTIFF:

Basavaraj S/o. Rudrappa Madabhavi
Age: 55 years, Occ: Agriculture
R/o. Banahatti, Tq: Naragund,
Dist: Gadag.

(By Sri. MNA. Adv.,)

-Vs-

DEFENDANTS:

1. Ashok S/o. Bhimappa Huligol
Age: 30 years, Occ: Agriculture
R/o. Dandapur, Tq: Naragund,
Dist: Gadag.

2. H.D.F.C. Bank Ltd.,
By its Manager,
Hubballi Branch, Hubballi.

(By Sri. GBN Adv.,)

PARTIES ON I.A. No.X

APPLICANT:

Basavaraj Madbhavi

-Vs-

OPPONENTS:

Ashok Huligol

ORDER ON I.A. No.X

I.A. No.X filed by the applicant / plaintiff U/o.16 Rule 1 R/w. Sec.151 of CPC with a prayer for kindly summon the manager HDFC Bank, branch Hubballi directing him to produce the document and give evidence in the above case i.e.,

1. Loan documents pertains to Ashok Bhimappa Huilgol R/o Dandapur, Tq. Naragund who wa borrowed the loan in the year November 2014.
2. Account opening form and specimens signature of Ashok Huilgol.
3. Statement of Accounts of Shri Ashok Bhimappa Huilgol.

2. In the sub-joined affidavit filed along with the application the plaintiff has sworn in the affidavit and contended that, he has filed above suit against the defendant for the relief of specific performance of contract to execute the clear registered sale deed in respect of suit schedule property. Further contended that, the defendant is the owner of suit schedule

property as well as other properties he agreed to sell the suit property in my favour for Rs.30,00,000/-. Further contention that, he has executed an agreement of sale on 16.04.2016 in my favour by receiving and earnest money of Rs.21,40,500/- in the presence of attesting witness.

3. Further contended that, he has examined the attesting witness before this court to prove my case. But defendant denying the execution of agreement of sale deed as well as receiving the earnest money of Rs.21,40,500/-, that defendant had taken contention that, the he has not executed any agreement of sale in respect of suit property and also the alleged agreement of sale signature is not belongs to him. Further contended that he has already leaded my evidence before this court and defendant cross examined me and also attesting witness.

4. Further contended that, the case is posted for defendant evidence. That, the defendant lead his evidence that my

counsel cross examined the defendant. During the course of cross examination defendant admitted that he had borrowed loan amount from the HDFC Bank Branch Hubli. The documents are revealed that, the defendant repaid the loan amount in the year 2016 itself and also the HDFC Bank had issued no dues certificate and also bank was executed the registered re-conveyance deed in favour of defendant on 03.10.2016. Further contended that, the defendant is habit of changing the signature on the documents as and when necessary. If the application is allowed no harm will be caused to the other side. Hence, prayed to allow the application.

5. On the other hand, defendant No.1 has filed the objections to the above said application and contended that, the application filed by the plaintiff is not maintainable either in law or on the facts of the case. He has produce the certified copy of the loan extract and also account opening statement of the defendant No.1, but with an intention to drag on the matter the plaintiff

has file this application to the manager HDFC Bank branch Hubballi for produce the loan documents of defendant No.1 and also account opening specimen signature of the defendant No.1 and also statement of account of defendant No.1. Further contended that the plaintiff has not assign any reason by these documents are produced before this Hon'ble Court. But, the reasons assigned in the said affidavit is not sufficient. Hence the plaintiff is liberty to file application before the competent authority for certified copy of the said documents. Hence, prayed to reject the application.

6. On the basis of the pleadings, objections, the points that would arise for my consideration are as under:

POINTS

1) Whether the I.A.No.X filed by the applicant/ plaintiff U/o.16 Rule 1 R/w. Sec.151 of CPC deserves to be allowed?
2) What order?

7. Heard the arguments and perused the material on record.

8. My findings on the above points are as under:

Point No.1: In the affirmative

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

R E A S O N S

9. **Point No.1:-** I.A. No.X filed by the applicant / plaintiff U/o.16 Rule 1 R/w. Sec.151 of CPC with a prayer for kindly summon the manager HDFC Bank, branch Hubballi directing him to produce the document and give evidence in the above case i.e.,

1. Loan documents pertains to Ashok Bhimappa Huilgol R/o Dandapur, Tq. Naragund who wa borrowed the loan in the year November 2014.
2. Account opening form and specimens signature of Ashok Huilgol.
3. Statement of Accounts of Shri Ashok Bhimappa Huilgol.

