

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 513 of 2017

Namdeo alias Namu alias
Nama Tukaram Pawar
since deceased through L.Rs.
& Ors

..Petitioners.

V/s.

Balasaheb Bapusaheb Autade
since deceased, Per L.Rs.
and others

.. Respondents.

Mr Jaydeep Deo for the petitioners.
Mr Dhairyasheel Sutar for Respondent
No.1 to 3.

CORAM: B.P.COLABAWALLA, J.

DATED : NOVEMBER 29, 2018

P.C. :-

1 Rule. Respondents waive service. By consent of parties,
rule made returnable forthwith and heard finally.

2 By this writ petition, the petitioners (legal heirs of the
original plaintiff Balasaheb Namdeo Pawar) have challenged two
separate orders, both dated 16th July, 2016 passed below Exh.84 and
85 in Regular Civil Suit No. 1116/2008 by 2nd Joint Civil Judge, Junior
Division Pune. Exhibit 84 was an application filed for recalling the
witness to bring before the Court the original thumb impression Book
regarding the sale deed dated 20th November 1990 bearing Registration

No. 17602. As far as Exh.85 is concerned, it was an application to send the original thumb impression book to the Handwriting Expert for comparing the thumb impression on the said book along with the thumb impression of the said Balasaheb Pawar which has been affixed to the plaint as well as other several documents, namely Exhibits 1, 5, 6, 69, 70 and 62.

3 It is the case of the plaintiffs that the thumb impression on the sale deed dated 20th November, 1990 is not that of Balsaheb Pawar and therefore they have sought cancellation of the sale deed in the suit. It is in these circumstances that these two applications were made. The Trial Court rejected both these applications for the reasons mentioned therein.

4 As far as Exh.84 is concerned, the Trial Court held that the witness sought to be recalled was already called by the plaintiffs with the original thumb impression book. He had therefore filed a certified copy of the same in the Court. Now, this application was made after a period of more than three years and therefore same ought not to be entertained.

5 As far as Exh.85 is concerned, the trial Court mainly rejected it on the ground that there was no admitted thumb impression of the said Balasaheb Pawar and Exh.62 (which is the sale deed) was only a certified copy. It is in these circumstances, that even this application was dismissed by the Trial Court.

6 In these circumstances, the learned Advocate appearing

on behalf of the petitioners submitted that the original sale deed is not available even in the office of Registrar as the same has been misplaced. It is for these reasons that he seeks to call the witness to produce the original thumb impression book regarding the sale deed dated 20th November, 1990 bearing Registration No. 17602. Once this is done, the thumb impression that is appearing in the said book, can be compared with the thumb impression on Exh-1 (which is plaint), Exhibit-5 (which is application for an injunction) and Exh-6 (the affidavit in support of the injunction application). He submitted that these thumb impressions are, in fact, not even disputed by the defendants.

7 The learned counsel appearing on behalf of the defendants fairly submitted that as far as thumb impressions of Balasaheb Pawar on Exhibits 1, 5 and 6 are concerned, he is not disputing the same. He, however sought to sustain the impugned order on the ground that the application (Exhs. 84 and 85) have been preferred after considerable delay and hence the Trial Court was justified in dismissing the said applications.

8 I have heard both the parties at some length and I have perused the papers and proceedings in the writ petition. The suit as originally filed, is for cancellation of the sale deed dated 20th November, 1990. According to the plaintiffs, this sale deed was never executed by Balasaheb Pawar who was the original plaintiff and hence the suit was filed for cancellation of the sale deed. Looking to the reliefs sought for in the suit and to ensure that the suit is properly

decided, one way or the other, I think it would be in the interest of justice, if the thumb impression of Balasaheb Pawar appearing on Exhs. 1, 5 and 6 respectively (which are undisputed) be compared with the thumb impression in the original thumb impression book with reference to sale deed dated 20th November, 1990 bearing Registration No. 17602.

9 In these circumstances, the writ petition is disposed of by allowing Exh.84 and 85 to the extent mentioned herein. In other words, the thumb impression in the original thumb impression book with reference to sale deed dated 20th November, 1990 bearing Registration No. 17602 shall be compared only with the thumb impression appearing on Exhs. 1, 5 and 6 respectively. Furthermore, it is only the thumb impression of Balasaheb Pawar that will be compared and not any other person.

10 The Trial Court will now summon the witness with the original thumb impression book and thereafter forward the same along with the original Exhs. 1, 5 and 6 to the Handwriting Expert for comparing the thumb impression on the aforesaid documents and who shall then file his report before the trial Court.

11 Rule is made absolute and the Writ Petition is disposed of in the aforesaid terms. However, there shall be no order as to costs.

(B.P.COLABAWALLA, J)