

Order on IA-X

This interim application is filed by the applicant/plaintiff, under Order XII R12 of CPC wherein they sought to summon copy of agreement of sale from the custody of the 2nd defendant.

2. The plaintiff has filed affidavit in support of the averments made in the application it is contended that, as per Ex.P1, agreement was executed between plaintiff and defendants. At the time of execution of agreement of sale, original copy was handed over to the plaintiff and Photostat copy was handed to the 2nd defendant. The said fact has been mentioned in condition no.8 of the Ex.P1. The said fact was also admitted by the 2nd defendant in the cross examination. To prove the case of the plaintiff, it is necessary to summon the copy of agreement of sale in order to elicit the truth. The copy of agreement of sale help the court to arrive at proper and just decision.

3. The said application is resisted by the opponent/defendant on the ground that, first of all they deny proper and due execution of Ex.P1. According to the defendant, Ex.P1 was materially altered. Further, DW1 during the course of cross examination clearly stated that, he do not posses the copy of Ex.P1. Under such circumstances, again directing the 2nd defendant to produce the

copy of agreement of sale doesn't arise. Hence, defendant/opponent sought to dismiss the application with cost.

4. Heard the arguments.

5. The following points arise for my consideration.

1. Whether the applicant/plaintiff has made out a case to summon the copy of agreement of sale as prayed for?

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:** The plaintiff has filed this suit for the relief of specific performance of contract. After conclusion of evidence of plaintiff and defendant, when the case is posted for further evidence, the present application is filed.

8. The learned counsel for plaintiff/applicant at the outset has submitted that, when 2nd defendant has admitted in his cross examination regarding delivery of copy of agreement of sale, under such circumstances if the copy of agreement of sale is produced regarding material alteration as averred by the defendant, could be addressed. It is further pointed out that, if the copy of agreement of sale at Ex.P1 is produced, court can

discover the truth. On the other hand, the learned counsel for defendant/opponent submitted that, in the cross examination, 2nd defendant has admitted that, even though the copy was handed over to him, now he is not in possession of the same. It is further submitted that, the plaintiff can take advantage of the said statement during the course of the final argument.

8. Carefully perused the cross examination of DW1, wherein DW1 stated that, copy of the Ex.P1 was handed ver to him, but later he said now he do not posses the copy of Ex.P1. When 2nd defendant categorically says that, he do not possess the copy of Ex.P1, it is not proper to issue directions to the 2nd defendant to produce the copy. No doubt it is true that, at the first instance, the 2nd defendant admits that copy was handed over to him, but in very next statement he denies that he is in possession of the same. As rightly submitted by the learned counsel for 2nd defendant/opponent, whatever the worthy of admission, it is for the plaintiff to take advantage during the course of final argument. Therefore, now at this juncture no grounds have been made out to summon the documents as prayed for. It is made clear that observation made above are confined to this interim application only. Hence, I answer above point in negative. In the result, I pass the following order.

ORDER

IA -X filed by the applicant/plaintiff under Order XII R12 of CPC is hereby rejected with no order as to cost. Call on for further evidence of defendants by, 11-04-2019.

Prl. Sr. Civil Judge, Udupi.