

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

WRIT PETITION NO.9683 OF 2021

**KAMLESH LAXMANRAO KADAM DIED THROUGH LRS RAJANI
KAMLESH ALIAS KAMLAKAR KADAM AND OTHERS
VERSUS
SUBHADRA EKNATH GAYAKE AND ANOTHER**

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Advocate for Petitioner : Mr. Manoj D. Shinde

Advocate for Respondents : Mr. S. V. Dixit

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 01st JULY, 2022

PER COURT :

1. The petitioner is aggrieved by the order dated 05/07/2021, passed by the learned Civil Judge Senior Division, Latur, below Exhibit-193 in R.C.S. No.503/1996, thereby rejecting the application filed by the petitioner under Order 26 Rule 10-A of the Code of Civil Procedure.

2. Petitioner/original plaintiff has filed suit for possession against defendants/respondents. The suit is resisted by the defendants/respondents by filing written statement. On 03/03/2005 issues are framed. On 09/12/2005 petitioner/plaintiff filed application Exhibit-53 with a prayer that, admitted signatures of plaintiff may be sent alongwith the signatures on disputed sale deeds to the handwriting expert, so as to determine whether the signatures and thumb mark on the sale deeds are made by the

plaintiff. Since the defendants gave no objection, the Trial Court allowed the application on 15/12/2006, in following terms :-

" Read application and say. Heard both sides. In the interest of justice, application as prayed for is allowed. The two disputed sale deeds No.6104/91 and 6105/91 be sent to the Government handwriting expert, Aurangabad alongwith the admitted signature of plaintiff on the plaint on Exhibit-1, Vakalatnama at Exhibit-2. Plaintiff to give specimen signature and thumb mark before this Court and they be also sent for examination. Plaintiffs to pay necessary charges for such examination of documents and he shall pay Rs.1000/- and if any additional charges on required to be paid, he shall pay it afterwards. Report of the expert be called on or before 02/02/2006."

3. Accordingly, the documents were forwarded to the handwriting expert and his opinion was received on 30/09/2010. In his opinion the handwriting expert has stated thus :-

"Resultant upon a careful examination, I am of opinion that the red-encircled signatures marked as Exhs. Q-1 to Q-7 are not written by the writer who wrote the Exhs. N-1 to N-3 and S-1 to S-4."

4. Thereafter the suit is proceeded. Evidence of plaintiff, handwriting expert and defendants is recorded and thereafter the matter is posted for final arguments. At this stage, the petitioner/plaintiff moved application Exhibit-193 contending that the handwriting expert has failed to compare the thumb impressions and no report in respect of thumb impression is filed by the handwriting expert. A prayer is, therefore, made that admitted thumb impressions of the deceased plaintiff taken before

the Trial Court be sent for verification and comparison alongwith disputed sale deeds bearing Daybook No.6104/91 and 6105/91 dated 05/12/1991 to the handwriting expert, so as to determine whether the thumb mark on the sale deeds are made by the deceased plaintiff or not. This application is strongly resisted by the defendants/respondents. The Trial Court has rejected the application, this order is impugned in the present petition.

5. Heard Mr. Manoj D. Shinde, learned advocate for petitioners and Mr. S. V. Dixit, learned advocate for respondents. Perused the documents placed on record.

6. It is not in dispute that the suit is filed by the plaintiff seeking actual possession of the suit property claiming that the alleged sale deeds dated 05/12/1991 are forged by the defendants and he has never executed the said sale deeds. The said pleading of the plaintiff is strongly denied by the defendants in their written statement. The Trial Court has framed issues on 03/03/2005, issue No.2 and issue No.4 are as follows :-

- "2) Does plaintiff prove that the sale deeds of defendants No.1 and 2 dated 05/12/1991 are illegal void?
- 4) Do defendants prove that plaintiff has made execution of their sale deeds on 05/12/1991?"

7. Thus, the core issue before the Trial Court is as to whether the plaintiff has executed the sale deeds in question by

putting his thumb impression and signature.

