

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.9446 OF 2021

BHAUSAHEB GANPAT NAT AND ANOTHER
VERSUS
SANGEETA BABASAHEB LOKHANDE AND OTHERS

...
Advocate for Petitioners : Mr. N.C. Garud

...

CORAM : MANGESH S. PATIL, J.

DATE : 30.08.2021

PER COURT :

The petitioners are the original defendant Nos.1 and 2 impugning the order passed by the learned Civil Judge on their Application (Exhibit-169) whereby they had prayed for referring the thumb impression purportedly that of the respondent No.5 on the registered sale deed under which they purchased the property in dispute from her husband, to a finger print expert.

2. According to the petitioners, since the respondent No.5 who was originally the defendant No.6 but was subsequently transposed as plaintiff No.5 has denied her thumb impression on the registered sale deed, they requested to get her thumb impression examined by an expert.

3. The learned advocate for the petitioners would submit that since the respondent No.5 has now been denying her thumb impression on the sale deed, the petitioners want to make it sure that the thumb impression appearing on the sale deed is compared with her admitted thumb impression so as to disprove her version. He would submit that, that is the only way now for the petitioners to disprove her version. The learned

Judge failed to consider such necessity and has illegally rejected the Application.

4. I have carefully considered the papers. True it is that the petitioners are coming with a case of execution of a sale deed by the husband of the respondent No.5 and to which she was an attesting witness. It is also true that during her cross-examination she has disputed her thumb impression on the sale deed.

5. But then, as has been rightly pointed out by the learned Civil Judge, it is a matter of execution of a registered sale deed and her thumb impression appears as an attesting witness. Naturally there is a presumption in favour of legality and if she wants to take an exception, the burden is on her to prove that she was not the attesting witness to the sale deed executed by her husband.

6. It is, in the facts circumstances, apparent that the petitioners on their own are intending to take the burden of establishing that she has acted as an attesting witness to the sale deed. Needless to state that the petitioners can independently establish the fact about she having endorsed the sale deed by putting her thumb impression in the capacity of an attesting witness.

7. If that be so no error or illegality can be said to have been committed by the learned Judge while rejecting the petitioners' Application (Exhibit-169).

8. There is no merit in the Writ Petition. The Writ Petition is dismissed *in limine*. The learned Judge of the Trial Court shall not feel influence by the observation made herein above.

(MANGESH S. PATIL, J.)