



CNR: KAHC010094542019

NC: 2026:KHC:39551
WP No. 14345 of 2019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

WRIT PETITION NO. 14345 OF 2019 (GM-CPC)

BETWEEN:

SRI VENKATARAMANAI AH
S/O LATE KARIYAPPA
AGED ABOUT 70 YEARS,
RESIDING AT DASANAPURA VILLAGE,
DASANAPURA HOBLI
BANALORE NORTH TALUK - 562 162

...PETITIONER

(BY SRI. RAJANNA C., ADVOCATE)

AND:

SRI RAMU
S/O LATE KARIYAPPA
AGED ABOUT 77 YEARS,
FORMER PRESIDENT OF SRI BALAJI TOWNSHIP
WELFARE ASSOCIATION IN STYLE OF
M/S CLASSIC LAND DEVELOPERS,
NO.205, 1ST MAIN ROAD,
SUBRAMANYANAGAR
BENGALURU - 560 021

...RESPONDENT

(RESPONDENT IS SERVED AND UNREPRESENTED)

THIS WP IS FILED UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDERS
DATED 01.03.2019 PASSED ON I.A.NO.6 IN O.S.NO.1039/2009

Digitally signed
by
SHARADAVANI
B
Location: High
Court of
Karnataka



**NC: 2026:KHC:39551
WP No. 14345 of 2019**

ON THE FILE OF SENIOR CIVIL JUDGE, NELAMANGALA,
BANGALORE RURAL DISTRICT, PRODUCED AT ANNEXURE-A
AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING
IN B GROUP, THIS DAY, ORDER WAS MADE THEREIN AS
UNDER:

CORAM: HON'BLE MR. JUSTICE VIJAYKUMAR A. PATIL

ORAL ORDER

This writ petition is filed challenging the order dated
01.03.2019 passed on I.A.No.6 in O.S.No.1039/2009 by
the learned Senior Civil Judge, Nelamangala, Bengaluru
Rural District (hereinafter referred to as the 'trial Court' for
short).

2. Sri Rajanna C., learned counsel appearing for
the petitioner submits that the respondent/plaintiff had
filed a suit in O.S.No.1039/2009 for specific performance
of the agreement of sale dated 10.02.2003. In the said
suit, the petitioner/defendant filed a detailed written
statement denying the plaint averments and specifically



contending that the defendant had never executed the agreement of sale.

3. It is further submitted that the plaintiff filed an application in I.A.No.6 under Section 65 of the Indian Evidence Act, 1872 (for short 'the Act') read with Section 151 of Code of Civil Procedure, 1908 (for short 'CPC') seeking to mark the photocopy of the agreement of sale dated 10.02.2003 as the secondary evidence. The trial Court, by order dated 01.03.2019, erroneously allowed the said application.

4. He further submitted that the case of the plaintiff is that the agreement of sale was with one Sri E. Krishnappa, who had appeared before the trial Court and specifically stated that he does not have the original agreement of sale. Therefore, the trial Court ought not to have allowed the application filed under Section 65 of the Act by permitting the plaintiff to produce the photocopy of the agreement of sale dated 10.02.2003 as secondary evidence. In support of his contention, learned counsel



places reliance on the decision of the Hon'ble Supreme Court in the case of **SMT. J. YASHODA VS. SMT. K. SHOBHA RANI**¹ and seeks to allow the petition.

5. I have heard the arguments of the learned counsel for the petitioner. Though notice has been served on the respondent, there is no representation on behalf of the respondent.

6. The respondent/plaintiff had filed O.S.No.1039/2009 seeking the relief of judgment and decree against the petitioner/defendant herein for specific performance of the agreement dated 10.02.2003. In the said suit, the petitioner/defendant filed a detailed written statement denying the plaint averments by specifically contending that he had not executed the said agreement of sale.

