

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10808 OF 2017

Smt. Parvati Dadasaheb Yadav

.. Petitioner

v/s.

Jayant Dinkar Prabhawale & Ors.

.. Respondents

Mr. Chetan G. Patil for the petitioner

Mr. Abhijit M. Adagule for respondent nos. 1, 2 and 4 to 6

Mr. Mandar G. Bagkar for respondent nos. 7 to 13

CORAM : M.S. SANKLECHA, J.

DATED : 29th SEPTEMBER, 2017

PC.

1. This petition is moved for urgent reliefs.
2. The learned Counsel for both the parties state that the petition be disposed of finally as the issue involved in the present petition is within narrow compass. At the request of the parties and since the defendant no.1 is more than 85 years old, the petition is being disposed of finally.
3. This petition under Article 227 of the Constitution of India challenges the order dated 7th July, 2017 passed by the Civil Judge, Junior Division, Kolhapur. By the impugned order, the application of

the petitioner (original defendant no.1) to send the original Sale Deed to Hand Writing Expert for verification of the thumb impression of defendant no.1, was rejected. The impugned order, while rejecting the application records as under :-

“At this stage it cannot be ignored that, if defendant want to compare the thumb impression with admitted thumb impression, then she has to be produced the certain specimen admitted thumb impression before the Court along with application. But no any document produced to that effect. Therefore, mere filing application that original sale deed be send to Handwriting Expert will not sufficient as defendant want to compare the thumb impression with admitted other thumb impressions”.

4. The aforesaid finding in the impugned order which forms the basis of the rejection of the application is contrary to the application dated 7th July, 2017 wherein the petitioner had submitted the admitted thumb impression and the disputed thumb impression of defendant no.1 on the Sale Deed. Further, it is noteworthy that the respondent (plaintiff) has filed an application before the trial Court accepting the contention of the handwriting expert to verify the thumb impression of the defendant no.1. However, only subject to the cost being borne by the petitioner. The petitioner states that she

will bear the cost of the handwriting expert.

5. In the above view, the impugned order is quashed and set aside. The trial Court is directed to send the Sale Deed to Handwriting Expert, CID, Pune for his opinion along with admitted thumb impression and also specimen of fresh thumb impression of defendant no.1. The requisition made to the handwriting expert would also require handwriting expert to opine on the fact whether a passage of time would bring about any change in the thumb impression of an individual. This is critical bearing in mind that the document which is disputed is of 1980 while the admitted thumb impression and / or specimen thumb impression are of recent vintage. The CID, Pune is requested to expeditiously give its opinion in view of the fact that the defendant is more than 85 years old, preferably within a period of 6 months from the receipt of the thumb impression of the petitioner.

6. The petition is disposed of in the above terms. No order as to costs.

(M.S. SANKLECHA, J.)