

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

WRIT PETITION NO. 9953 OF 2014

Shivprasad S/o Murlidhar Bhandari,
Age: 61 years, Occ. Business,
R/o Sant Dnyaneshwar Nagar,
Behind Shree Swami Samarth Temple,
M-2 Hudco, N-9, Aurangabad

...PETITIONER
(Ori. Defendant)

versus

Sitaram S/o Motilal Navandar,
Age: 81 years, Occ. Business,
R/o Mayur Park, Vaijapur Road,
Gangapur, Dist. Aurangabad.

...RESPONDENTS
(Ori. Plaintiff)

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Smt. Pooja V. Langhe, Advocate for Petitioner
Mr. Y.V. Kakade, Advocate holding for
Mr. V.V. Tarde, Advocate for respondent

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 6th July, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard the learned counsel for parties finally, with consent.
2. Petitioner - original defendant is before this court against order dated 06-09-2014 on Exhibit-19 in Special Civil Suit No. 34 of 2013, passed by joint civil judge, junior division, Vaijapur, whereunder his request to send the document for comparison of the signatures appearing thereon with that of petitioner to handwriting expert pursuant to section 45 of the Evidence Act has been declined.

3. Learned counsel for petitioner submits that right from the beginning, execution of the document has been denied by the petitioner and that there is wide difference in the signatures as is appearing in the document and the way in which petitioner normally makes. It is further being contended on behalf of the petitioner that the document in question is forged and witness-signatory on said document being unknown person to the petitioner, it was incumbent to send the document to handwriting expert for his opinion.

4. Learned counsel in support of his submissions relies on decisions in the cases of *Srikant Balwant Nalawade Vs. Bajrang Yashwant Nimbalkar & ors* reported in 2014(4) All MR 302, *State (Delhi Administration) Vs. Pali Ram* reported in AIR 1979 Supreme Court 14(1) and a decision of Andhra Pradesh High Court in the case of *Velaga Sivarama Krishna Vs. Velaga Veerabhadra Rao and another* reported in 2009(5) All MR (Journal) 8. Andhra Pradesh High Court, in the case *Velaga Sivarama Krishna (Supra)* appears to have considered that '*expert's opinion under section 45 is not excluded from the purview of examination and it will help court in exercising power of comparison under section 73 of the Evidence Act. Comparison by court without assistance of any expert is considered hazardous and risky.*' The court further appears to have considered that '*whenever a party disputes the signature on a particular document, two remedies are open to it, namely, either to request the court to compare the signatures or, to file an application requesting to send the document to the expert for comparison. When the petitioner opted to file an application to send the document to the handwriting expert, no*

prejudice will be caused to either party.' It is further considered that *'it cannot be said that no useful purpose will be served by sending the document to the expert.'*

5. Mr. Kakade, learned counsel appearing for respondent, however, states that the trial court has framed the issues and cast primary burden on the plaintiff to prove the same. He further submits that the amount pursuant to the document has been paid to the petitioner under a bank document. He submits that there is considerable substance in the agreement of sale which appears to have been acted upon, however, the petitioner all along has been disputing the signatures appearing on the agreement.

6. Looking at the observations, as have been appearing in *Velaga Sivarama Krishna (Supra)*, I think that no prejudice would be caused to the parties, if the document is sent to handwriting expert for his opinion. As such, the document in question and admitted signature of the petitioner be sent to the handwriting expert for his opinion.

7. Writ petition, as such, is allowed in terms of prayer clause "B". Rule is made absolute accordingly.

Sd/-

(SUNIL P. DESHMUKH, J.)