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C.O. 1762 of 2022

**Ujjal Ghosh
Vs
Pranab Kumar Majumder**

Mr. Kartick Kumar Bhattacharya,
Ms. Soumashree Dutta,
... For the petitioner.

Mr. Sarbananda Sanyal,
... For the opposite party.

The subject matter of challenge in this revisional application is against the rejection of a prayer for Handwriting Expert filed by the petitioner/plaintiff in a suit for adverse possession.

Mr. Kartick Kumar Bhattacharya, learned advocate appearing for the petitioner submits that on the strength of an agreement for sale, petitioner was put in possession of the subject property upon payment of some part consideration of the agreed amount.

It is contended by the learned advocate for the petitioner that subsequently a salish was held, being called by the petitioner/plaintiff, and a salishnama was then prepared, bearing signatures of the parties including the defendant.

Taking recourse to the deposition of DW1, Mr. Kartick Kumar Bhattacharya, learned advocate appearing for the petitioner argues that when the defendant has disputed with his own signature appearing in his examination-in- chief, and affidavit of his written statement already furnished together with

the salishnama already held between the parties, a necessity then arises to seek for assistance of Handwriting Expert for his opinion to resolve the controversy surfaced at the moment.

It is also argued by the petitioner that the Court below without adhering to the true purports of the prayer proposed, has mechanically rejected the prayer for Handwriting Expert.

Per contra, Mr. Sarbananda Sanyal, learned advocate appearing for the opposite party submits that prayer for Handwriting Expert for comparison of the disputed signatures of defendant is nothing but to manufacture evidence, which is not permissible under the provisions of law.

It is also contended by the opposite party that by the proposed prayer for Handwriting Expert, petitioner has endeavoured to collect some evidence touching his title to the suit property, which may not be permitted to collect in a suit already instituted taking a plea of adverse possession, because the plea of title, if there be any, would not be available to establish in a suit for adverse possession.

Having considered the submission of both sides, it appears that the prayer for Handwriting Expert has been proposed for resolving a dispute upon denial of signature of defendant allegedly found appearing on a salishnama together with his examination-in-chief and

affidavit of written statement.

The salishnama pertains to execution of an agreement for sale, what is strongly disputed by the learned advocate for the opposite party.

In a suit based on the plea of adverse possession, question of claiming title by the plaintiff does not arise. Though there has been a prayer proposed for examination of Handwriting Expert to resolve a dispute for the denial of signature of the defendant on some documents as referred hereinabove, but the petitioner is not remediless at the moment in view of the provisions available under Section 73 of the Evidence Act.

Normally the Court should not bear the task of comparison of signatures, but that power is not excluded under the provision available under Section 73 of the Evidence Act. In an appropriate case, being set up, subject to the discretion of the Court below, it is for the Court below to take recourse to the provisions of the 73 of the Evidence Act after undertaking the burden of making comparison of signatures of defendant on some documents produced in the trial of case.

This would not, however, prevent the Court below to take judicial notice on such documents, if required for the purpose of proper adjudication of the matter in controversy between the parties.

This order is passed without prejudice to the rights and contentions of the parties.

As per submission disclosed by the both parties, evidence has already been adduced by both the parties to this case, and the suit has already been set for argument, the logical conclusion of the suit may be reached expeditiously, giving a hearing to both the parties, upon setting the matter for argument. if not already fixed. and the case may be decided preferably within a period of three (03) weeks from the date of communication of this order.

With this observation and direction, the revisional application stands disposed of.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

(Subhasis Dasgupta, J)