7. In the said suit, when the matter was posted for evidence of the plaintiff, the plaintiff filed an application I.A.No.6 under Section 65 of the Act read with

¹ AIR 2007 SC 1721



CNR: KAHC010094542019

Section 151 of the CPC seeking prayer to permit the plaintiff to mark the photocopy of the agreement of sale dated 10.02.2003, as the secondary evidence in the absence of the original document. The said application was opposed by the petitioner. The trial Court under the impugned order dated 01.03.2019 allowed the said application.

8. The affidavit filed in support of the application indicate that the said affidavit was sworn by Sri C. Gangaiah, the General Secretary of the plaintiff Association. In the affidavit, he is specifically contending that he is the present General Secretary of the Association and knows the facts of the case. It is further deposed that originally the suit was presented by the former President of the Association, Sri E. Krishnappa for specific performance and that, in view of the change of management, he is pursuing the suit. The affidavit also indicates that the original agreement of sale which was obtained in the name of Sri E. Krishnappa is in the



possession of Sri E. Krishnappa, the former President of the Association.

9. The records further indicate that the respondent/plaintiff filed an application under Order XVI Rule 6 of the CPC seeking to summon Sri E. Krishnappa to produce the original agreement of sale dated 10.02.2003. The said Sri E. Krishnappa entered appearance before the Court along with his counsel and stated that he does not have the original agreement of sale dated 10.02.2003. Taking note of the averments made in the affidavit accompanying the application, and the statement of Sri. E. Krishnappa, the trial Court, proceeded to allow the application.

10. It is required to be noticed that Section 65(a) of the Act, provides for secondary evidence may be given of the existence, condition or contents of a document in the following cases. Section 65 of the Indian Evidence Act reads as under:



CNR: KAHC010094542019

"65. Cases in which secondary evidence relating to documents may be given.--

Secondary evidence may be given of the existence, condition, or contents of a document in the following cases: --

(a) when the original is shown or appears to be in the possession or power --

of the person against whom the document is sought to be proved, or

of any person out of reach of, or not subject to, the process of the Court, or

of any person legally bound to produce it,

and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily movable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in [India] to be given in evidence;

(g) when the originals consists of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c) and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.



CNR: KAHC010094542019

**NC: 2026:KHC:39551
WP No. 14345 of 2019**

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents."

11. The aforesaid Section, more particularly sub clause (a) thereof, makes it clear that when the original document is shown or appears to be in the possession or power of the person against whom the said document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in Section 66 of the Indian Evidence Act, such person does not produce it, then secondary evidence may be given.

12. In the case on hand, the plaintiff has specifically pleaded in the application that the original agreement of sale is in the possession of Sri E. Krishnappa. The trial Court summoned the said Sri E. Krishnappa and he has stated that he does not possess the original agreement of sale. Hence, the requirement of notice under Section 66 of the Evidence Act has been met, and the specific assertion



CNR: KAHC010094542019

that the original agreement of sale is in possession of Sri E. Krishnappa was denied. Considering the same, the trial Court proceeded to allow the application by permitting the plaintiff to produce a photocopy of the agreement of sale as secondary evidence.

13. It is required to be noticed that mere production of the agreement does not amount to an admission of the agreement or its contents. Ultimately, the admissibility is required to be considered by the trial Court during the course of the trial.

14. The trial Court, considering the aforesaid aspect, has rightly come to the conclusion and allowed the application. I do not find any good reasons to interfere with the order of the trial Court.

15. The decision relied upon by the learned counsel for the petitioner in the case of **SMT. YASHODA** referred to supra is not applicable to the facts and circumstances of the case. In the said case, it was clear that the plaintiff had made a specific assertion that the original document



**NC: 2026:KHC:39551
WP No. 14345 of 2019**

CNR: KAHC010094542019

was in possession of the person against whom the document was sought to be proved. In the case on hand, the plaintiff is specifically contending that the agreement of sale is in the possession and custody of the earlier President of the Association and who has filed the suit.

16. For the aforementioned reasons, I proceed to pass the following:

The Writ Petition is devoid of merits and the same is ***rejected.***

**Sd/-
(VIJAYKUMAR A. PATIL)
JUDGE**

SHS
List No.: 1 Sl No.: 17