

\$~32

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 438/2016

FARMAN

..... Petitioner

Through: Mr.R.K.Singh, Advocate.

versus

FURQAN & ORS

..... Respondents

Through: Mr.S.K.Jain, Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

23.05.2017

CM(M) No.438/2016

1. The petitioner has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 3rd March, 2016 whereby the application filed by the petitioner under Section 45 of Indian Evidence Act to examine the handwriting expert has been dismissed by the learned Trial Court observing as under:-

*'I have gone through the application alongwith contentions of plaintiff in the plaint. Plaintiff has filed this suit for declaration, partition, rendition of account and permanent injunction in respect of property No.J-293 & J-294, measuring 22.5 sq.yards each, situated at Sunder Nagri, Nand Nagri Extension Shahdara, Delhi. The suit was filed by plaintiff in the year 2009. Issues in this suit was framed on 06.07.12 and plaintiff has already examined three witnesses thereafter this application is filed. **The suit is filed by plaintiff for partition***

and declaration and no fruitful purpose shall be served after examining the hand writing expert in this suit.'

2. Learned counsel for the petitioner submits that on the date when the application under Section 45 of Indian Evidence Act was filed, the case was still at the stage of plaintiff's evidence. The name of the handwriting expert was duly mentioned in the list of witnesses filed at the appropriate stage. Despite that, he has not been permitted to examine the handwriting expert.
3. Learned counsel for the respondent No.1 does not dispute the above fact and submits that he has no objection if the petitioner is allowed to examine handwriting expert subject to cost.
4. It is informed by learned counsel for the parties that during pendency of this Civil Misc. (Mains), the plaintiff's evidence has been closed and now the case is at the stage of defendants' evidence.
5. In view of the submissions made by learned counsel for the parties, the petitioner is granted one opportunity to examine the handwriting expert, subject to cost of Rs.10,000/- to be paid to the counsel for respondent No.1 on or before the next date of hearing fixed before the learned Trial Court.
6. The petitioner, on giving a prior notice to the opposite counsel, shall take the necessary steps for getting the record inspected/photographed by the handwriting expert for purpose of comparison of the disputed thumb impression/signatures. The petitioner shall also ensure that not only the record is inspected/photographed for purpose of comparison of thumb impression/signatures, the report by handwriting expert is also prepared and filed before the learned Trial Court at the earliest with copy to learned counsel for the respondents.
7. Thereafter the learned Trial Court shall fix a date for examination of

the handwriting expert as plaintiff's witness.

8. With above observations, the petition is disposed of.

9. A copy of this order be sent to the learned Trial Court for information and compliance and be also given dasti to learned counsel for the parties, as prayed.

CM Nos.16884/2016 & 21570/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 23, 2017

'st'