

**IN THE COURT OF ADDL. SENIOR CIVIL JUDGE & J.M.F.C.,
AT:MAGADI**

Present:

Sri.Hanumanth Satwik., LL.M,

Addl. Senior Civil Judge & JMFC. Magadi

Dated : This the 8th day of February, 2021

O.S.No.28/2015

Plaintiff :- Smt. Sharadamma. S.
W/o K.P.Renukaradhya,
Aged about 39 years,
R/at Kodihalli Village,
Solur Hobli, Magadi Taluk,
Ramanagara District.

(By Sri. **A.S.S.**, Advocate)

--V/S--

Defendants :-

1. Sri. Jayanna,
S/o late Gurumurthappa,
Aged about 43 years.
2. Smt. Savitha,
W/o Jayanna,
Aged about 38 years.
3. Sri. Kirankumar,
S/o Jayanna,
Aged about 19 years.
4. Chiranjivi Kishorekumar,
S/o Jayanna,
Aged about 16 years.

5. Chiranjivi Chandru,
S/o Jayanna,
Aged about 12 years.

Defendant no. 4 and 5 are major at age.
4 and 5 are minors
represented by the natural guardian
and next friend their father Jayanna.

Defendant no.1 to 5 are R/at
Kodihalli Village, Solur Hobli,
Magadi Taluk, Ramanagara District.

(Defendant no.1 By Sri.**K.L.S.**, Advocate)

(Defendant no.2 By **C.K.R.**, Advocate)

(Defendant no.3 ExParte)

ORDER ON IA NO.VIII

The present suit is for specific performance of contract.

2. The present application has been filed by defendant no.1 to refer agreement for sale dated:30-05-2012 and the shara dated:15-01-2013 to competent laboratory for comparison and to ascertain the signature on the shara belongs to him and to witness no.1 of agreement for sale. The defendant submits that he used to take money as loan from the husband of plaintiff. He approached the husband of plaintiff to lend money. The husband

of plaintiff agreed to lend him Rs.2,00,000/-. Accordingly, the husband of plaintiff lent him Rs.50,000/- saying he would get the rest of the money by installments. As he was in hurry to get the money, he signed agreement dated:30-05-2012 for having availed loan of Rs.50,000/- only, but it was agreed for a sum of Rs.2,00,000/-. Later on the husband of plaintiff did not pay him the rest of the agreed amount. The husband of plaintiff thereafter started demanding for execution of sale deed in his favour. Subsequently, the husband of plaintiff prepared some endorsements showing that he borrowed Rs.5,00,000/- from him and forged the signature of himself and the signature of witnesses. The signature of one of the witness to the agreement dated:30-05-2012 is correct. However, the signature of him was forged in the endorsement shara dated:15-01-2013. As such, it is necessary to refer the signatures found on shara to the competent lab to test whether the signatures found on shara belonged to him and to witness no.1. In this regard defendant no.1 prayed as above.

3. The counsel for defendant no.2 submitted no objection to allow the aforesaid application.

4. The counsel for plaintiff orally objected to allow the application. The counsel contended that still PW-1 has to be cross-examined and evidence of both the sides is yet to be completed. At this stage, the relief sought for by defendant no.1 in the application cannot be granted. In this regard the plaintiff prayed to reject the application.

5. Heard arguments of learned counsel for plaintiff and defendants.

6. Considering the contentions of both parties following points arise for my consideration.

1. *Whether defendant no.1 has made out a case to refer the signatures found on agreement for sale dated:30-05-2012 to the competent lab to compare it with the alleged signatures of himself and witness no.1 as found on shara dated:15-01-2013 as sought for?*
2. *What order?*

7. My findings for the above points are as follows.

Point no.1 : In the negative

Point no.2 : As per final order
For the following;

REASONS

8. **Point no.1:** - It is the case of defendant no.1 that he and witness no.1 have signed agreement for sale dated:30-05-2012. However, the alleged signatures of himself and the witnesses as found on the shara dated:15-01-2013 have been forged. The signatures found on the shara do not belong to himself and to witness no.1 to the agreement for sale. In this regard the defendant prayed to refer signatures present in both the documents for comparison and to ascertain whether the signatures found on the shara belong to him and to witness no.1.

9. In this regard I have perused the materials available on record. Be it stated, the present suit is posted for cross-examination of PW-1. As such, in the case at hand the evidence of plaintiff and defendants is yet to be completed. In this circumstances there are no materials before this court to make

an attempt to ascertain the author of the signatures found on the agreement for sale and the shara. In the absence of evidence having been completed, I am of the view that at this stage of the case it is not fit to refer the agreement for sale and the shara to the laboratory for comparison and to ascertain the author of the signatures of the shara. In this regard it is befitting to refer the decision of Hon'ble Karnataka High Court between Miss Renuka D/O Ramakrishna Reddy vs Sri Tammanna S/O Dyawappa Battal AIR 2007 Kant 133, wherein it was held as below;

“It is settled position of law that Court Commissioner cannot be appointed to collect evidence in support of a claim. After completion of evidence on both the sides, if it is found that there is any ambiguity in the evidence adduced by the parties, then the Court may appoint a Commissioner for the purpose of clarification of such an ambiguity”.

In this view of the matter, considering the application and the materials placed on record and in view of the decision of the

Order**O.S.No.28/2015**

Hon'ble High Court of Karnataka, I am of the view that at this stage of the case defendant no.1 failed to make out case to refer the signatures found on the agreement for sale dated:30-05-2012 and the signatures found on shara dated:15-01-2013 for comparison and to ascertain whether the signatures on the shara belongs to defendant no.1 and to witness no.1 of agreement for sale. Accordingly I answer point no.1 in the negative.

10. **Point no.2**: In view of reasons on point No.1 and in the interest of justice and equity, I proceed to pass the following;

ORDER

IA No.VIII filed by defendant no.1

U/Sec.151 of CPC is hereby rejected.

Parties to bear their own costs.

(Dictated to the Stenographer directly on the computer, typed by him and corrected by me and then pronounced in the open court on this the 8th day of February, 2021.)

(Hanumanth Satwik)
Addl. Senior Civil Judge & JMFC
Magadi.