

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1350 OF 2018
(Surekha d/o Channappa Mitkari Vs. Channappa Veerpakashappa
Mitkari and others)

Mr.S.S.Halkude, Advocate for the petitioner.

(CORAM : RAVINDRA V. GHUGE, J.)
DATE : 06/02/2018

PER COURT :

1. The petitioner is aggrieved by the order dated 11/07/2017, passed by the Appellate Court by which application Exh.41 filed by the applicant/original defendant No.4 for sending the sale deed Exh.103 for examination of the signature / thumb impression to a handwriting expert, has been rejected.

2. Learned Advocate for the petitioner has strenuously criticized the impugned order. Contention is that the endeavour of the Court should be to do complete justice after a fair trial. The petitioner was about 9 years of age when the sale deed Exh.103 was said to have been executed. Original plaintiff is her father. Though she did not file a written statement, she has deposed before the Trial Court and has denied the said sale deed and her signature. In this backdrop, the Appellate Court should have allowed the application Exh.41.

3. I find that RCS No.574/2006 filed by the plaintiff Channappa was dismissed by judgment dated 30/01/2012. The petitioner herein was defendant No.4. She is respondent No.4 in RCA No.69/2012 filed by Channappa. He had initially moved application Exh.29 praying for sending the sale deed to a signature/ thumb impression expert. However, he withdrew Exh.29 on 09/11/2016. Thereafter, the petitioner moved an application Exh.48 for the same purpose.

4. It also cannot be ignored that Channappa claims that the sale deed was executed by the mother of the petitioner alongwith the petitioner. It is for Channappa to establish the probative value of the sale deed. When the petitioner has taken a definite defence that she was 9 years of age when the sale deed was allegedly executed, the onus and burden would shift upon Channappa to prove the probative value of the said sale deed. Moreover, the Trial Court has observed that all the contentions of this petitioner including the challenge to the sale deed would be considered while deciding the appeal.

5. In the light of the above, I do not find that the impugned order could be termed as being perverse or erroneous. This petition, being devoid of merit, is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)