

KAHV310003052015



Presented on : 27-04-2015

Registered on : 27-04-2015

Decided on : --

Duration :

IN THE COURT OF THE CIVIL JUDGE & J.M.F.C.,
HANGAL

PRESENT: Sri. Janardhana. S.K. B.A.L., LL.B.,
Civil Judge & J.M.F.C.,
Hangal.

O.S.No.166 of 2015

DATED THIS THE 07th DAY OF MARCH 2022

Plaintiff : Sri. Rudrappa S/o Basappa Devagiri

(By Sri. S.V.Murudannanavar - Adv.)

V/s.

Defendant : Sri. Gadigeppa S/o Kalaveerappa
Devagiri.

(By Sri. M.S.Hullur - Adv.)

PARTIES TO I.A.No.XVII

Applicant/

Plaintiff : Sri. Rudrappa S/o Basappa Devagiri
Age: 46 years, Occ: Agriculturist
R/o: Haravi village,
Tq: Hangal, Dist: Haveri.
Now at- Ilajarilakamapur, D.C.Office
Road, Haveri. Tq/Dist: Haveri.

- V/s -

Opponent/

Defendant : Sri. Gadigeppa S/o Kalaveerappa Devagiri
Age: 61 years, Occ: Rtd., Employee
R/o: Haravi village,
Tq: Hangal, Dist: Haveri.
Now at- Kottigeri-Mundagod Road,
Bankapur, Tq: Shiggaon,
Dist: Haveri.

**(Sri. Janardhana. S.K.)
Civil Judge & JMFC.,
Hangal.**

ORDER ON IA.NO.XVII

The plaintiff/applicant has filed this application U/o. 26 Rule 10(A) R/w. 151 of C.P.C, seeking to appoint a hand writing expert as commissioner to compare and examine the admitted signatures of the defendants to be taken before this

court with that of disputed signature of the defendant in the sale agreement (Ex.P4).

2. The defendant has filed objection by resisting the application inter alia among various grounds.

3. I have heard the arguments of both the sides and perused the materials available on record.

4. The points that would arise for consideration of this court are as follows:-

POINTS

1. Whether the applicant has made out sufficient grounds allow the application?

2. What order?

5. The findings of this court on aforesaid points are as follows:-

Point No.1 : In the affirmative

***Point No.2 : As per final order
for following:-***

REASONS

6. **Point No.1**:- The applicant/plaintiff in the affidavit annexed to the application has specifically deposed that, the defendant has executed agreement of sale in his favour on 10-05-2002 in the presence of attesting witnesses to sell the suit schedule property and thereby received earnest

amount of Rs.32,450/-. It is further deposed that, during the evidence of defendant/DW-1 who has denied his signature found in the agreement of sale and also throughout evidence denies the execution of the suit document i.e., sale agreement dated 10-05-2002. In view of denial of the signature by the defendant, ambiguity has been created during the evidence regarding execution of the agreement of sale and in order to clarify such an ambiguity and to find out the real truth of the case, it is just and necessary to obtain the signature of the defendant in the open court and refer the same for comparison with that of disputed signature to the hand writing expert. It is further contended that, this court has ample power to refer the same to the hand writing expert for scientific investigation. On aforesaid stated grounds, the applicant/plaintiff has prays to allow the application.

7. On the other hand, the counsel for the defendant has filed the objections, wherein it is asserted that, the defendant has not at all executed alleged sale agreement in favour of the plaintiff with respect to suit schedule property and plaintiff has fabricated/forged signature of the defendant in the sale agreement. Even otherwise, the defendant has adduced evidence before the court by asserting that, signature found in the sale agreement is not

of himself and accordingly asserted that alleged sale agreement is created and false one. It is further stated that, only when the court entertain the doubts and comes to conclusion regarding the signature of the defendant then only application is maintainable. However, the court has not raised any such doubts. Moreover, U/s. 45 of the Indian Evidence Act, the expert can raise an opinion with respect to hand writing and thumb impression and accordingly, the instant application is not maintainable one. By specifically contending that, the application has been filed to protract the proceedings and in order to harass the defendants, it is prayed to dismiss the application with costs.

