

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.6761 OF 2019

Dr Gopal Natthu Sarve, Shastri Nagar, Bhandara and anr.

-vs-

Deepak Dashrath Fender, Bhandara

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Shashikant Borkar, Advocate for petitioners.
Shri N. B. Kalwaghe, Advocate for respondent.

CORAM : A.S.CHANDURKAR, J.

DATE : October 04, 2019

The challenge raised in the present writ petition is to the order passed by the trial Court below Exhibit-108 by which the application filed by the original defendants for appointment of Commissioner to compare the signature on the documents at Exhibit-50, 51 and 62 with the document at Exhibit-102 has been rejected.

2. The respondent has filed a suit under Section 6 of the Specific Relief Act, 1963 (for short, the said Act) for restoration of possession alleging forcible dispossession. In that suit various documents have been brought on record which include documents at Exhibits-50, 51 and 66 that are signed by one Nanhu Thaokar. Since the petitioners-defendants sought to prove the signature of the original owner of the property by having it compared with the signature of said Nanhu Thaokar on the document at Exhibit-102, the aforesaid application came to be moved. The trial Court observed that in absence of any document bearing the original and

admitted signature of said Nanhu Thaokar being available, it would not be permissible on the basis of a photocopy to arrive at any conclusion with regard to authenticity of the said signature. Hence the application was rejected.

3. Shri S. Borkar, learned counsel for the petitioners submitted that the document at Exhibit-102 was exhibited after perusing the original sale-deed which was brought by the witness from the office of the Registrar and therefore the prayer made in the application to compare the signatures at Exhibits-50, 51 and 66 with the signature on the said document at Exhibit-102 was justified. According to him the original owner of the property was not alive and therefore the defendants had rightly sought reference of these documents to the handwriting expert. Though the issue of prior possession was material, it was necessary for the defendants to indicate that the stand taken by the plaintiff that he was a tenant was not correct. Hence the impugned order was liable to be set aside.

4. Shri N. B. Kalwaghe, learned counsel for the respondent supported the impugned order and submitted that in absence of any original and admitted signature of the owner of the said property on record, the trial Court was justified in rejecting the said application. He referred to the decisions in *S. Chinnathai vs. K. C. Chinnadurai* 2010 AIHC 3018 and *Bheri Nageswara Rao vs. Mavuri Veerabhadra Rao and ors.* AIR 2006 AP 314 in that regard. He further submitted that the defendants could not bring on record original signature of Nanhu Thaokar despite admissions in that regard. Moreover by referring to the cross-examination of one of

the defendants he submitted that such report was already obtained by the defendants but it was not placed on record. Hence no interference was called for.

5. Heard the learned counsel. The suit in question is filed under Section 6 of the Specific Relief Act, 1963. The material issue therefore is with regard to prior dispossession within period of six months of filing of the suit. The burden in that regard is on the plaintiff. It is not in dispute that the documents at Exhibits-50, 51, 66 and 102 are all photocopies and there is no original document on the basis of which comparison of signature can be undertaken. The observations in *Bheri Nageswara Rao* (supra) support the contentions of the respondent. The trial Court was therefore justified in taking into consideration this aspect while rejecting the application moved by the defendant. Moreover, considering the summary nature of the suit, a substantive defence sought to be raised by the defendant can be sought to be proved by filing a suit in that regard. Considering provisions of Section 6(4) of the said Act, the defendants are not precluded from suing on the basis of title. In that view of the matter I do not find any reason to interfere in writ petition. The writ petition is therefore dismissed with no order as to costs.

JUDGE