

KAMS400001792015



IN THE COURT OF
SENIOR CIVIL JUDGE AND JMFC AT
KRISHNARAJANAGARA, MYSURU
Presided Over by Sujatha Madiwalappa Sambrani

This the 18th day of July 2023

O.S./30/2015

PLAINTIFFS: Smt. Jameela Bi and Others.

// Vs. //

DEFENDANTS: Smt. Zaibunnisa and Others.

: I.A.NO.26 :

APPLICANT: Sri. Mohammed Rafi,
S/o Mohammed Ismail,
Aged about 46 years,
R/at: No.81/18, ward No.18,
Muslim Block, K.R.Nagar Town.

..... Plaintiff

(By Sri. A.S., Advocate)

Vs.

OPPONENTS: 1. Smt. Zaibunnisa,
W/o Late Nisar Ahmed,
Aged about 76 years,

R/at: Door No.720,
Hayathnagar, Mysore Road,
Holenarasipura Town,
Hassan District.

Dead

2. Sri. Asif Ummer,
S/o Late Mohammed
Sheik Ameer,
Aged about 44 years,
R/at: Door No.1/1, 6th Cross,
K.M. Halli, Udayagiri,
Mysore-570019.
3. Sri. Syed Mansoor,
S/o Late Syed Hayath,
Aged about 48 years,
R/at:Door No.720, Hayathnagar,
Mysore Road, Holenarasipura
Town, Hassan District.
4. Sri. Siddiq Ahamed,
S/o Late Nazeer Ahamed,
Aged about 45 years,
R/at: # 2, MIG, 4th Cross,
Udayagiri, Mysore-19.
5. Sri. Siddiq Ahamed Khan,
S/o S. Rafi Ahmed Khan,
Dead by Lrs.
- 5(a). Smt. Ummehari,
W/o Siddiq Ahmed Khan
Aged abut 30 years.
- 5(b). Kum. Saad Umar Khan,
S/o Siddiq Ahmed Khan,
Aged about 11 years,
Represented by his minor
guardian mother Ummehani.

5(c). Kum. Siddiqa Fathima
D/o Siddiq Ahmed Khan,
Aged about 6 years,
Represented by his minor
guardian mother Ummehani.

5(d). Kum. Shafi Ahmed Khan,
S/o Siddiq Ahmed Khan,
Aged about 1 year.
Represented by his minor
guardian mother Ummehani.

All are R/at: # 20/104,
Farm House, Muslim Block,
Krishnraja Nagar,
Mysore-571602.

6. Faiz Ahmed Khan,
S/o S. Rafi Ahmed Khan,
Aged about 28 years,
R/at: #20/104, Farm House,
Muslim Block, K.R.Nagar,
Mysuru-571602.

..... *Defendants*

(D1 by Sri. L.U.R., Advocate)
(D2 to D4 Exparte)
(D5(a to c), D6 by Sri.
M.A.I., Advocate)

ORDER ON IA No.26

The learned counsel for the plaintiff after completion of evidence of both the parties filed this application under Order 26 Rule 10(C) of CPC seeking sending Ex.D45 for finger print expert opinion along with

the signatures of defendant No.1 found in vakalath, Ex.P1 and Ex.D5.

2. The said application is objected by the defendant No.6 by filing objections.

3. Heard and perused the records.

4. The following points that would arise for my consideration is:

1. Whether the application filed by the plaintiff under Order 26 Rule 10(C) of CPC seeking appointment of Court Commissioner i.e., a finger print expert to examine the Ex.D45 and compare the signatures of defendant No.1 with Ex.P1, Ex.D5 and vakalath deserves to be allowed?

2. What order?

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

Point No.1 : In the Affirmative

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

REASONS

POINT No.1:-

6. The plaintiffs have filed this suit for declaration that, declare the plaintiffs are the absolute

owners of the suit schedule property to the extent of East to West 100 feet and North to South 21.75 feet. Further declare the gift deeds dated 03.11.2007 and sale deeds dated 15.03.2008 executed by the 1st defendant in favour of the 2nd and 3rd defendants, sale deed dated 02.12.2014 executed in favour of 4th defendant e by the 2nd defendant, sale deed dated 23.01.2015 executed in favour of the 5th defendant by the 3rd defendant, sale deed dated 08.04.2015 executed in favour of the 6th defendant by the 4th defendant and sale deed dated 01.06.2015 executed in favour of the 5th and 6th defendants by the 1st defendant in respect of the suit schedule property are null and void and the same are not binding on the plaintiffs. The plaintiffs have also seeking the relief of permanent injunction restraining the defendants from interfering peaceful possession and enjoyment of the suit schedule property to the extent of East to West 100 feet and North to South 21.75 feet permanently.

