

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 11713 OF 2015

SHRI. SUBHASH DHODIRAM RUNWAL ...Petitioner

Versus

SHRI. RAM ALIAS BALU SOPAN WALKE
AND ORS. ...Respondents

....

Mr. Javeed Hussein a/w. Mubashir Hussein i/b. Hussein & Co.,
Advocate for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 2nd FEBRUARY, 2016

P.C.

1. Heard Mr. Hussein, learned Counsel for the Petitioner,
at length.

2. By this Petition under Article 227 of the Constitution of
India, the petitioner, hereinafter referred to as 'plaintiff No.1',
has challenged the judgment and order dated 11.8.2015 passed
by learned Joint Civil Judge, Senior Division, Pune below
Exh.288 and 291 in Special Civil Suit No.1301/1999. By that
order, learned trial Judge rejected the applications made by the
plaintiffs.

3. Mr. Hussein submitted that the plaintiffs have instituted Suit *inter alia* for declaration that the sale deed executed by original defendant Nos.1 to 4 and 6 to 15 in favour of defendant No.5 on 21.4.1999 is illegal, null and void; for perpetual injunction restraining the defendant No.5 from causing obstruction to the plaintiffs possession; as also restraining defendant No.5 from creating third party interest on the basis of the sale deed dated 21.4.1999.

4. During pendency of the Suit, the plaintiff made application for referring the sale deed 21.4.1999 for obtaining handwriting expert's opinion. In pursuance thereof, the report of the Handwriting Expert and Thumb Impression Expert was received. The said expert did not give proper opinion about the signatures of Laxman and Pandit and thumb impression of Malan. The handwriting expert also did not comply the order passed by the Court. Plaintiff No.1 therefore took out application Exh.288 on 13.1.2015 for examining Mr. Saleem Khan as his witness on the ground that the plaintiffs have obtained opinion and report dated 1.3.2008 of Shri Salim Khan about the signatures and thumb impression of the parties on

the sale deed dated 1.12.1990 and other documents. The plaintiffs, therefore, took out application Exh.291 on 10.2.2015 seeking permission to examine the Handwriting and Thumb Impression Expert, CID. By the impugned order, learned trial Judge rejected both the applications.

5. Mr. Hussein submitted that in fact application Exh.291 was filed in pursuance of the observations made by trial Court in para-7 of order dated 10.12.2014. In para-7, the Court observed as under :

“The plaintiff has taken the contention in this application that the expert has not given any proper and reasoned opinion about the signatures and thumb impression and not complied the order passed by this Court. If it is so, then the plaintiffs may examine the expert as a witness in the Court and with the permission of the Court can seek explanation about the opinion and for non compliance of the order as well as the method of examination.”

6. Mr.Hussain submitted that in the light of these observations, the plaintiff took out application Exh.291, that too is also rejected by the learned trial Judge. He, therefore, submitted that the impugned order is liable to be set aside.

7. I have considered the submissions advanced by

learned Counsel for the petitioner. I have also perused the material on record.

8. While rejecting the applications, the learned trial Judge noted that the plaintiff has closed his evidence in the year 2005. The evidence of defendant No.1, since deceased, was recorded in the year 2006. The evidence of defendant No.2 was recorded and he was under cross-examination. It is at that stage the plaintiffs have filed applications Exh.288 and 291. In para-8, learned trial Judge dealt with argument that cross-examination of defendant No.2 may be kept in abeyance so as to permit the plaintiffs to examine the witness and thereafter plaintiffs will cross-examine the defendants. As the defendants have led evidence and opened their defence, permitting the plaintiffs to examine their witness as prayed for vide Exh.288 and 291 will prejudice the case of the defendants.

9. Learned trial Judge also dealt with the observations made in para-7 of the order dated 10.12.2014 and observed that those observations were in relation to the mode of suggesting the plaintiff as to what steps he ought to have taken and not the liberty to examine the witness.

10. Even otherwise, I do not find that any case is made out by the plaintiff for examining Salim Khan as prayed in application Exh.288. As far as application Exh.291 is concerned, for the reasons recorded in paras-8 to 10 of the impugned order, I do not find that the learned trial Judge has committed any error. Apart from that the petitioner is at liberty to lodge objections to the report of handwriting expert, if not already filed. Hence, the Petition fails and the same is dismissed. Order accordingly.

11. It is made clear that where a decree is appealed from by the petitioner, 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 appeal as contended by section 105(1) of Civil Procedure Code.

(R. G. KETKAR, J.)