

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11766 OF 2014

BHARTI RAJENDRA PENDSE AND OTHERS
VERSUS
PRATIBHA KRUSHNAJI PENDSE, LRS AND OTHERS

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Advocate for Petitioners : Shri Gunale V.D.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: January 20, 2015
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PER COURT :-

1. Grievance of the petitioners is that by the impugned order, dated 14.11.2014, application Exhibit 168 is allowed, thereby referring the document memorandum of partition dated 17.6.1997, Exhibit 94, to a Hand-Writing Expert.

2. The petitioners submit that original defendant Nos.1 and 2 have admitted the said document Exhibit 94, through their Written Statement, filed in RCS No.263 of 2003, preferred by the petitioners seeking partition and separate possession in relation to ancestral property. Defendant No.1 has died during the pendency of the proceedings. Legal Representatives of defendant No.1 are now disputing Exhibit 94. The recording of oral evidence of the petitioners - plaintiffs has been concluded and the legal representatives of the first defendant have examined one witness. It is at this stage that the application Exhibit 168 is preferred and in the submissions of the petitioners, rendered untenable for having been belatedly filed.

3. Defendant No.3 is a subsequent purchaser of a portion of the ancestral property and, therefore, has no voice as regards the memorandum of partition dated 17.6.1997 is concerned.

4. The petitioner submits that the impugned order allowing Exhibit 168 would be a futile exercise as the signatures on Exhibit 94 would not match with the signatures of the defendants on account of they being of advanced age. According to Shri Gunale, the signatures that may be taken by way of a specimen today, would naturally appear different than those signatures of the same parties assigned on Exhibit 94 on 17.6.1997. He relies upon the judgment of the Andhra Pradesh High Court in the matter of Renu Devi Vs. Seetha Devi [AIR 2005 AP 180].

5. I have heard Shri Gunale, learned Advocate for quite some time and have considered application Exhibit 168, the impugned order and the copies of the amended plaint and written statement on record.

6. Referring a document to the Hand-writing Expert would assist the trial Court in deciding the main issue. The report of the Hand-writing Expert is an opinion expressed on the handwriting and the signatures appearing on a document. In the event, the apprehension of the petitioners turns out to be true that there is a difference in the signatures on account of advanced age of the signatory, the trial Court is bound to appreciate the entire available evidence while deciding the probative value of Exhibit 94.

The contention of Shri Gunale, that once the handwriting expert's opinion is placed on record, the trial Court would discard the oral and documentary evidence adduced by the respective sides, cannot be sustained.

7. The view expressed by the Andhra Pradesh High Court in the case of Renu Devi (supra), was with regard to a plea of forgery and the document having been disputed belatedly. In the instant case, the document at issue has been partly admitted by some of the defendants. Nevertheless, the trial Court in this case would also consider, to what extent can the objection of the subsequent buyer - defendant No.3 would impact the probative value of Exhibit 94.

8. In the light of the above, I do not find that the impugned order would cause grave injustice and an irreparable harm to the petitioners. As such, the petition is devoid of merits and is accordingly, dismissed.

(RAVINDRA V. GHUGE, J.)

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