

ORDER ON IA No.15

The application is filed by the defendant No.2 u/O.26 Rule 10(A) r/w sec.151 of CPC, to appoint Court Commissioner/Scientific Investigator to compare the signatures of vendors i.e., L.Mallesh, L.Manjunatha, J.K.Anandh and M.Gururaj on Ex.P18, Ex.P28 GPA dated 27.07.2023 which is allegedly executed by the very same four persons.

2. In the annexed sworn affidavit the defendant No.2 has stated that the suit is filed seeking the relief of declaration and perpetual injunction. The plaintiffs are L.Mallesh, L.Manjunatha, J.K.Anandh and M.Gururaj have allegedly executed GPA in favour of K.Shivaram to conduct the case, the original GPA was never produced. Then the subsequent GPA was produced. In the cross-examination dated 02.12.2024 the said GPA holder who is examined as PW.1 when asked with question regarding sending Ex.P18 and 28 to handwriting expert to obtain report he has stated no objection. To procure the truth Ex.P18 & 28 are required to be referred for scientific investigation the signatures in the said documents do not tally with each other even when seen through naked eye. Accordingly, prays to allow the application.

3. The plaintiffs have filed objection contending that the application is not maintainable, the statement of PW.1 cannot be criteria to seek comparison of signature, the defendant No.2 has to make out why the reference is necessary. The suit is instituted by the plaintiffs through POA holder. The plaintiffs have chosen to institute suit through POA holder and the defendant No.2 cannot find fault with the same. Copy of the Ex.P18 is also furnished with plaint. However, the original was misplaced.

Thereafter an application u/O.3 Rule 1 & 2 of CPC was filed and the same was allowed vide order dated 02.11.2023. Subsequently, the original GPA was traced and the court has permitted for production of the said document. The application is filed with malafide intention. The defendant No.2 is also represented by POA holder. Accordingly, the application is not maintainable and prays to reject the application.

4. Heard arguments of both sides. Perused the application and also the entire records.

5. The following points that arise for my consideration are:-

- 1) Whether the defendant No.2 has made out sufficient grounds to allow the application?
- 2) What order?

6. My finding on the above points are as under:

Point No.1: **Negative.**

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

REASONS

7. **Point No.1:-** Admittedly, the plaintiffs No.1 to 4 have filed this suit through their POA holder seeking the relief of declaration that the sale deed dated 30.01.2003 in favour of defendant No.1 and sale deed dated 05.02.2010 in favour of defendant No.2 is not binding on plaintiffs, for perpetual injunction, for possession and for such other further reliefs.

8. The plaintiffs No.1 to 4 were represented by their POA holder by name K.Shivaram the said POA holder got examined himself as PW.1 and he got marked copy of sale

deed dated 19.11.2003 as Ex.P18 and GPA dated 17.07.2010 as per Ex.P23 along with other documents. Thereafter during the course of cross-examination dated 02.07.2024 of PW.1 the GPA dated 27.07.2023 is marked as Ex.P28. Now the defendant No.1 & 2 are seeking for comparison of signatures of plaintiffs No.1 to 4 on Ex.P18 copy of sale deed with that of Ex.P28.

9. According to defendant No.1 & 2 as the Pw.1 during his cross-examination at page 33 has stated no objection to obtain report of handwriting expert by comparing Ex.P18 & 28 the same is to be referred to expert. However, it is pertinent to note that the plaintiff No.1 and 2 have duly authorized the PW.1 to give evidence before the court by way of executing Ex.P23, thereafter the plaintiffs have issued GPA as per Ex.P28 to this Pw.1. When the plaintiff themselves authorized this Pw.1 to give evidence and when the application of plaintiff filed u/O.3 Rule 1 & 2 of CPC was allowed now it is not open to the defendant No1 & 2 to challenge the said Ex.P28. Ex.P18 is a certified copy of sale deed executed by plaintiffs No.1 to 4 in favour of S.Suryanarayana in respect of site No.71 which is formed out of Sy.No.88. The POA marked at Ex.P28 is the document interse between these plaintiffs No.1 to 4 and this Pw.1 i.e., POA holder. The defendant cannot contend that the signatures on Ex.P18 and 28 do not tally with each other as because the said documents are documents interse between these plaintiffs and Pw.1. To decide the real controversy in dispute the oral as well as documentary evidence can be lead in by both the parties. The appointment of handwriting expert for comparison of signatures on Ex.P18 & 28 is not warranted. Accordingly, the defendant No.2 has not made out grounds to allow the

application. **Hence, I have answered point No.1 in the negative.**

10. Point No.2: In view of the reasoning given above, I proceed to pass the following:-

O R D E R

IA No.15 filed by defendant No.2 u/O.26
Rule 10A r/w sec.151 of CPC **is hereby**
dismissed on cost of Rs.500/-.

For defendants' evidence by 06.02.2025.

LXXIII Addl.CC & SJ, M.H.Unit,
Bengaluru.