HC-KAR

IN THE HIGH COURT OF KARNATAKA AT DHARWAD

DATED THIS THE 1ST DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM

WRIT PETITION NO. 104556 OF 2025 (GM-CPC)

BETWEEN:

RAVINDRA S/O YALLANAGOUDA PATIL,
AGE: MAJOR, OCC. PRIVATE SERVICE,
R/O. LAKSHMI NILAYA,
SHIDDESHWAR COLONY,
UNAKAL CROSS, HUBBALLI.

... PETITIONER

(BY SRI. S.S. BETURMATH, ADVOCATE)

AND:

1. RAJU HIREMATH AND CREW,
   R/O. 1ST FLOOR,
   CHAMBER OF COMMERCE BUILDING,
   J.C. NAGAR, OPP. NEHARU STADIUM,
   HUBBALLI-580020.

2. RAJU HIREMATH AND
   AGE: 45 YEARS, OCC: BUSINESS,
   REPRESENTED BY ITS AUTHORIZED SIGNATORY,
   R/O. 1ST FLOOR,
   CHAMBER OF COMMERCE BUILDING,
   J.C. NAGAR, OPP. NEHARU STADIUM,
   HUBBALLI-580020.

3. THE PUNDALIKAPPA DODDABASAPPA SHIRUR,
   AGE: 65 YEARS, OCC. BUSINESS,
   R/O. VIDYANAGAR,
   HUBBALLI-580021.

Digitally signed by MOHANKUMAR B SHELAR
Location: HIGH COURT OF KARNATAKA

4. SMT. SHOBHA SOMASHEKHARAYYA HIREMATH,
AGE: 62 YEARS, OCC. HOUSEWIFE,
R/O. HIREMATH BUILDING, SHANTI COLONY,
VIDYANAGAR, HUBBALLI-580021.

5. SOWMYA D/O SOMASHEKHARAYYA HIREMATH,
AGE: 35 YEARS, OCC. PRIVATE SERVICE,
R/O. HIREMATH BUILDING, SHANTI COLONY,
VIDYANAGAR, HUBBALLI-580021.

6. SHAMITA
D/O SOMASHEKHARAYYA HIREMATH,
AGE: 35 YEARS, OCC. PRIVATE SERVICE,
R/O. HIREMATH BUILDING, SHANTI COLONY,
VIDYANAGAR, HUBBALLI-580021.

7. SRI. U.M. GIRISHANKAR,
AGE: 54 YEARS, OCC. BUSINESS,
R/O. 104, 1ST FLOOR, OSIA APARTMENT,
AMBIKA NAGAR, KESHWAPUR,
HUBBALLI-580023.

8. SRI. PRALHAD S/O BABACHAR JAHAGIRDAR,
AGE: 54 YEARS, OCC. BANK EMPLOYEE,
R/O. STATE BANK OF INDIA,
KESHWAPUR, HUBBALLI-580023.

… RESPONDENTS

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR SET ASIDE THE ORDER OR TO RECALL THE ORDER DATED 29/11/2024 PASSED BY THE PRL. SR.CIVIL JUDGE HUBBALLI IN O.S. NO.114/2018 ON I.A. NO.III FILED BY THE PETITIONER/PLAINTIFF ANNEXURE-A AND ETC.,

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

ORAL ORDER

(PER: HON'BLE MR. JUSTICE SACHIN SHANKAR MAGADUM)

1. The captioned writ petition is filed by the plaintiff assailing the order passed by the learned Trial Judge on I.A. No.3, whereby the application filed under Section 65 of the Indian Evidence Act, 1872 seeking permission to adduce secondary evidence came to be rejected. The said order is called in question in the present petition.

2. I have heard the learned counsel appearing for the petitioner and have carefully perused the impugned order as well as the material placed on record.

3. The records indicate that the petitioner has instituted a suit for specific performance of an agreement of sale. After the plaintiff concluded his evidence and when the suit was posted for the evidence of the defendants, the plaintiff filed I.A. No.3 seeking leave of the Court to produce a xerox copy of a receipt dated 02.11.2011 by way of secondary evidence.

4. The case of the plaintiff is that, pursuant to the agreement of sale, a portion of the sale consideration was paid to the defendant and, acknowledging the said payment, the defendant executed a receipt dated 02.11.2011. It is further contended that the original receipt had been entrusted to one Chandrasekhar Aramani, who is the father-in-law of the plaintiff, and therefore the plaintiff sought permission to produce its xerox copy by invoking Section 65 of the Indian Evidence Act, 1872.

5. The question relating to admissibility of secondary evidence is no longer *res integra*. It is well settled by a catena of decisions of the Hon'ble Supreme Court as well as this Court that a party seeking to adduce secondary evidence must lay a proper factual foundation in the pleadings by specifically disclosing the circumstances under which the original document is unavailable and the necessity to rely upon secondary evidence. In the present case, there is absolutely no averment in the plaint that the original receipt dated 02.11.2011 was in the custody or

possession of Chandrasekhar Aramani. In the absence of such foundational pleadings, the statutory requirements for permitting secondary evidence are not satisfied.

6. It is also significant to note that the application seeking permission to lead secondary evidence has been filed only after the plaintiff had concluded his evidence and when the matter had been posted for the defendants' evidence. The belated attempt to introduce the document, without there being any foundational pleadings or satisfactory explanation as contemplated under Section 65 of the Indian Evidence Act 1872, cannot be countenanced. The learned Trial Judge, having examined these aspects, has rightly rejected the application. I do not find any jurisdictional error, perversity or patent illegality in the impugned order warranting interference under Articles 226 and 227 of the Constitution of India.

7. For the reasons stated above, the writ petition being devoid of merits stands ***dismissed***.

8. It is, however, made clear that the observations made by the learned Trial Judge while rejecting I.A. No.3 and the observations made in this order are confined only to the adjudication of the application seeking permission to adduce secondary evidence and shall not come in the way of the Trial Court while adjudicating the suit on its own merits. The plaintiff shall be at liberty to establish his case by such other admissible evidence as may be permissible in law.

Sd/-
(SACHIN SHANKAR MAGADUM)
JUDGE

VNP / CT: BCK
LIST NO.: 1 SL NO.: 7