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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9451 OF 2015

Pankaj A. More (Baddare) & Ors.	...Petitioners
V/s.	
Dinesh R. Farat	...Respondent

Mr.S.S. Kanetkar for the Petitioners.

Mr.C.G. Gavnekar for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 4TH SEPTEMBER, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 25th August, 2017 passed by the learned Civil Judge, Junior Division, Khalapur rejecting the Application (Exhibit – 70) filed by the petitioners (original plaintiffs) *inter-alia* praying to send the disputed document of certified copy of sale deed and thumb impression of the deceased Parasu Zitya Farat executed in the Day Book kept by the Registering Authority of Karjat Sub-Registrar to the hand writing expert and particularly to the department of Crime Investigation Bureau for expressing opinion about the comparison of both thumb impressions.

2. It is not in dispute that the petitioners are claiming to be the legal heirs of Smt.Suman Arun More. The said Smt.Suman Arun More

had alleged to have purchased the suit property from Parasu Zitya Farat by a Sale Deed dated 7th August, 1996 registered with the office of the Sub-Registrar at Karjat.

3. On the other hand, the respondent is claiming to be the legatee under an alleged Will dated 4th April, 2008 alleged to have been executed by the said Parasu Zitya Farat.

4. The petitioners have filed a suit inter-alia praying for a declaration that the petitioners are the owners of the suit property, whereas the respondent is relying upon an alleged Will executed by Parasu Zitya Farat.

5. The execution of the alleged sale in favour of the petitioners by the Sale Deed by Parasu Zitya Farat is disputed by the respondent by filing a detailed written statement.

6. It is also not in dispute that it is the case of the petitioners that the original alleged Sale Deed in favour of the mother of the petitioners by Parasu Zitya Farat is not traceable. Learned Trial Judge has already granted permission to the petitioners to lead secondary evidence. It is the case of the respondent that the petitioners have however, not entered into witness box to prove the existence and the contents of the said alleged Sale Deed. Similarly the respondent also has not entered the witness box to prove the existence and the contents of the alleged Will executed by Parasu Zitya Farat allegedly

bequeathing the suit property in favour of the respondent.

7. The petitioners made an application for referring the two disputed documents to the department of Crime Investigation Bureau for expressing opinion.

8. Learned Trial Judge has rejected the said application on the ground that the petitioners have not entered into a witness box so far and at the most it would be just and proper to give an opportunity to the plaintiff to lead evidence as to the disputed thumb impression on the basis of subsequent fact brought on record by way of Day Book of Sub-Registrar at his own.

9. I do not propose to go into the question as to whether the application filed by the petitioners was under section 45 of the Indian Evidence Act or the same was under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 or under section 75(e) of the Code of Civil Procedure, 1908.

10. In my view, since the petitioners have not entered the witness box and have not proved so far the existence and contents of the alleged Sale Deed in favour of their mother, there is no admitted thumb impression of Parasu Zitya Farat on record which can be sent for verifying the thumb impression of Parasu Zitya Farat on another alleged document.

11. The petitioners have also not examined any witness from

the office of Sub-Registrar to prove that the alleged Sale Deed was executed and registered in the office of the Sub-Registrar of Sub Assurances at Karjat.

12. In my view, the learned Trial Judge has thus rightly rejected the said application by an order dated 25th August, 201 on the grounds set out in the impugned order.

13. In my view, unless the petitioners themselves enter the witness by exercising an opportunity to lead secondary evidence and by examining the witness from the office of the Sub-Registrar of Assurances to prove the existence and the contents of the said alleged Sale Deed, the application filed by the petitioners for referring the two disputed documents to the department of Crime Investigation Bureau was thus not maintainable at that stage.

14. It is made clear that if the plaintiffs' witness including the witness, if any, from the office of the Sub-Registrar proves the existence and contents of the documents before the learned Trial Court, at that stage the petitioners would be entitled to file a fresh application for referring the said documents to hand writing expert or to the department of Crime Investigation Bureau for expressing opinion about the contents of both the alleged thumb impressions i.e. the thumb impression on the alleged Sale Deed and also on the alleged Will propounded by the respondent.

15. The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

16. If any fresh application is made by the petitioners after the process of proving the alleged Sale Deed is complete in the manner referred to aforesaid, the said application for referring the thumb impressions to any hand writing expert or to department of Crime Investigation Bureau shall be considered by the learned Trial Court on its own merit without being influenced by the observations made by the learned Trial Court rejecting the earlier application for the reasons recorded aforesaid.

Vasant
Anandrao
Idhol

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(R.D. DHANUKA, J.)