

**IN THE COURT OF THE I ADDL. SENIOR CIVIL JUDGE
AND JMFC., AT K.R.PETE**

Dated this 20th day of June- 2026

Present : H.R. Devaraju, B.A.LL.B.,
I Addl. Sr. CJ & J.M.F.C.,
K.R.Pete.

O.S.No.22/2019

PLAINTIFF/S:

Smt. Sarojamma W/o Subbegowda
Aged about 51 years.
R/a Madapura Village,
Kikkeri Hobli,
K.R Pete Taluk.

(By Sri. **HVM**, Advocate)

-V/s-

DEFENDANT/S:

1. Smt. B. Lalitha W/o K P Siddalingaprabhu,
Aged about 57 years,
2. Sri. K.P Siddalingaprabhu S/o A.S Puttannaiah,
3. Sri. M.S Vivek S/o K.P Siddalingaprabhu,

All are R/o Door No. 502, H block,
Ramakrishnanagara
Mysuru.

I.A.NO.12

Applicant/Defendant/s:

Smt. B.Lalitha & others

-V/s-

Opponents/Plaintiff/s :

Smt. Sarojamma

ORDERS ON I.A.NO.12

This application is filed by the defendants U/Order
26 Rule 10(a) of CPC and Section 39 of Bharatiya Sakshya

Adhiniyama seeking appointment of court commissioner/expert to compare the disputed thumb impression available on agreement dated 04.06.2018 with the admitted thumb impression of the plaintiff in the interest of equity and justice.

2. In annexed affidavit defendant No.2 has stated that, plaintiff has filed present suit for specific performance of contract based on the agreement dated – 05.07.2018. Now case is set up for arguments. The Actual sale consideration amount is 36,25,000/- and he has received 15,00,000/- as advance amount. However on requisition of the plaintiff he himself and his wife have executed the registered agreement of sale on 05.07.2018 for value of 6,00,000/-. Now, plaintiff by taking advantage of the registered agreement of sale has filed present suit in order to cause hardship to him. During cross examination of PW-1/plaintiff has denied her signature on agreement dated 04.06.2018, which marked at EX-D1. The thumb impression available in Ex.D1 is belonging to the plaintiff. However, in order to defraud the defendants she denied the thumb impression available on EX-D1. Hence, he sought for appoint court commissioner to compare the thumb impression available on EX-D1 with the admitted thumb impression of plaintiff. If this application is not allowed much hardship causes to him. Hence, he sought for allow the application.

3. Per contra, plaintiff has filed objection and contended that, application filed by the defendants is not

maintainable on liable to the dismissed. The defendants in their written statement have taken specific contention that, there is another agreement dated – 04.06.2008, which is unsustainable defense. This court has discretionary power to compare the disputed thumb impression with the admitted thumb impression of the plaintiff. The 2nd defendant has filed present application at belated stage. Hence, application is not maintainable. He has filed present application in order to harass the plaintiff. If this application is allowed much hardship caused to her. Hence, he sought for dismiss the application.

4. Heard arguments, Perused the documents placed on record.

5. The following points arise for the consideration of this Court;

1. Whether the appointment of court commissioner is necessary in order to compare the disputed thumb impression available on Ex.D1 with the admitted thumb impression of the plaintiff?

2. What order?

6. My findings on the above points are as follows:

Point No.1 : **In the Affirmative,**

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

REASONS

7. **Point No.1**: The plaintiff has filed present suit for specific performance of agreement of sale based on the agreement dated 05.07.2018. According to the plaintiff

Ex.P1 is executed by the defendant in her favour by agreeing to sell the suit schedule property for consideration amount of Rs. 6,00,000/-.