8. Admittedly, by the order passed below Exhibit-53 the Trial Court directed the plaintiff to give specimen signature and thumb mark before the Court, which were forwarded for examination to the handwriting expert. At that time, the defendants had not taken any objection to the said application filed by the plaintiff.

9. The handwriting expert has forwarded his opinion only in respect of the signatures and has not expressed any opinion in respect of thumb impression, though the same was specifically directed by the Trial Court. The report of the handwriting expert was received by the Trial Court in the year 2011.

10. It is not in dispute that thereafter parties have led their evidence and even the handwriting expert was examined. However, the record indicates that not a single question was put to the handwriting expert by the plaintiff in respect of non submitting the opinion about thumb impression of the plaintiff. It is also admitted position on record that the matter is finally heard by the Trial Court and thereafter present application Exhibit-193 is filed seeking expert opinion of the handwriting expert under Order 26 Rule 10-A of the Code of Civil Procedure read with Section 45 of the Evidence Act.

11. The Trial Court has rejected the application holding that the same is belatedly filed after about 10 years and when the matter was finally heard. No objection was taken by the plaintiff at the time of recording evidence of the handwriting expert. The suit is of 25 years old and the plaintiff is trying to prolong the matter, hence, on these grounds the Trial Court has rejected the application.

12. True it is that the plaintiff and his advocate have failed to notice the said aspect that handwriting expert has not submitted his report in strict compliance of the order passed by the Trial Court and that he has failed to give opinion about the thumb impression of the plaintiff. Even the Trial court has missed this aspect. It cannot be denied that the suit is filed by the plaintiff seeking possession of the property in question with a specific contention that the alleged sale deeds are not executed by him and they are forged by the defendants.

13. No doubt there are lapses on the part of the plaintiff and his advocate in noticing this aspect of non submission of opinion by the handwriting expert in respect of thumb impressions of the plaintiff, thereby not complying the order passed by the Trial Court. The said error appears to be inadvertent and a bona fide mistake on the part of plaintiff and his advocate. Fact remains that,

even the Trial Court has failed to notice this aspect. The Trial Court has lost sight of the fact that it is the plaintiff's suit seeking possession of the property in question and he has nothing to gain by prolonging the matter. In the facts of the present case, this Court is of the view that, the plaintiff needs to be given full and fair opportunity to prove his case and the order passed by the Trial Court should be fully complied with by the handwriting expert. For the lack of due diligence on the part of the plaintiff, the defendants can be adequately compensated.

14. The learned advocate for defendants, strenuously submitted that there is no propriety in forwarding the admitted thumb impressions of the deceased plaintiff to the handwriting expert, since they were taken almost 15 years ago and they are not fit for comparison. The said aspect can be agitated by the defendants before the trial Court.

15. In *Rama Avatar Soni Vs. Mahanta Laxmidhar Das and Others, 2018 AIR(SC) 5597*, the Hon'ble Apex Court has held that, if scientific investigation of document in question facilitates ascertaining of truth, in the interest of justice, naturally it has to be ordered.

16. Coming to the facts of the present case, since the plaintiff has questioned genuineness of sale deeds in question, the

handwriting expert's opinion on thumb impression of the plaintiff would facilitate the Trial Court in ascertaining truth and therefore, in the interest of justice, the said application deserves to be allowed.

17. In the result, the writ petition is allowed in terms of prayer clause 'B'. The impugned order dated 05/07/2021, passed by the learned Civil Judge Senior Division, Latur, below Exhibit-193 in R.C.S. No.503/1996, is hereby quashed and set aside.

18. Application Exhibit-193 is allowed. Admitted thumb impressions of the deceased plaintiff taken before the Trial Court be sent for verification and comparison alongwith disputed sale deeds dated 05/12/1991, to the handwriting expert within a period of two weeks from the date of receipt of this order.

19. The handwriting expert shall submit his report within a period of four weeks from the date of receipt of the documents.

20. The plaintiff shall pay cost of Rs.10,000/- (Rupees Ten Thousand Only) to the defendants in the Trial Court.

(NITIN B. SURYAWANSHI, J.)