

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

919. WRIT PETITION No. 10483 of 2015

Isaq Abdullasaheb Hamdule,
age 53 years occupation business
R/o Grain Market, Latur Taluka and District Latur.

...Petitioner

VERSUS

1. Dr. Khayyumkhan Mohammad Khan,
age 56 years occupation medical practitioner
R/o Zingangappa Galli, Latur Taluka and District Latur.
2. Shaikh Dastgir Kasimsaheb,
age 42 years occupation agriculture
R/o Dhanegaon Taluka and District Latur.

...Respondents

Miss Anjali Dube (Bahpai), Advocate for Petitioner
Mr. Ajinkya Deshmukh, Advocate, holding for Mr Ashwin Hon,
Senior Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.

DATE : 18th January, 2019

ORDER:

1. Rule. Rule made returnable forthwith. Heard learned counsel for appearing parties finally by consent.
2. It is being contended on behalf of the petitioner that while the partition and the document as contended on behalf of

the defendants had all along been denied, application to produce the memorandum of partition had been filed by defendants in special civil suit of 2004 in the year 2011 in the suit of 2004 and the same had been allowed in 2014 and thereafter present application for sending the documents for opinion of handwriting expert has been filed. It is significant to note that factual aspects have been overlooked and the application has been cursorily considered. It is therefore, contended that observations appearing in order in paragraph No. 9 are not keeping with the factual aspects. Order, as such, suffers infirmity and is without application of mind.

3. Learned counsel for respondents submits that the petitioner/plaintiff denied the partition deed, as claimed, and thus, unless the document is factually proved, it would not be a case wherein it can be said that the document would be required to be sent for hand writing expert's opinion. It is further being claimed that no contemporaneous signatures hitherto have been placed on record by the petitioner for comparison, as observed in paragraph No. 10 of the impugned order.

4. Having regard to the aforesaid aspects, it appears to be expedient that the parties should be allowed to re-address this application for a decision afresh by the trial court.

5. The writ petition, thus, is allowed setting aside impugned order, restoring application for decision afresh by the trial court.

6. All the contentions of the parties are kept open.

7. Rule is made absolute accordingly.

**(SUNIL P. DESHMUKH)
JUDGE.**

Madkar