8. The defendants have put their appearance and filed their written statement by denying the consideration amount as alleged by the plaintiff. The defendants in their written statement at para No. 12 have specifically contended that, plaintiff has agreed to purchase the suit schedule property for total consideration amount of Rs. 36,25,000/-, on very same day plaintiff has paid amount of Rs. 15,00,000/- to the defendants and agreed to pay remaining sale consideration amount of Rs. 21,25,000/- within 11 months from the date of agreement of sale. At Para No.14 of the written statement have further contended that plaintiff has requested the defendants to execute the registered agreement of sale with respect to agreement dated 04.06.2008. Accordingly they have executed registered agreement for amount of Rs. 6,00,000/- as nominal agreement. Actual consideration amount is 36,25,000/-. But plaintiff has filed present suit based on the agreement dated – 05.07.2018.

9. Further on perusal of the deposition of the PW-1 it appears that she has denied the agreement dated – 04.06.2018 and also consideration amount.

10. Once again I repeat that, it the specific contention of the defendants that, consideration amount is 36,25,000/- as per the unregistered agreement dated 04.06.2018 which marked at EX-D1. On the other hand plaintiff has contended that, defendants have agreed to sell the property

for consideration amount of Rs. 6,00,000/- as per registered agreement dated – 05.07.2018.

11. It is relevant to note here that, Ex.D1 is the pivotal document in the present suit, the proof of the execution of the Ex.D1 by the plaintiff is the primary requirement from the side of the defendant in this suit, when the plaintiff has denied the Ex.D1 and also thumb impression contained in Ex.D1. This court has to invariably answer as to whether the thumb impression of the disputed thumb impression in Ex.D1 is proved to be of the plaintiff or not before embarking upon any other aspects in respect of Ex.D1. Hence, court commissioner report would have it is opinion importance in arriving at a just and conclusion regarding due execution of Ex.D1 by the plaintiff.

12. The plaintiff has contended that, court can compare the disputed the thumb impression available on Ex.D1 with the admitted thumb impression of the plaintiff U/sec. 73 of Indian Evidence Act. No doubt the court an experts and it can be compare the thumb impression on its opinion by excersing its power U/sec. 73 of Indian Evidence Act. However, in order to come to proper conclusion the deeper look of the disputed thumb impression is give an all together different insight. It is well settled that mere examination of the thumb impression by the court can not be a substitute for scientific examination by an expert. Hence, if court commissioner appointed either parties are having right to file their objection and conduct cross examination of commissioner and bring out somethings more on record in respect of the disputed and admitted

thumb impressions, which would eventually assist the court in arriving at a logical conclusion regarding the disputed thumb impressions. Therefore, it is always advisable in the opinion of this court to have assistance of an expert in a matter of this nature of the suit. It is interesting to note that, burden lies on the defendant to prove the thumb impression disputed by the plaintiff. But plaintiff has filed objection to send the disputed document to the expert for scientific verification. The defendants fairly admitted the execution of two agreements. Hence, in order to ascertain the actual consideration amount of the agreement of sale proving of EX-D1 is necessary. The plaintiff herself has denied the thumb impression available on EX-D1. Hence, it creates doubts on execution. Therefore, in order to remove the doubts, I am of the opinion that consider opinion that, appointment of court commissioner is just and necessary and expedient to decide real dispute involve in this suit. Hence, I hold Point No.1 in the **Affirmative**.

13. **POINT No.2:** In view of my above discussions, I proceed to pass the following;-

:ORDER:

***I.A.No.12 filed by the defendants U/o
26 Rule 10(a) of CPC is hereby allowed.***

***It is held that, appointment of
experts as court commissioner is just
necessary and expedient in the
interest of justice to compare the
disputed thumb impression in Ex.D1***

with the admitted thumb impression of the plaintiff.

The parties shall suggest the name of the court commissioner.

The defendants shall pay prescribed fee that may be informed by the proposed hand writing expert as and when called for without caused any delay.

Both the parties are hereby liberty to file their respective memo of instruction to the court commissioner.

(Dictated to the Stenographer directly on the computer, typed by her, corrected and then pronounced by me in open court, this the **20th** day of **June-2026**)

(DEVARAJU H.R.)

I Addl.Sr.CJ and J.M.F.C.,
K.R.Pete.

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