8. I have perused the application, it's accompanying affidavit, pleadings of the both sides and materials available at this stage including oral and documentary evidence already adduced by both the sides. The plaintiff has filed present suit against the defendant for the relief of specific performance of sale agreement dated 10-05-2002 and to direct the defendant to execute the registered sale deed in his favour in terms of said sale agreement and for alternatively refund of earnest money of Rs.32,450/- along with interest at the rate of 24% per annum and for consequential relief of permanent injunction to restrain the defendant from

interfering in peaceful possession and enjoyment of the suit schedule property.

9. In the aforesaid contest, on perusal of entire materials available on record including both of oral and documentary evidence adduced by the both sides, it is made it clear that, in response to suit summons, the defendant has appeared through his counsel and filed written statement on 04-06-2016 by denying entire case of the plaintiff in toto. On careful consideration of material defense set out in para 12 of the written statement, it is forthcoming that, the plaintiff alleged to had concocted and created the false sale agreement in respect to suit schedule property and thereby asserted the specific fact that, the defendant has never executed the sale agreement in favour of plaintiff. Corroborative to said defense, during the cross examination of plaintiff/PW-1 at page No.15, it is specifically suggested by the counsel for the defendant to the effect that, in order to grab or knock of the suit schedule property, the plaintiff has created the false sale agreement by signing the signature resembles to the defendant's signature.

10. It is pertinent to note that, the defendant/DW-1 during his cross examination by the plaintiff counsel has reiterated the fact that the plaintiff has concocted the false sale agreement and thereby denied very execution of the

same by him. In fact on meticulous and prima faice consideration of objections filed by the defendant to instant application, wherein, also the defendant has denied very execution of sale agreement and further denied the signature found in the sale agreement not of himself. Such being the clear facts, evidence and circumstance of the case, for fair, proper and complete adjudication of matter in issue between the parties, it is just and necessary to refer the disputed signature of the defendant contained in Ex.P4 sale agreement and admitted signatures that may be taken in the open court along with admitted signature of the defendant as per Ex.P6 vakalath. The contention of the counsel for the defendant that U/s. 45 of the Indian Evidence Act, an expert can raise opinion only with respect to hand writing and thumb impression is not tenable for the simple reasons that, the disputed and admitted signatures are also form a part of hand writing. It is well settled law is that though court is a expert of an expert and compare the admitted signatures with that of disputed signature U/s.73 of the Indian Evidence Act, at the same time comparison and examination of signature and hand writing involves technical procedures that can be done by the hand writing expert himself. Such being the case, court can not effectively ascertain and decide the admitted and disputed signatures on bare looking of the same. Unless expert in that field is appointed, this court

cannot effectively and conveniently decide the admitted and disputed signature of the defendant. For aforesaid reasons, the considered opinion of this court that the applicant/plaintiff has made out sufficient grounds to allow the application. Accordingly, point No.1 is answered in the affirmative.

11. It is relevant and worth to note here that, the applicant/plaintiff once already filed similar application as per I.A.No.XII U/o.26 Rule 10(A) R/w Sec.45 of Indian Evidence Act and section 151 of CPC., seeking to refer the admitted signatures of the defendant in the vakalath, written statement and affidavits filed by him with that of disputed signature found in the Ex.P4 sale agreement and same is pending for adjudication. In view of disposal of present application on merits, the I.A.No.XII filed under similar provisions and similar reliefs does not survive for consideration and accordingly disposed of.

12. **Point No.2**:- In the light of aforesaid reasons and discussions, this court is proceed to pass following:-

ORDER

***The I.A.No.XVII filed under order 26
Rule 10(A) R/w sec.45 of Indian Evidence***

Act and Sec.151 of C.P.C, by the applicant/plaintiff is hereby allowed.

Consequently, a hand writing expert is hereby appointed court commissioner to examine and compare the disputed signatures of the defendant in the Ex.P4 sale agreement with that of admitted signatures of him contained in the written statement, vakalath (Ex.P6) and his signatures to be taken in the open court.

The commissioner fee tentatively fixed at Rs.2,000/-

To deposit the commissioner fee and suggest the name of the competent hand writing expert and for presence of the defendant to obtain his signature in the open court.

(Dictated to Stenographer, directly typed by him on computer, once revised, corrected and later initialed by me and then pronounced by me in the open court on this the 7th day of March - 2022)

(Sri. Janardhana. S.K.)

**Civil Judge & JMFC.,
Hangal.**

Order pronounced in Open court as
under (vide separate Order):

:O R D E R:

***Civil Judge and JMFC.,
Hangal.***