

**ORDER ON I.A. No.XIII**

I	Provision under which the application is filed	Under Section 151 and Order XXVI Rule 10A of C.P.C
II	Relief sought for	Praying to appoint any handwriting expert as court commissioner for making scientific investigation.
III	The date on which the application filed.	26.11.2024
IV	Number of application.	I.A.No.XIII
V	The date on which the objection is filed by the opponent.	10.12.2024

VI	The date of which the order is passed on the application.	07.01.2025
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The plaintiff has filed the above said application seeking to appoint any handwriting expert as court commissioner for making scientific investigation for comparing the signatures of the defendant i.e., on the exhibit P2, P11, P12 and P13 with the signatures of the defendant on the admitted documents of the defendants i.e., Vakalath, written statement and affidavit filed in examination in chief and to submit the detailed report thereon to the court in the interest of justice.

2. In the affidavit accompanying to the application, the applicant stated that, he is the GPA holder of the plaintiff. He knew the defendant and facts of this case. He personally acquainted with the facts of this case and the lease transactions between the plaintiff and the defendant. The plaintiff has filed above suit for eviction of the defendant from the suit schedule premises and for recovery of the arrears of rentals from the defendant. The averments in their plaint may be read as part and parcel of this affidavit for repetition of facts. The defendant has denied the execution of the deed of lease i.e., exhibit P2, P11, P12 and P13 and he has also denied his signatures thereon

during his cross-examination and also in his written statement. The defendant voluntarily executed the exhibit P2, P11, P12 and P13 and he is deliberately denying his signatures thereon with a malafide intention to harass and humiliate the plaintiff. Further, stated that, the plaintiff has no other alternative mode to prove the execution of the exhibit P2, P11, P12 and P13 except to refer the signatures of the defendant to the handwriting expert to compare his signatures on the exhibit P2, P11, p12 and P13 with his admitted signatures on written statement, affidavit, vakalath etc. The report of the handwriting expert will help the court to come to the just conclusion of the dispute between the parties and to deliver the fair justice to the parties. Further stated that, referring the aforesaid documents to the handwriting expert for his signature expert will not cause any injustice or harm to any parties to the suit. On the other hand it will help the parties to prove their case. He has no other alternative mode to prove the exhibit P2, P11, P12 and P13 except referring the same to the handwriting expert. If the accompanying application is not allowed and he shall be put to injury and injustice which cannot be compensated in terms of money. Hence prays to allow the application.

3. On the other hand the defendant has filed objection and contended that, the application filed by the plaintiff is false, frivolous and vexatious and the same is not maintainable either in law or on facts, and the same is liable to be dismissed in limine. The plaintiff has filed this application at this belated stage only to drag the proceedings, and there is no merits in the application filed by the plaintiff. The defendant submitted that, it is the specific case of the defendant that, the suit schedule premises are not located in plot No. 223 of Sy. No.88 of Venkatapur Village as claimed by the plaintiff in the plaint. But the suit premises are standing in the land belonging to Government of Karnataka bearing Sy. No.88/231 of Venkatapura Village, Susgadi Hobli of Bhatkal Taluk, the plaintiff has no manner of right or title over the said government land nor has he ever been in possession of the said government land or any portion thereof. The suit shops are constructed by this defendant as its absolutely owner. There is no relationship of landlord and tenant between the plaintiff and the defendant and this defendant did not execute any lease deed or agreement in favour of the plaintiff and the tenancy claimed is false and imaginary. Therefore sending of the fabricated false documents for scientific investigation may not serve the purpose in the above

case in the interest of justice and equity. Section 73 of the Evidence Act authorizes the court to compare such hand writings or signatures in order to come to its own conclusion. Hence, prays to dismiss the application.

4. Heard both side arguments, perused the materials available on record.

5. In view of above the following points that would arise for my consideration is as below:-

1. Whether the application filed under section 151 and order XXVI Rule 10A of C.P.C is deserves to be allowed?

2. What order?

6. My answers to the above points is as follows:-

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

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

### **REASONS**

7. **Points No.1:** The plaintiff has filed the suit against the defendant for eviction. This application is filed at the stage of plaintiff's side argument.

8. In the present suit it is the case of the plaintiff that, the defendant is his tenant with respect to the suit schedule property. In spite of issuance of termination notice, the defendant has not delivered the possession of the schedule premise, hence filed

this suit. On the other hand, the defendant has denied the landlord and tenant relationship between himself and plaintiff and also contended that, the suit schedule property is situated in the government land bearing Survey No.88/231 of Venkatapur Village and prays to dismiss the suit.

9. On perusal of entire records on hand, the plaintiff has produced Exhibit P2, P11 to 13 lease agreements executed between the plaintiff and the defendant to prove landlord and tenant relationship. But, the defendant has entirely denied the execution of those documents and also denied the signatures found on the Exhibit P2, P11 to P13. Hence, the plaintiff sought for scientific examination of signatures found on the disputed documents with that of the admitted signatures of the defendant through the handwriting expert. In the present case, the defendant has completely denied the case of the plaintiff, when such being the case, if the Exhibit P2, P11 to P13 documents are sent for scientific examination, the report of the expert may help this court in the adjudication of dispute between the parties to the suit. On the other hand, no hardship will cause to the defendant. By these observations, without much discussion, I hold that the plaintiff has made out sufficient grounds to pass an order for appointment of

Court commissioner as sought in the application. Accordingly, the above points is answered in the **Affirmative** .

10. **Point No.2** : For the above discussed reasons, I proceed to pass following:

**ORDER**

The application filed under section 151 and Order 26 rule 10A of CPC by the plaintiff is hereby allowed.

The Exhibit P2, P11 to P13 lease agreements are directed to be sent to the handwriting expert for comparison of the alleged signatures of the defendant on those documents with the admitted signatures on the Vakalath, written statement and chief examination affidavit of the defendant filed in this case.

The commissioner fee shall be paid by the plaintiff.

For suggestion of handwriting expert.

Call on 17-01-2025.

**Sd/-**

Addl. Civil Judge and  
JMFC., Bhatkal.