7. The plaintiff has sworn to the affidavit and submitted that defendant No.6 has produced forged document and the said document is marked as Exhibit Ex.D45. In the said document, the defendant No.6 has created false document by forging the signatures of the Defendant No.1 and the scribe. As the Document of Ex.D45 is a forged one and it is to be

examined by an expert. The plaintiff contended that, Ex D45 is a concocted forged document in order to substantiate his claim, it is necessary that the signature of the defendant No.1 in the said document has to be examined by a hand writing expert who is technically fit and competent to give opinion as to their veracity and it is very necessary that a commissioner to be appointed in order to determine the validity, verification and authenticity of the disputed document with signatures in suit documents. And it is very necessary for proper adjudication a scientific investigation which cannot, in the opinion of the court be conveniently conducted before the court it is necessary and expedient in the interest of justice so to do as the suit involves scientific investigation for which a commission to such person as the court think fit directing him to enquire into such question and report thereon to the court. Therefore he prayed to appointment of commissioner i.e., hand writing expert for scientific investigation and for proper adjudication in the interest of justice and equity. Hence, this application.

8. The learned counsel for defendant No.6 filed the written statement and contended that, the application file by the plaintiff is not maintainable

either in law or facts. He denied that, he has produced forged document in this case and he has created false documents by forging the signature of the defendant No.1 and scribe in the gift deed which is marked as exhibits Ex.D45. He contended that, the said document is genuine document and it is the gift deed executed by Late Janab Nisaar Ahmed Rabbani in favor of his wife who is the defendant No.1. Since it is genuine and legal document, the question of appointing the commissioner to examine by a handwriting expert doesn't arise at all. He further contended that, the plaintiff has filed this application only with an intention to drag the proceedings in the case and waste the precious time of this court. Hence, he prayed to dismiss the application with exemplary cost.

9. On perusal of the entire records it appears that, the plaintiffs are claiming the title to the suit schedule property as absolute owner and the Ex.D45 relied by the defendants is the main document of the suit. An issue is framed in additional issue dated 08.03.2021 casting the burden of defendant No.5 and 6 to prove this Ex.D45 which is a gift deed dated 10.02.1989 alleging to be executed by Sri. Janab Nissar Ahamed Rabbani S/o Late Peshumam

Mohammed Jaffar in favour of his wife defendant No.1.

10. According to plaintiff this document is created by defendants. But, the defendants denied the said contention and submitted that, it is a genuine document. But, on perusal of the signatures found in the Ex.D45 of defendant No.1 it appears that, there is a prima facie difference found in a signatures. If the signatures tallies with the Ex.P1, D5 and the vakalath of defendant No.1 then, the genuineness of Ex.D45 can be ascertained. There are the admitted signatures available on record which are admittedly signed by the defendant No.1 such as, Ex.P1, Ex.D5 and also vakalath of defendant No.1. If the signatures of defendant No.1 found on these documents, if compared with the disputed signatures on Ex.D45, the genuineness of the documents can be ascertained. This Ex.D45 is a material document of the suit on which the defendants are disputing the title of the plaintiffs. In order to ascertain that, it is genuine and legal document, the appointment of the commissioner is very much necessary.

11. Therefore, in order to ascertained the truthness in the document, genuineness of the document,

veracity of the document, examination of the signature of defendant No.1 on this Ex.D45 is very much necessary. Even, the burden is on the defendants to prove this document. Therefore, it will assist the both the parties in deciding the dispute in a just and proper manner. Therefore, for proper adjudication of the dispute between the parties, it is necessary to examine the signature of defendant No.1 on Ex.D45 by appointing the hand writing expert and by sending this document for scientific investigation for obtaining the expert opinion. The expert opinion will assist the court in ascertaining the truth in the document.

12. The plaintiff has sought for sending this document to Truth Lab for examination of the document. The defendants have not objected for appointing this Truth Lab as Court Commissioner. Therefore, in the best interest of both the parties, this document needs to be examined by the hand writing expert. Accordingly, Point No.1 is answered in the **Affirmative**.

POINT No.2:-

13. For the reasons stated above, I pass the following;

ORDER

IA No.26 filed by the plaintiff under Order 26 Rule 10(C) of CPC seeking appointment of Court Commissioner i.e., finger print expert i.e., Truth Lab to examine the signature of defendant No.1 in the disputed document Ex.D45 and compare the admitted signature with vakalath of defendant No.1, Ex.P1 and Ex.D5 is allowed.

The Truth Lab, 2nd floor, 28/2, Siddapura, Main Road, Whitefield, Bengaluru is appointment as Court Commissioner to examine the signature of defendant No.1 on Ex.D45 by comparing the same with vakalath of defendant No.1, Ex.P1 and Ex.D5 found on the records.

The Court Commissioner fees is fixed at Rs.2,000/- tentatively.

The plaintiff is required to pay the Court Commissioner fees as fixed by the Truth Lab.

Office is directed to send the Ex.D45, vakalath of defendant No.1, Ex.P1 and Ex.D5 to the finger print expert i.e., Truth Lab for examination of the signatures.

Both the parties are directed to submit their memo of instructions within 10 days from the date of this order.

Issue Court Commissioner warrant if P.F. and Court Commissioner fees are paid. R/by 01.09.2023.

*(Dictated to the stenographer, transcribed, typed and printout taken by her and added some paragraph directly on computer and corrected, signed and then pronounced by me in the open court, this **18th July 2023**)*

(Sujata M. Sambrani)
Senior Civil Judge & J.M.F.C.
K.R.Nagar.