

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

WRIT PETITION NO. 10402 OF 2015

Pandurang Gana Katkate (Suryawanshi)
age 80 years, occ. Nil
r/o Bhada, Tq. Ausa, Dist. Latur
at present residing at 24,
Mig Colony, Behind Panchavati
Nashik, Dist. Nashik

.. PETITIONER

VERSUS

- | | | |
|---|---|--|
| 1 | Rajendra s/o Vithal Katkate (Suryawanshi)
age 45 years, occ. Labo
r/o Bhada, Tq. Ausa, Dist. Latur
at present residing at Borgad
Panchavati, Nashik | |
| 2 | Gopi s/o Vithal Katkate (Suryawanshi)
age 42 years, occ. Labor
r/o as above | } Deleted vide
} Court order
} dt. 20.02.2017
} |
| 3 | Taramati w/o Dagdu Katkate (Suryawanshi)
age 55 years, occ. Household
r/o Ekta Chowk , Khadipar
Maliwada, Tq. Bhivandi, Dist. Thane | }
}
}
} |
| 4 | Khandu s/o Dagdu Katkate (Suryawanshi)
age 35 years, occ. Labour
r/o as above | } Deleted vide
} Court order
} dt 14.12.2015 |
| 5 | Balu s/o B agdu Katkate (Suryawanshi)
age 32 years, occ. Labour,
r/o as above | } Deleted vide
} Court order
} dt 20.02.2017 |
| 6 | Raghunath s/o Tukaram Gavli
age 80 years, occ. Agriculture
r/o Bhada, Tq. Ausa, Dist. Latur | |
| 7 | Balasaheb s/o Tukaram Gavli
age 75 years, occ. Agriculture
r/o as above. | |
| 8 | Ramhari s/o Babu Gavli
age 80 years, occ. Agriculture
r/o as above. | |
| 9 | Bhanudas s/o Tukaram Gavli | |

age 65 years, occ. Agriculture
r/o as above.

- 10 Shivaji s/o Raghuath Gavli
age 45 years, occ. Agriculture
r/o as above
- 11 Subhash s/o Raghunath Gavli
age 42 years, occ. Agriculture
r/o as above
- 12 Vishnu s/o Babu Gavli
age 43 yrs, occ. Agriculture
r/o as above
- 13 Gayabai Vishnu Gavli
age 35 years, occ. Household
r/o as above
- 14 Yamunabai Ambadas Shinde
age 60 years, occ. Household
r/o Ekta Chowk
Khadipar, Maliwada, Tq. Bhivandi
dist. Thane
- 15 Bai Bhagvantrao Gaykwad
age 55 years, occ. Household
r/o Wadgaon, Tq. Tuljapur
dist. Osmanabad
- 16 Chimabai Khanderao Shinde
age 52 years, occ. Household
r/o Ekta Chowk, Khadipar
Maliwada, Tq. Bhivandi
Dist. Thane

.. RESPONDENTS

Mr. S.D. Tawshikar, advocate for petitioner.

Mr. G.Y. Patil, advocate holding for Mr. B.N. Patil, advocate for respondents
no. 6 to 11 and 13.

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CORAM : S. B. SHUKRE, J.
DATE : 6th MARCH, 2017.

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith.

2. Heard finally by consent of learned counsel for the respective parties.
3. Application for sending the admitted and disputed thumb impressions and signatures to Government expert for comparison and opinion has been rejected by the learned Civil Judge only on the ground that even otherwise, the parties can independently prove or disprove a document which is registered.
4. This reason appears to be not at all germane to the issue raised by petitioner, original plaintiff. The issue relates to the registered sale-deed being fraudulent document as per the case of original plaintiff as it is the contention of original plaintiff that this document, though registered, has been fraudulently obtained by impersonating plaintiff and forging his signature as well as forging signatures of the attesting witnesses. In such a case, it would be necessary for the trial Court to undertake the exercise of comparing the admitted signatures and thumb impressions with the disputed signatures and thumb impressions and, consider whether it is in a position to make such comparison and record appropriate finding. If the difference between admitted and disputed signatures or thumb impressions is minute or is of such a nature as could not be ascertained through naked eyes, the safer approach for the trial Court would be to seek assistance of the expert. In such a case, it is well settled law that the trial Court should not hazard a guess. The observations of the Honourable Apex Court in the case of Thiruvengada Pillai vs Navaneethammal and another **(2008) 4 SCC**

530, relied upon by learned counsel for petitioner, appearing in paragraph no. 15 are relevant. They are reproduced as under :

15 While there is no doubt that Court can compare the disputed handwriting/signature/finger impression with the admitted handwriting/signature/finger impression, such comparison by Court without the assistance of any expert, has always been considered to be hazardous and risky. When it is said that there is no bar to a Court to compare the disputed finger impression with the admitted finger impression, it goes without saying that it can record an opinion or finding on such comparison, only after analysis of the characteristics of the admitted finger impression and after verifying whether the same characteristics are found in the disputed finger impression. The comparison of the two thumb impressions cannot be casual or by a mere glance. Further, a finding in the judgment that there appeared to be no marked differences between the admitted thumb impression and disputed thumb impression, without anything more, cannot be accepted as a valid finding that the disputed signature is of the person who has put the admitted thumb impression. Where the Court finds that the disputed finger impression and admitted thumb impression are clear where the Court is in a position to identify the characteristics of finger prints, the Court may record a finding on comparison, even in the absence of an expert's opinion. But where the disputed thumb impression is smudgy, vague or very light, the Court should not hazard a guess by a casual perusal. The decision in Muralilal (supra) and Lalit Popli (Supra) should not be construed as laying a proposition that the court is bound to compare the disputed and admitted finger impressions and record a finding thereon, irrespective of the condition of the disputed finger impression. When there is a positive denial by the person who is said to have affixed his finger impression and where the finger impression in the disputed document is vague or smudgy or not clear, making it difficult for comparison, the Court should hesitate to venture a decision based on its own comparison of the disputed and admitted finger impressions. Further even in cases where the Court is constrained to take up such comparison, it should make a thorough study, if necessary with the assistance of counsel, to ascertain the characteristics, similarities and dissimilarities. Necessarily, the judgment should contain the reasons for any

conclusion based on comparison of the thumb impression, if it chooses to record a finding thereon. The Court should avoid reaching conclusions based on a mere casual or routine glance, or perusal.

5. In the instant case, no exercise of making comparison between disputed and admitted signatures and thumb impression has been undertaken and, no finding has been recorded by the trial Court as to whether or not in the given set of facts and circumstances, it would be possible to reach any conclusion and whether or not assistance of expert is required. Therefore, the impugned order would have to be called as patently illegal and arbitrary.

6. In the result, writ petition is allowed. Impugned order is quashed and set aside. The matter is remitted back to the trial Court for considering the application vide Exh. 41 in accordance with law and the law laid down by the Honourable Apex Court in the case of Thiruvengada Pillai (supra). The application shall be decided within a period of one week from the next date of appearance of all the parties. If there are no admitted signatures or thumb impressions on record, the Court shall take into account this fact also and decide the application in accordance with law. Rule made absolute in above terms. No costs.

(S. B. SHUKRE)
JUDGE