

Order on IA-IX

This interim application is filed by the defendants/applicants, under Order XXVI R10A of CPC and sought to appoint Handwriting Expert to conduct scientific enquiry with regard to the points raised in the application.

2. The 2nd defendant/applicant has filed affidavit in support of the averments made in the application wherein it is contended that, they have taken specific contention in written statement that, the plaintiff has materially altered the figures '12' as '16' without the knowledge and consent of defendants, by virtue of such material alteration, the document rendered unenforcible. Apart from the agreement of sale as per Ex.P1 vitiated by fraud. It is also contended by the plaintiff in the evidence that, the defendants have made corrections as '16' and also figure '44/3' by using ball pen. Therefore, it is just and necessary to send the agreement of sale as per Ex.P1 to the handwriting expert.

3. Objections have not been filed by the plaintiff.

4. Heard the arguments.

5. The following points arise for my consideration.

1. Whether the applicant/2nd defendant has made out the case to appoint Handwriting Expert to examine the alteration alleged to have found in Ex.P1 agreement of sale?

2. What Order?

6. My findings to the above point No.1 is in negative and point No.2 for the following reasons.

REASONS.

7. **Point No.1:** Before adverting to the contention urged by both the parties, it is necessary to narrate in brief some of the facts of the case. The plaintiff has filed this suit for the relief of specific performance of contract. According to the plaintiff, the defendants have agreed to sell the schedule property for a sum of Rs.18/- lakh and in this context, agreement of sale was executed as per Ex.P1 and a sum of Rs.2/- lakh was paid as earnest money. It is also contended by the plaintiff that defendants have agreed to execute the sale deed within 16 months from the date of agreement of sale. But, since the defendants failed to execute the sale deed as agreed, made the plaintiff to file the suit for specific performance of contract.

8. The defendants appeared and filed written statement wherein they have specifically contended that, the plaintiff has materially altered figures '12' as '16', therefore according to the defendants Ex.P1 agreement of sale has become unenforcible for the reason of fabricating the document.

9. In pursuance of pleadings, issues have been framed. Plaintiff examined himself as PW1 and two witnesses have been examined as PW2 and PW3. Ex.P1 to P6 are marked on behalf of plaintiff. 2nd Defendant examined as DW1 and when the case is posted for further evidence of defendant, the present application is filed.

10. In order to appreciate, the contention urged in application it is just and proper to carefully peruse the Ex.P1. On perusal of Ex.P1 at page

no.3, para no.3 and 4 it appears that, figure '16' has been overwritten. Likewise, in page no.4, survey no.'44/3' is inserted by using ball pen. It is admitted by PW1 during the course of cross examination that, before the presence of the witnesses, figure '12' is altered as '16'. According to the defendants the figures were altered without their knowledge and consent. Therefore, the alterations of figure is admitted by PW1, therefore the question is whether the figure was altered with the consent of defendants and whether the figure was altered before the presence of the defendants. The said factual ground is to be ascertained only after full fledged trial. Under such circumstances, when alteration of figure can be seen from the naked eye and it is also admitted by PW1 and the fact that it was done within the knowledge of the defendants, is a matter to be considered only after conclusion of trial. Under such circumstances, the appointment of expert commissioner as prayed for is unwarranted. However, it is made clear that any observation made above cannot be construed as opinion expressed with regard to the merits of the case. Observations made above are confined only to the extent of this interim application. ***As such, I answer above point No.1 in negative. In the result, I pass the pass following order.***

ORDER

IA-IX filed by the 2nd defendant/applicant, under Order XXVI Rule 10A of CPC is hereby rejected with no order as to costs.

Call on for further evidence of defendants by,

Prl. Sr. Civil Judge, Udupi.