

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 2059 OF 2015

Digambar Ramchandra Satav
And Ors

...Petitioners

Versus

Ashok Shantilal Kurani

...Respondent

....
Ms. Neeta Karnik, Advocate for the Petitioners.

....

CORAM : R. G. KETKAR, J.

DATE : 4th May, 2016

P.C.

1. Heard Ms. Neeta Karnik, learned Counsel for the petitioners, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 27.1.2015 passed by learned 14th Jt. Civil Judge, Junior Division, Pune below Exhibit-67 in R.C.S. No.1603/2007. By that order, learned trial Judge rejected the application made by the petitioners, hereinafter referred to as 'plaintiffs', for sending the sale deed dated 3.5.1996 along with the register maintained by the office of Sub-Registrar, Haveli to the handwriting expert

for his opinion in respect of signatures and thumb impression on the sale deed and the register maintained by the Office of Sub-Registrar.

3. The plaintiffs have instituted the suit for cancellation of the sale deed dated 30.5.1996 on the ground that they had never executed that sale deed in favour of the defendant. The plaintiffs were not present in the office of the Sub-Registrar at the time of registration. The plaintiffs have not signed the sale deed and also not put signatures in the register maintained by the office of the Sub-Registrar. The plaintiffs filed application Exhibit-34 for sending that sale deed as also the register maintained by the Sub-Registrar containing signatures and thumb impressions for the purpose of comparison of handwriting expert. By order dated 19.1.2013, learned trial Judge rejected the application.

4. Ms. Karnik submitted that during course of cross-examination of the plaintiffs witness, he was confronted with the original sale deed. Till that time, the original sale deed was not produced on record. In view of change of circumstances, the plaintiffs filed application Exhibit-67 for sending sale deed and

the register containing signatures and thumb impressions for the opinion of handwriting expert. Learned trial Judge however rejected the application on the ground that earlier application Exhibit-34 was rejected by the Court and there is no change in circumstances. She invited my attention to paragraph-5 of the present application to contend that as sale deed was produced during the course of cross-examination that itself is a change in circumstances and learned trial Judge should have allowed the application.

5. As noted earlier, the plaintiffs had filed application Exhibit-34 on 9.1.2012. That application was rejected on 19.7.2013. In paragraph-1 of that order, learned trial Judge has noted that the plaintiffs filed this application for sending original sale deed and register maintained by the office of Sub-Registrar containing signatures and thumb impressions for the purpose of comparison by handwriting expert. In paragraph-4, learned trial Judge noted that as per the order, the defendant had filed original sale deed on record along with list Exhibit-43. In paragraph-5, learned trial Judge noted that admitted signatures of the plaintiff on plaint, vakil patra and other

documents are already on record. As the admitted documents are already on record, in view of Section 73 of the Indian Evidence Act, 1872 (for short, 'Act'), the Court has power to compare the signature, writing or seal with other admitted or proved documents. The Court has power to compare the signatures and, therefore, it did not find any merit in sending the document for examination by handwriting expert.

6. The plaintiffs have thereafter filed present application at Exhibit-67 on 8.11.2014. While rejecting the application, learned trial Judge has observed that the report of handwriting expert Mr. Jadhav is already on record. Learned trial Judge thereafter referred to the order dated 19.7.2013 passed below Exhibit-34. In paragraph-6, learned trial Judge thereafter observed that there is no change in the circumstances to consider this application. It is not in dispute that the plaintiffs did not challenge the order below Exhibit-34. In view of the decision of this Court in the case of **Shivaji V. Kshirsagar & Ors. vs. Sayaji Vitthal Kshirsagar & Anr., 2012(2) Bom.C.R. 136**, present application is hit by principles of *resjudicata*.

7. I do not find that learned trial Judge committed any

error in rejecting the application on the ground that the present application is hit by principles of *resjudicata*. In the case of **Y.B. Patil and others vs. Y.L. Patil, AIR 1977 SC 392**, the Apex Court held that the principles of *res judicata* can be invoked not only in separate subsequent proceedings; they also get attracted in subsequent stage of the same proceedings. Once an order made in the course of a proceeding becomes final, it would be binding at the subsequent stage of that proceeding. That apart, under Section 73 of the Act, the Court has power to compare the signatures. Perusal of application Exhibit-67 also does not indicate any change in the circumstances. Hence, Petition fails and the same is dismissed.

8. It is made clear that where a decree is challenged by the petitioners, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of CPC.

(R. G. KETKAR, J.)