

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4117 OF 2015

Bhagwan Gangaram Bansode,
Age : 58 years, Occu. Agril.,
R/o Selu (Jalwga)
Tq. Renapur, Dist. Latur.

...PETITIONER

versus

1. Sou Kantabai W/o Vasantrao Bansode,
Age: 40 years, Occu. Household,
2. Vasant S/o Gangaram Bansode,
Age 45 years, Occu. Service,

Both R/o Siddhivinayak Chowk,
Shyam Nagar, Latur,
Tq. Dist. Latur.

...RESPONDENTS

.....
Mr. Anand V. Indrale Patil, Advocate for Petitioner
Mr. C.R. Deshpande, Advocate for respondents
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CORAM : SUNIL P. DESHMUKH, J.

DATED : 8th JULY, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally with consent.

2. Petitioner - original plaintiff is aggrieved by order dated 27th January, 2015 on Exhibit-68 in Regular Civil Suit No. 238 of 2012, passed by 2nd Joint Civil Judge, Senior Division, Latur, whereunder his request for sending the document registered sale-deed bearing day book No. 2268 of 1989 dated 01-06-1989 to handwriting expert for his opinion, has been rejected.

3. Application - Exhibit-68 has been moved pursuant to liberty available to the petitioner under the order of this court dated 09-07-2014 in writ petition No. 97 of 2014.

4. In writ petition No. 97 of 2014, order dated 18-12-2013 on Exhibit-59 in present suit i.e. Regular Civil Suit No. 238 of 2012 was the subject-matter of challenge. While deciding said writ petition, this court had referred to observations of the court in the order on Exhibit-59 that, *'the defendants had no objection for sending the documents for opinion of handwriting expert is little of consequence, for, the application was to be decided legally.'* The trial court then appears to have considered that the request made thereunder was quite delayed one after evidence on either side was over particularly having regard to that all along it was plaintiff's contention that signatures on sale deed are forged and the same is by impersonation. This court, particularly, with reference to judgment of Andhra Pradesh High Court cited by defendants had declined to accede to the request.

5. It is being submitted on behalf of petitioner, pursuant to liberty granted by this court, application Exhibit-68 came to be filed incorporating paragraph No. 4. It is submitted by counsel for petitioner that impugned order does not at all consider said paragraph No. 4 of Exhibit-68 and it cannot be said that trial court had even applied mind to the same. Lot of stress has been laid on this aspect complaining that this tantamounts to breach of principles of natural justice.

6. Defendants had opposed the application on the count that in earlier round, may be no particular objection was taken for sending the document to handwriting expert, however, now they are entitled to raise objection on the ground of *res-judicata* at the interlocutory stage with reference to two citations, namely, reported in *AIR 2005 Supreme Court 446 (U.P. State Road Transport Corporation Vs. State of U.P. and another and a decision reported in 2009 (6) Mh.L.J.305 (Taramati H. Wadker and others Vs. Rui J. Valladares and others)*.

7. Learned counsel Mr. C.R. Deshpande refers to a decision reported in *AIR 2005 Supreme Court 446 (U.P. State Road Transport Corporation Vs. State of U.P. and another and a decision reported in 2009(6) Mh.L.J.305 (Taramati H. Wadker and others Vs. Rui J. Valladares and others)*,

8. It is apparent that the court has not adverted to contents of paragraph No. 4 of application Exhibit-68 which creates an impression that it had been oblivious of that.

9. Writ Petition, as such, is allowed. The impugned order dated 27th January, 2015 on Exhibit-68 in Regular Civil Suit No. 238 of 2012 is set aside. Application Exhibit-68 is restored to its original position as had been subsisting immediately before passing of the impugned order.

10. Although in impugned order there is no reference to contents under paragraph No. 4 of Exhibit-68 and looking at the stage at which application has been made, it is not a case wherein the court can be said to have erred in respect of considerations which weighed with it.

11. Citations relied on by learned counsel for petitioner may be a defence and may be a ground for resistance to the application which may be considered by the court.

12. However, this indulgence is being given to petitioner to see that justice is not only done but justice appears to have been done.

13. It is being made clear that the trial court shall reconsider Exhibit- 68 on its own merits in accordance with law, including taking into account the reasons which had weighed with it and also resistance by defendants on the grounds they deem appropriate, without being influenced by this order and observations hereinbefore. All points are kept open.

14. Rule is made absolute in aforesaid terms.

Sd/-

(SUNIL P. DESHMUKH, J.)

MTK

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