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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9271 OF 2014

Janardhan s/o Apparao Kavthale
Age – 52 years, Occ – Agri
R/o Nagewadi (SA) Tq-Shirur Anantpal
District - Latur

PETITIONER

VERSUS

1. Narsing s/o Shivanand Morkhande
Age – 23 years, Occ – Agri
R/o Nagewadi (SA) Taluka – Shirur Anantpal
District – Latur
2. Shivraj s/o Gangadhar Morkhande
Age – 19 years, Occ – Agri
R/o Nagewadi (SA) Taluka – Shirur Anantpal
District – Latur
3. Sow. Mahananda w/o Gangadhar Morkhande
Age – 40 years, Occ – Household
R/o Nagewadi (SA) Taluka – Shirur Anantpal
District – Latur

RESPONDENTS

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Mr. Girish L. Awale, Advocate for the petitioner
Mrs. M. D. Thube-Mhase, Advocate for respondent No.1

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 3rd DECEMBER, 2021

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of learned advocates for the appearing parties.
2. This petition is directed against common order dated 24th June, 2014 passed by Civil Judge, Senior Division, Nilanga,

below Exhibits, 169, 199 and 206 in Regular Civil Suit No. 47 of 2012, thereby allowing applications Exhibits-169 and 199 filed by the original plaintiff – respondent No.1 for appointment of court commissioner and rejecting application Exhibit-206 filed by the petitioner – defendant No. 3 under section 10 of the Civil Procedure Code (for short “the CPC”) seeking stay to hearing of applications Exhibits-169 and 199.

3. Respondent No.1 filed Regular Civil Suit No. 47 of 2012 seeking specific performance of the agreement 30th December, 2006 entered into between the plaintiff and defendant No.1.

4. Applications Exhibits-169 and 199 came to be filed by the plaintiff seeking appointment of court commissioner for comparison of signatures on agreement dated 30th December, 2006 and application Exhibit-206 was filed by the petitioner – defendant No. 3 under section 10 of the CPC praying requesting to stay hearing of applications Exhibits-169 and 199 and for dismissal of said applications on the ground of *res judicata*.

5. After hearing the learned advocates for the parties, the trial court allowed the applications Exhibits-169 and 199 and rejected the application Exhibit-206. The petitioner is aggrieved by the said order.

6. Heard learned advocate for the petitioner and learned advocate for respondent No.1.

7. Learned advocate for the petitioner states that earlier also, the trial court had forwarded documents for comparison of the signatures of defendants No. 1 and 2 to the handwriting expert. Report Exhibit-99 was received, which depicted that there was no similarity in the signatures on the disputed agreement and the sample signatures. Thereafter, the plaintiff examined handwriting expert (PW-8), who also confirmed that there was no similarity in the signatures on the disputed agreement and the sample signatures.

8. In the light of above, the defendants contended that the present applications Exhibits-169 and 199, filed by the plaintiff, are not tenable. It is contention of the plaintiff that the defendants have not made natural signatures while sending the same to the handwriting expert, along with sample signatures forwarded to the handwriting expert and no other document was forwarded. Considering these aspects and the fact that admitted signatures of the defendants on *Vakalatnama*, (Exhibit-21 and 25) agreement dated 9th August, 2006 (Exhibit-52/6), receipt dated 9th August, 2006 (Exhibit-52) sale deed dated 20th June,

2006 (Exhibit-52/3), Kabuilyatnama dated 20th June, 2006 (Exhibit-52/6 and W.S. (Exhibit-27) can be compared with the fresh specimen signatures of the defendants, the trial court allowed Exhibits-169 and 199.

9. The trial court was of the view that no harm would be caused to the defendants if the said documents are forwarded to the handwriting expert for comparison of admitted signatures of the defendants. On the point of *res judicata*, the trial court has recorded a finding that it had not decided any issue in that behalf. Since the plaintiff had every right to prove the document - the disputed agreement, the trial court deemed it appropriate to forward the said documents for handwriting expert's opinion.

10. Perusal of the record indicates that the findings recorded by the trial court are proper. The trial court has passed a well reasoned order, which need not be interfered in the extraordinary writ jurisdiction. No case is made out by the petitioner to cause interference in the impugned order. The writ petition is, therefore, dismissed. Rule stands discharged with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE