

KAMS300001202019



**IN THE COURT OF THE PRINCIPAL SENIOR CIVIL JUDGE
AND J.M.F.C AT HUNSUR**

Present: Smt.Anitha, B.A. (Law) L.L.B.,
Prl.Senior Civil Judge & JMFC.,
Hunsur.

Dated this the 30th day of July, 2025.

OS No.4/2019

Plaintiff: Smt.Asha,W/o Raju,
Aged about 35 years,
R/atSaligramaVillage,
Basaveshwara Block, Saligrama Hobli,
K.R.Nagar Taluk.

-Vs-

Defendants: 1. Sri.Shivanna, S/o Late Channegowda,
Aged 61 years,
2. Smt.Uma, W/o Shivanna,
Aged about 55 years,
3. Sri.Anil, S/o Shivanna,
Aged about 35 years,
4. Sri.Akhil, S/o Shivanna,
Aged about 33 years,

Defendants No.1 to 4 are residing at
Bharathvadi village,
Hanagodu Hobli, Hunsur Taluk,
Mysore District.

Presently residing at # No.2896/1,
2nd Main Road, Chamundipuram,
Mysore City.

1.	Provision under which the application is filed	:	Under Order 8 Rule 1A and Sec.151 of CPC R/w Sec.63 to 67A of Evidence Act
2.	Relief sought for	:	To permit the defendants to mark the xerox copy of e-stamp sale agreement dated 15.07.2013
3.	The date on which the application is filed	:	01.02.2024
4.	Number of the application	:	IA No.XII
5.	The date on which the objection is filed by opponent	:	28.02.2024
6.	The date on which the orders passed on the said application	:	30.07.2025

ORDERS PASSED ON IA NO.XII

When the case was posted for further chief of DW1, the learned counsel for the defendants filed IA No.XII under Order 8 Rule 1A and Sec.151 of CPC R/w Sec.63 to 67A of Evidence Act to permit the defendants to mark the xerox copy of e-stamp sale agreement dated 15.07.2013 executed by defendants infavour of one Sri.Raju who is husband of the plaintiff as well as GPA holder of the plaintiff who has been examined as PW1.

2. The application is supported with the affidavit of the 1st defendant wherein it is stated that, the plaintiff filed the suit for the relief of specific performance of sale agreement and the defendants have filed the written statement and now the case is posted for evidence of DW1. On 29.12.2015 they had received Rs.2,00,000/- from the plaintiff in the presence of witnesses and the husband of the plaintiff who has been examined as PW1 played fraud upon the defendants and obtained their signature to the said document dated 29.12.2015 and got it registered before Sub-Registrar as security for the amount of Rs.2,00,000/- received by them on 15.07.2013. Believing his words of husband of plaintiff they have put their signature on the said document. On the same day another document was executed in the presence of witnesses by name Sri.Mahadeva S/o Shivanna and Sri.Venkatesh S/o Dasegowda both are residence of Bharathvadi Village, Hangodu Hobli, Hunsur Taluk. The said document has been confronted to PW1 to PW3 and they have denied their signatures and execution of the same. The contents of said document dated 15.07.2013 and Ex.P3 and Ex.P4 are one and the same. It is also stated that, the registration number dated 07.12.2012 and the amount of Rs.3,00,000/- and Rs.2,00,000/- and balance of Rs.8,48,750/- are one and the same. It is also stated that, their signature was found in the document dated 15.07.2013

and it is necessary to mark the said document. It is also alleged that, the original of the said document is retained by the husband of the plaintiff and they were handed over with xerox copy for their reference. Hence, prayed to allow the application.

3. After filing of the application the plaintiff filed the objection statement contending that, the application is not maintainable under law or on facts. It is also contended that, there is no agreement dated 15.07.2013 between husband of the plaintiff and the defendants in respect of the suit schedule property. The defendants created the xerox copy and PW1 is not a party to this proceeding but he is only GPA holder. The defendants are trying to divergent the case and they are not entitled to adduce secondary evidence. Earlier the application under Order 11 Rule 14 Section 151 of CPC to direct the plaintiff to produce the original document was dismissed by this court. Thereafter, the plaintiff filed this application and this court directed the defendants to make use of the document only by confrontation. Further, contended that, the defendants have admitted the sale agreement dated 07.12.2012 and supplementary document dated 29.12.2015 in their reply notice as well as admitted about receipt of Rs.5,00,000/-. Hence, in order to drag on the proceedings the application is filed and prayed to dismiss the same with exemplary costs.

4. Thereafter, heard arguments addressed by learned counsels for the plaintiff and defendants and perused the case papers. After hearing the arguments and on perusal of the case papers, the points that arise for consideration are as hereunder:

POINTS

1. Whether the defendants have made out sufficient grounds to permit them to mark the xerox copy of one sale agreement as Ex.D1?
2. What order?
5. The findings of the above points are as hereunder:

Point No.1: In the Negative

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

REASONS

6. **Point No.1:-** The plaintiff filed the suit against the defendants seeking the relief of specific performance of sale agreement directing the defendants to execute the registered sale deed infavour of the plaintiff by receiving balance sale consideration of Rs.8,48,750/- and to hand over possession of property. The plaintiff further sought for permanent injunction restraining the defendants from transferring the khata before the revenue authorities in respect of the suit schedule property and from alienating the suit schedule property. It is the specific case of the plaintiff that, the defendants are the absolute owners of the suit schedule property. The 1st

defendant is the husband and father of defendants No.2 to 4. Towards their legal necessities the defendants approached the plaintiff and on mutual discussions they have entered into a sale agreement dated 07.12.2012 for Rs.13,48,750/-. On the date of agreement itself the defendants have received Rs.3,00,000/- and agreed to execute the registered sale deed within three years. The plaintiff was ever ready and willing to perform his part of contract but the defendants have not performed their part of contract. Again the defendants approached the plaintiff with a request for Rs.2,00,000/- and as such the supplementary agreement dated 29.12.2015 was registered before the Sub-Registrar, Hunsur and the remaining balance was Rs.8,48,750/-. In spite of the same the defendants not executed the registered sale deed in favour of the plaintiff and as such the plaintiff got issued legal notice and in spite of service of notice the defendants have not performed their part of contract but issued untenable reply. Hence, filed the suit for specific performance of contract.

7. Thereafter, the defendants appeared through their counsels and filed the written statement. The defendants admitted that, the 1st defendant is the khata holder of the suit schedule property. At para No.3 of the written statement the defendants have denied about the family necessities. Further, at para No.6 of the written statement the defendants submitted that, on 15.07.2013 the husband of the plaintiff

Sri.Raju S/o Shvianna has paid Rs.2,00,000/- on behalf of the plaintiff and obtained their signatures to a bond paper as security for the said amount and the defendants have totally received Rs.5,00,000/- as loan to be returned with interest as agreed between them.

8. The defendants specifically denied about the execution of sale agreement for the value of Rs.13,48,750/-. The defendants have specifically denied the entire case of the plaintiff. On the basis of above pleadings the court framed the issues on 03.07.2019. In order to prove the case the husband of the plaintiff who is GPA holder was examined as PW1. Further, the plaintiff also got examined three witnesses as PW2 to PW4. The plaintiff got marked the original sale agreement as well as supplementary agreement as per Ex.P3 and Ex.P4. Further, after completion of the plaintiff evidence, the defendant No.1 filed his chief examination affidavit on 18.01.2024 and on the said date the further chief examination was deferred. Now, at this stage this application came to be filed by the defendants stating that, on the date of Ex.P3 sale agreement there is one more agreement with PW1 by the defendants in respect of the same property for the same sale consideration. As per the defendants they have retained the xerox copy of the said sale agreement and the plaintiff is in possession of the original sale agreement.

9. It is at this juncture very much necessary to state that, earlier on 03.02.2022 the defendants filed IA No.9 under Order 11 Rule 14 R/w Section 151 of CPC to direct PW1 and the plaintiff to produce the original sale agreement dated 15.07.2013 executed by the defendants in favour of PW1 who is husband of the plaintiff. The said application came to be dismissed by this court on 14.12.2021. Thereafter, the defendants filed IA No.10 under Section 63 and 65 of Indian Evidence Act to permit the defendants to adduce secondary evidence in respect of the sale agreement dated 15.07.2013 which is a photo stat copy. This application came to be allowed by this court on 07.03.2023 subject to the condition that, there shall be only confrontation of the document in respect of the said agreement. The said document will be permitted to be confronted strictly as per the provisions of Indian Evidence Act. It appears that, in the cross-examination of PW1 to PW4, the learned counsel for the defendants has confronted the xerox copy of the document which has been categorically denied by them.

10. Again on 20.01.2020 the defendants also filed the notice under Order 12 Rule 8 of CPC to direct the plaintiff to produce the original sale agreement dated 15.07.2013 which was dismissed along with IA No.11. Thereafter, this application is filed. Admittedly, the defendants produced the xerox copy of one sale agreement dated 15.07.2013 between the husband of

the plaintiff who is none other than PW1 i.e., the GPA holder of the plaintiff and the defendants and the sale agreement is in respect of the subject matter of this suit itself and said sale agreement is for Rs.13,48,750/-. Now the defendants wants mark the xerox copy of the sale agreement alleged to have been entered between PW1 and the defendants.

11. It is very important to note that, this application came to be filed by the defendants under Order 8 Rule 1A R/w Section 151 of CPC R/w 63 to 67A of Evidence Act. Further the earlier application filed by the defendants herein under Order XI of CPC came to be rejected and the application filed under Section 63 and 65 of Evidence Act came to be allowed and at the time of confronting the said document by the defendants to the plaintiff as well as her witnesses came to be denied. As such this application is filed. It is to be noted that, the present suit is between the plaintiff and the defendants and it is in respect of the sale agreement between them and PW1 has adduced before this court only as GPA Holder of the plaintiff and he is not a party to the suit. By way of filing this application, the defendants have made another attempt to lead secondary evidence. It is pertinent to note that, while passing orders on IA No.X, this court made it clear that the defendants are entitled to take benefit of the said document by way of confrontation within the procedure enumerated under the Indian Evidence Act. It is further necessary to note that, the

sale agreement which is sought to be marked is not between the plaintiff and defendants of this suit.

12. Furthermore, in the written statement the defendants contended that, they have borrowed a sum of Rs.5,00,000/- from the husband of the plaintiff. On the other-hand by filing this application the defendants have changed their version by saying that, there is one more sale agreement between PW1 and the defendants. In the reply notice the defendants specifically admitted about the execution of the registered sale agreement as well as the supplemental agreement. At one point of time the defendants admit the execution of the documents in question and at another point of time they allege that there was loan transaction between them. The defendants are not certain about their defence. It is very important to note that the defendants have not challenged the orders passed by this court on I.A.No.11. At the time of addressing the arguments learned counsel for the defendants has placed reliance on the decision of Hon'ble High Court of Karnataka reported in:

2015 (1) AKR 845

Between: Chikkanarasappa and another Vs Smt.Venkatamma
and another

Wherein Hon'ble High Court of Karnataka has held as
hereunder:

Relevancy of document. Trial Court declined to mark several documents of defendants on objections raised by plaintiffs. Mere marking of document cannot amount to proof of document. When objection is raised for marking of document, court should record objections. Final decision on objection must be recorded before court proceeds to judgment. Question regarding admissibility or relevancy of document cannot be decided at time of marking of document as said objection does not relate to non payment or deficiency of stamp duty.

13. Herein this case the defendants are before the court by filing the present application stating that, they may be permitted to lead secondary evidence by permitting them to mark the xerox copy of the document. It is pertinent to note that the document sought to be marked is not between the plaintiff and the defendants. In the aforesaid decision the suit was one for partition and the present suit is for the relief of specific performance and the plaintiff is not a party to the said document and as such the principles laid down in the aforesaid decision are not applicable to the facts of the case on hand. On the basis of the above discussions this court comes to the conclusion that the the defendants have not made out any grounds to permit them to mark the xerox copy of sale agreement as Ex.D1. Hence, Point No.1 is answered in the negative.

14. **Point No.2:** In view of the reasons discussed above this court proceeds to pass the following:

ORDER

IA No.XII filed by the defendants under Order 8 Rule 1A and Section 151 of CPC R/w Section 63 to 67A of Evidence Act is hereby rejected with costs of Rs.750/-.

(Dictated to the Stenographer, transcribed and computerized by her on the computer, transcript corrected and pronounced by me in the open court on this the 30th day of July, 2025.)

(Anitha)

Prl.Senior Civil Judge and JMFC,
Hunsur.