

KAMS010037622025



**IN THE COURT OF THE III ADDL. DISTRICT &
SESSIONS JUDGE: MYSURU.**

Dated this the 28th day of January 2026

:PRESENT:

Sri **Gururaj Somakkalavar**, M.A.,LL.B.,
III Addl. DISTRICT & SESSIONS JUDGE:
MYSURU.

R.A.96/2025

Petitioner: Smt.Deepa.H.D

V/s

Respondent: Rangaswamy

I.A

Applicant Smt.Deepa.H.DAppellant.

V/s

Opponent: RangaswamyRespondent

ORDER ON APPLICATION FILED U/O.26 RULE 10-A
R/W.SEC.151 OF CPC

The applicant/appellant has filed this application U/o.26 Rule 10(A) R/w Sec.151 of CPC praying to refer the Handwriting Expert to comparison of the appellant/defendant specific signature i.e., Ex.P-1 Pronote and Ex.P-2 Consideration Receipt, in the interest of justice and equity.

2. In the affidavit accompanying to the application, the appellant has stated that the respondent herein has filed the suit for recovery of money, in O.S.No.872/2022 on the file of II Addl. Senior Civil Judge at Mysuru. She contested the above case on the ground that, she has not admitted the signature in the above case and also she has taken good defence in the written statement. Hence, opinion of the handwriting expert is just and necessary to prove her contention in the above case. If, the application is allowed, no hardship or loss will be caused to the other side, but on the other hand, she will be put to greater hardship and inconvenience if the same is not allowed, which cannot be compensated in terms of money. Hence, prays to allow the application.

3. The counsel for the respondent has filed objections to the application filed under Order 26 Rule 10(A) of CPC and submitted that the application filed by the appellant is not maintainable either in law or on facts and liable to be dismissed in limine. The appellant stated in his affidavit that, the appellant/defendant has filed I.A. No.3 before the Trial Court in O.S. No. 872/2022 under the provision Order XXVI Rule 10(a) R/w Section 151 of C.P.C. The Court has rejected the same in the Judgment dated 29.03.2025 by drawing opinion at Para No.15 & 16 that, there is no necessity to refer the Signatures to the Hand Writing Expert. This fact has been suppressed by the appellant/defendant purposefully. Since, the Trial Court has already drawn its opinion on this Issue & same has not been challenged by the appellant/defendant the question of referring the Disputed Signatures to the Hand Writing Expert once again does not arise. It is further stated that, the appellant/defendant is working as Panchayath development office and having all the wordily knowledge. The appellant has made only allegations against the respondent that in Ex.P-1 & 2 her signature has been forged. Neither she has given any complaint in this regard nor any criminal petition before the court

questioning the same. All the other grounds made are denied as false and created to protract the proceedings and hence prays to dismiss the application.

4. Having heard the arguments of the appellant/ applicant and perused the materials on record, the points that arise for my consideration is:

(1) Whether the applicant has made out justifiable grounds to allow the application ?

(2) What order?

5. My findings to the aforesaid points is:

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

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

REASONS

POINT NO.1:

6. The appellant herein is the defendant before the trial court. The appellant has challenged the judgment and decree dated 29.03.2025 in OS.872/2022 on the file of II Addl. Senior Civil Judge, Mysuru. The respondent herein who is the plaintiff before trial court has filed a suit for recovery of money. Whereby the trial court has decreed the suit of the plaintiff and directed

defendant shall pay the decretal amount with accrued interest. Aggrieved by the said Judgment and decree the present appeal is preferred.

7. During the pendency of the appeal the appellant has filed application U/o.26 Rule 10(a) .r/w 151 CPC to appoint commissioner / hand writing expert to compare the signature in Ex.P.1 pronote and Ex.P.2 consideration receipt.

8. It is the specific case of the plaintiff that, both plaintiff and defendant known to each other since five years. Due to acquaintancy defendant/appellant borrowed Rs.5 lakhs from plaintiff on 23.7.2021. She has executed on demand promissory note and consideration receipt in favour of plaintiff. Since she failed to repayment, the present suit is filed.

9. On the contrary defendant has denied the case of the plaintiff. It is specifically contended that, the plaintiff is stranger, she neither borrowed amount from plaintiff nor executed on demand promissory note and consideration receipt.