10. In the sub-joined affidavit filed along with the application the plaintiff has sworn in the affidavit and contended that, he has filed above suit against the defendant for the relief of specific performance of

contract to execute the clear registered sale deed in respect of suit schedule property. Further contended that, the defendant is the owner of suit schedule property as well as other properties he agreed to sell the suit property in my favour for Rs.30,00,000/-. Further contention that, he has executed an agreement of sale on 16.04.2016 in my favour by receiving and earnest money of Rs.21,40,500/- in the presence of attesting witness.

11. Further contended that, he has examined the attesting witness before this court to prove my case. But defendant denying the execution of agreement of sale deed as well as receiving the earnest money of Rs.21,40,500/-, that defendant had taken contention that, the he has not executed any agreement of sale in respect of suit property and also the alleged agreement of sale signature is not belongs to him. Further contended that he has already leaded my evidence before

this court and defendant cross examined me and also attesting witness.

12. Further contended that, the case is posted for defendant evidence. That, the defendant lead his evidence that my counsel cross examined the defendant. During the course of cross examination defendant admitted that he had borrowed loan amount from the HDFC Bank Branch Hubli. The documents are revealed that, the defendant repaid the loan amount in the year 2016 itself and also the HDFC Bank had issued no dues certificate and also bank was executed the registered re-conveyance deed in favour of defendant on 03.10.2016. Further contended that, the defendant is habit of changing the signature on the documents as and when necessary. If the application is allowed no harm will be caused to the other side. Hence, prayed to allow the application.

13. On the other hand, defendant No.1 has filed the objections to the above said application and contended that, the application filed by the plaintiff is not

maintainable either in law or on the facts of the case. He has produce the certified copy of the loan extract and also account opening statement of the defendant No.1, but with an intention to drag on the matter the plaintiff has file this application to the manager HDFC Bank branch Hubballi for produce the loan documents of defendant No.1 and also account opening specimen signature of the defendant No.1 and also statement of account of defendant No.1. Further contended that the plaintiff has not assign any reason by these documents are produced before this Hon'ble Court. But, the reasons assigned in the said affidavit is not sufficient. Hence the plaintiff is liberty to file application before the competent authority for certified copy of the said documents. Hence, prayed to reject the application.

14. Perused the application, affidavit filed along with the application, objections and other materials on records this court of the opinion that, the plaintiff has made out grounds to allow the application as prayed for. From the

documents it reveals that, the plaintiff has filed this suit against the defendants for the relief of specific performance of contract in respect of suit property. The plaintiff in his affidavit contended that, the proposed documents are materials in this case and it is necessary to produce the said documents before this court to adjudicate the matter on merits. Further stated that, the defendant has in habit of changing his signature. Hence, it is required to direct the defendant to produce such documents before this court. But, the defendant has contended that, the proposed documents are not in his custody, the plaintiff has to file an application to get them, before competent authority.

15. In the instant case the plaintiff has filed this suit against the defendants for specific performance of contract in respect of suit schedule property. The defendant No.1 is the absolute owner and in possession of the suit property, and for his family necessity he has put the said property for sale for Rs.30,00,000/- and he has

executed agreement of sale in favour of plaintiff on 16.04.2016 by receiving 21,40,500/- but, he has failed to execute the registered sale deed. Here in this case the plaintiff sought for prayer for kindly summon the manager HDFC Bank, branch Hubballi directing him to produce the document and give evidence in the above case i.e.,

1. Loan documents pertains to Ashok Bhimappa Huilgol R/o Dandapur, Tq. Naragund who was borrowed the loan in the year November 2014.
2. Account opening form and specimens signature of Ashok Huilgol.
3. Statement of accounts of Shri Ashok Bhimappa Huilgol.

16. But, the plaintiff has contended that, the defendant has in habit of changing the signature. But, herein thi case, the plaintiff not mentioned account Number of the defendant and not mentioned which branch the defendant has taken a loan is not mentioned in the application. So, without any information material before

the court about the defendant application can not be allowed. Therefore plaintiff failed to prove ground to allow the application. So, without any bank details and any branch name the said application can not be allowed. Hence, therefore in view of the above facts and discussed reason I answered **point No.1 in the negative.**

17. **Point No.2**:- In view of my findings on the above points, I proceed to pass the following:

O R D E R

I.A.No.X filed by the applicant/ plaintiff U/o.16 Rule 1 R/w. Sec.151 of CPC is hereby rejected.

(Dictated to the Stenographer directly on computer and revised by me and then pronounced in the open court on this the 27th day of March 2024).

(PRAKASH C. KURABETT)
Addl. Senior Civil Judge,
Gadag.