

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2469 OF 2022

Vilas Shirchand Sethiya & Ors.

.. Petitioners

Versus

Maruti Yashwat Jadhav & Ors.

.. Respondents

-
- Mr. Rushikesh C. Barge for the Petitioners
 - None present for the Respondents
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 12, 2022

P.C.:

1. Heard.

2. The impugned order dated 01.04.2021 is a common order disposing of Exhibits 82, 90 and 92 filed by the Petitioners i.e. the Defendants before the trial court. Application under Exhibit 82 was filed on 04.08.2017; Exhibit 90 was filed on 26.06.2019 and Exhibit 92 was filed on 11.12.2020, all for seeking appointment of handwriting expert and his report as it was the contention of the Defendants that the Agreement for Sale dated 14.11.2005 did not bear their signatures and that their signatures on the said document were forged. In support of their contention, the Defendants have placed on record the contemporaneous documents bearing their signatures i.e. the donation receipts which have been taken note of by

the trial court in paragraph Nos. 4 and 5 of the impugned order. However, the trial court has held that the Defendants would be at liberty to show the falsity of the alleged Agreement for Sale in the trial. The trial has since commenced.

3. Learned counsel appearing for the Petitioners submitted that the learned trial court has thereafter proceeded with the trial of the suit. The evidence of the Plaintiffs has been completed and it is now the Defendants' turn to lead evidence. He submitted that the Defendant No. 1 has not filed his affidavit in examination-in-chief in the trial court. However he asserted that the handwriting expert's opinion be called for at their cost in order to aid and assist the trial court before the Defendants lead their evidence.

4. Defendants have tendered copy of list of Documents filed under Exhibit 62 before the trial court across the bar. The said list of documents is taken on record and marked "X" for identification along with its annexures. In Exhibit 62, Defendants have annexed 11 contemporaneous documents out of which their signatures are borne out in two documents for comparison with their signatures in the Agreement for Sale dated 14.11.2005.

5. In view of the above, the Writ Petition can be disposed of by

passing the following order:-

- (i) The impugned order dated 01.04.2021 is quashed and set aside;
- (ii) The trial court is directed to appoint handwriting expert from the empanelled list of handwriting experts maintained by the trial court within a period of one week from today;
- (iii) Parties are directed to deposit in the trial court the original copy of the Agreement for Sale dated 14.11.2005 and the 11 original documents annexed to Exhibit 62 within a period of one week from today;
- (iv) The trial court shall send the aforesaid documents to the handwriting expert for comparing the signatures of the Defendants and obtain his report within a period of six weeks from today;
- (v) In the meanwhile until receipt of the report from the handwriting expert, the evidence of Defendant No. 1 shall be deferred for a period of six weeks;
- (vi) All contentions of the parties are kept open.

6. Writ Petition stands disposed of accordingly.

[MILIND N. JADHAV, J.]