

(2026) 08 KAR CK 2233

In the Karnataka High Court, Bengaluru Bench

Case No : WRIT PETITION NO.3358/2022 (GM-CPC)

Mr. P. Vittalraya Shenoy

APPELLANT

Vs

H. Dilip Jain & Ors.

RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

Constitution of India — Article 227
Order XXVI Rule 10(a)
Indian Evidence Act, 1872 — Section 45

Citation : (2026) 08 KAR CK 2233

Hon'ble Judges : Vijaykumar A. Patil, J

Bench : Single Bench

Advocate : Sri. Sachin K. Naik, Adv., Sri. S. Rajashekar, Adv., Sri. Abhishek Marla, Adv.

Final Decision : Dismissed

Judgement

This writ petition is filed challenging the order dated 15.04.2021 passed on I.A.No.15 in O.S.No.40/2016 on the file of the Principal Senior Civil Judge and CJM, Mangaluru (for short, '**the trial Court**').

2. Heard Sri.Sachin K.Naik, learned counsel for Sri.Rajashekar, learned counsel for the petitioner and Sri.Abhishek Marla, learned counsel for the respondent No.3 and meticulously perused the material available on record.

3. The petitioner-plaintiff had filed the suit in O.S.No.40/2016 against the respondents-defendants herein seeking the relief of vacant possession of the suit schedule property and permanent prohibitory injunction against the defendants from putting up any construction in the suit schedule property. The said suit is opposed by the defendants by filing the written statement. In para 6 of the written statement, the defendants have specifically contended that the plaintiff had conveyed his right, title and interest over the suit schedule property to the defendant No.2 through his General Power of Attorney ('GPA') holder i.e. defendant No.1. The said sale deed conveying the right was executed on

26.07.2006.

4. The parties have led the evidence and thereafter the plaintiff filed an application under Order XXVI Rule 10(a) read with Section 45 of the Indian Evidence Act, 1872, seeking prayer to refer the admitted signature of the plaintiff on the evidence sheet for comparing with the disputed signature of the plaintiff on Ex.D3 i.e., the GPA dated 26.07.2006. The trial Court, considering the rival submissions, rejected the said application.

5. It is to be noticed that the suit filed by the plaintiff is for possession and permanent prohibitory injunction. There is no relief of declaration that the GPA and the sale deed in favour of the defendant are not binding, and in the absence of any such prayer, mere contention of the plaintiff that the signature found on Ex.D3 is not of the plaintiff has no merit and he cannot insist that those signatures are required to be compared. It is also required to be noticed that the disputed signature on the GPA is dated 26.07.2006 and the signature in the evidence sheet is of the year 2017 and there is a gap of 11 years in between both the signatures. Therefore, the admitted signature and the disputed signature are not the contemporaneous signatures. Hence, the petitioner-plaintiff cannot seek the prayer to compare the signature on the Ex.D3 with the admitted signature on the evidence sheet.

6. The trial Court has also recorded the finding that PW2 is a notary, who has notarized the GPA, has been examined and his evidence is already on record and proceeded to reject the application. I do not find any good grounds to interfere with the impugned order passed by the trial Court.

7. Insofar as the judgment relied on by the learned counsel for the petitioner-plaintiff in the case of **Dr.Edward Lobo v. Mrs.Letitia Marcy R Perriera**¹ is concerned, the said decision is based on the facts and circumstances of the said case and admittedly in the case on hand the petitioner-plaintiff has not sought any relief with regard to the GPA and the suit is only for possession and prohibitory injunction, hence the said judgment has no application to the facts and circumstances of the present case.

8. For the aforementioned reasons, I am of the view that the trial Court, taking into account all the aspects, has rightly rejected the application and the same does not call for any interference. The writ petition is devoid of merits and the same is accordingly **rejected**.

No order as to costs.

FOOTNOTES

1. WP No.2345/2022 DD 13.06.2023