

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 754 of 2015

1. Mu. Tapaswini D/o Sanatan Bramhan, aged about 62 years, R/o Village Dudhipali, P.S. and Post Basna, Civil and Revenue District Mahasamund, Chhattisgarh

---- Petitioner/Plaintiff

Versus

1. Mu. Vrindavati D/o Sanatan Bramhan, aged about 62 years, R/o Village Dughipali, at present r/o Dhanupali (Sambalpur), P.O. Dhanupali (Gopal Ji Mandir Parisar), Tahsil Sambalpur, Civil and Revenue District Sambalpur, Orrissa.
2. Varun Kumar Agrawal, S/o Rajesh Agrawal, aged about 22 years, R/o Village Basna, P.S. and Post and Tahsil Basna, Civil and Revenue District, Mahasamund, C.G.
3. State of Chhattisgarh, through Collector, Mahasamund, P.S. and Post Mahasamund, Civil and Revenue, District Mahasamund, C.G.

---- Respondents

For Petitioner	:	Mr. Manoj Paranjpe, Advocate.
For Respondent No. 1 & 2	:	Mr. Vivek Kumar Tripathi, Advocate.
For Respondent No. 3/State	:	Mr. Adhiraj Surana, Dy. G.A.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

14/11/18

1. By the impugned order dated 28.04.2015, the plaintiff's application under Section 45 and 71 of the Evidence Act and Order 26 Rule 10(A) read with Section 151 of CPC has been rejected by the trial Court and the plaintiff has been denied the examination of the impugned document dated 29.05.2010 by handwriting expert, against

which this writ petition has been preferred.

2. Learned counsel for the petitioner submits that the impugned order is unsustainable and bad in law as the plaintiff's signature on the said document is highly disputed and the Court has rejected the application on the ground that Court can compare the disputed signature on itself.

3. On the other hand, learned counsel for the respondents would oppose the submissions made by counsel for the petitioner and support the order impugned.

4. I have heard learned counsel for the parties, went through the records and perused the impugned order with utmost circumspection.

5. From the perusal of the records it appears that the said document was tendered during the evidence of the defendant No. 2 which has been admitted by defendant No. 1 and that led the plaintiff to file an application for examination of the said document by handwriting expert.

6. The Supreme Court in the case of **Thiruvengadam Pillai v. Navaneethammal and Another**¹ has held that though the Court may record a finding on comparison even in the absence of expert opinion and held in para-16 as under :-

“16. While there is no doubt that court can compare

1 (2008) 4 SCC 530

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 an 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 and where the court is in a position to identify the characteristics of fingerprints, 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."

7. Taking into consideration the nature of the document and following the principle of law laid down by the Supreme Court in the

case of *Thiruvengadam Pillai* (supra) and also considering the fact that evidence of the parties has not yet closed, the plaintiff is permitted to get the document examined by the handwriting expert.

8. In view of the above, the application filed by the plaintiff under Section 45 and 71 of the Evidence Act and Order 26 Rule 10(A) read with Section 151 of CPC is allowed subject to payment of cost of Rs.2000 to the defendants No. 1 and 2. The trial Court is directed to do the needful and conclude it expeditiously as the suit is pending since 2013.

9. With the aforesaid direction, the writ petition stands disposed of. No cost(s).

SD/-

(Sanjay K. Agrawal)
Judge