10. It is specifically contended by the defendant she has not executed on demand promissory note and

consideration receipt. She has disputed the signature on those two documents. It is pertinent to note here that, the said fact of execution of on demand promissory note and the consideration receipt is a crucial fact to decide the case. The entire case depends upon the said two documents. The same very fact of disputing the signature is also raised by the defendant during the cross-examination of PW-1. The amount involved in the present case is Rs.5 lakhs, the volume of amount is high and hence, it is very necessary to adjudicate the issues with clarity. The trial court has observed in the judgment with regard to the signature of the defendant and has denied the contention of the defendant. It has held that, the defendant has tried to look signature different in Vakalath, Written Statement and deposition then the signature in Ex.P.1 and 2 and come to conclusion that, the signature in Ex.P.1 and 2 is of defendant herself. The defendant has also filed application to refer the said documents Ex.P.1 and 2 to handwriting expert, but before delivering of the judgment, the trial court has dismissed the application as already the evidence is concluded. It is relevant to note here that, the defendant has specifically contended that she has not executed the said Ex.P.1 and 2 and signature

found on those document is not of defendant. It become necessary to ascertain the genuinity of the signature found on those Ex.P.1 and 2. If same is ascertain by expert opinion, it become very helpful to the court to adjudicate the dispute. It is helpful to both the parties. If the plaintiff is genuine then he will get the relief and if the defendant is contending that, signature is not of her, she will get the relief in the suit. Hence, it is necessary to refer the said documents to expert opinion. At this juncture it is worth to rely upon the Hon'ble High Court of Karnataka in K.C.Girish Vs. K.C.Suresh in W.P.11177 of 2021 judgment dated 6.6.2023.

9. If the report of the court commissioner is that the disputed signature in the Ex.P1 belongs to the same person who has made the admitted / authentic signatures, then also such an opinion would have its own importance in arriving at a just conclusion regarding due execution of Ex.P1 by the defendant. No doubt, it may seem at the first blush that the court is an expert of experts and it can compare the signatures on its own by exercising its powers U/s.73 of the Evidence Act. However, a deeper look would In NC: 2023:KHC:19585 the decision give an altogether different insight. In the decision reported in 1992(3) SCC 700 (State of Maharashtra Vs. Sukhdev Singh), the Hon'ble Apex court has observed as follows:

Although Section 73 specifically empowers the court to compare the disputed writings with the specimen/admitted writings shown to be genuine, that the court should be prudence demands extremely slow in venturing an opinion on the more so, when the basis

of mere comparison, in quality evidence of specimen/admitted writings is not high standard.

10. Therefore, the power vested in the court U/s.73 of Evidence Act must be exercised with due caution. Mere examination by the court cannot be a substitute for scientific examination by an expert in that realm of science. In case of examination by the court commissioner, the parties will be having right to file objections and to cross examine the court commissioner and bring out something more on record in respect of the disputed and admitted signatures, which would eventually assist the court in arriving at a logical conclusion regarding the disputed signature. Therefore, it is always advisable, in the opinion of this court, to have assistance of an expert in a matter of this nature.

The Hon'ble High Court of Karnataka has observed that, mere examination by the court cannot be substitute for scientific examination by an expert in the realm of signs. It is always advisable to have assistance of an expert in the matter of the nature as in the present case.

11. Here, it is specifically disputed by the defendant the signature found on the Ex.P.1 and 2 and those documents are crucial in adjudication of matter. Hence, it is better to refer the documents to handwriting expert. In view of the above observation, this court is of the view that, the said Ex.P.1 and 2 on demand promissory note and consideration receipt are to be sent to handwriting expert to compare the signature in those

documents with that of signature in the Vakalath and deposition in OS 872/2022. The said documents along with vakalath and deposition to be sent to handwriting expert at FSL Bengaluru. The appellant has to bear the expenses of the commission work. With these observations, the application filed by the appellant is allowed. Accordingly, point No.1 held in affirmative.

POINT NO.2:

12. In the result, I proceed to pass the following:

ORDER

Application filed by the appellant under Order 26 Rule 10(a) R/w Section 151 of C.P.C is hereby **Allowed**.

It is hereby directed to refer the Ex.P-1 Pronote and Ex.P-2 Consideration Receipt along with Vakalath and Deposition in OS No.872/2022 of DW.1 to Handwriting Expert at FSL, Bengaluru for comparison of signature at Ex.P-1 & 2 with signature of appellant/defendant in the Vakalath and Deposition in OS No.872/2022 and submit

report with regard to the handwriting in the above said documents.

The appellant is directed to bare the expenses of the said commissioner work and deposit the amount as fixed by the FSL, Bengaluru.

(Dictated to the stenographer, transcribed by her, corrected and then pronounced by me in the Open Court, on this the **28th day of January 2026**)

[Gururaj Somakkalavar]
III Addl. District & Sessions Judge,
Mysuru.