

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2372 OF 2020
WITH
INTERIM APPLICATION NO. 9821 OF 2022

Shri Bachubhai Kakad Gangoda & Ors.

..Petitioner/s

v/s.

Shri Natwarsingh Ramsingh Chauhan

..Respondents

Mr. Mandar Soman for the Petitioner/s.
Mr.Girish Agrawal for the Respondent.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 10th AUGUST, 2022.**

P.C.

1. The petitioner herein has challenged the impugned order dated 9.12.2019 whereby the learned Civil Judge, Senior Division, Dadra & Nagar Haveli, Silvassa has dismissed the application filed by the petitioner to permit the handwriting expert to inspect the original Will at Exhibit 61 and affidavit of evidence of P.W.2 Naileshsingh Bhagwansigh Rathod, who is stated to be one of the attesting witnesses to the Will at Exhibit 61.

2. Heard Learned Counsel for the Petitioner and Respondents.
Perused the records .

3. The records reveal that by order dated 15.04.2019 in Writ Petition

Digitally
signed by
PRASANNA P
SALGAONKAR
Date:
2022.08.18
17:12:28
+0530

PRASANNA P
SALGAONKAR

No.14264 of 2017 this Court had granted liberty to the Petitioner to examine the handwriting expert. The Trial Court was directed to examine the hand writing expert and this Court had observed that thereafter it was for the trial Judge to examine the effect of not only the evidence of handwriting experts, but also to make a comparison in respect of the disputed and admitted signatures. Pursuant to this order, the Petitioner filed an application to permit the handwriting expert to inspect and to take photographs of the original Will at Exhibit 61 as well as affidavit of PW2 as to enable him to compare the disputed signature on the Will as well as the admitted signature on the affidavit. The said application has been dismissed solely on the ground that this Court had only allowed the Petitioner to examine the hand writing expert and that there are no directions to permit the handwriting expert to inspect the Will or to take photographs of the Will.

4. It is to be noted that the authenticity of the Will is under challenge. This Court has already permitted the Petitioner to examine hand writing expert. Accordingly the Petitioner made an application to permit the handwriting expert to examine the Will and the affidavit of PW2 and to take photographs of the said documents. It need not be emphasized that comparison of a disputed signature with admitted signature involves specialized skill based on study. It cannot be done without examining the relevant documents and taking photographs of the documents for the purpose of examination and investigation. Hence, until the hand writing

expert inspects and compares the disputed signatures on the Will with admitted signature of PW2 on the affidavit, he will not be able to form opinion about genuineness of the Will. In such circumstances, the trial Court as a matter of course ought to have allowed the expert witness to examine/inspect the Will and the affidavit of PW2 as to enable him to compare the disputed signature with admitted signature. The trial Court was not justified in taking a hypertechnical view, which renders the order dated 15.04.2019, allowing the Petitioner to examine the expert witness nugatory. Hence the order cannot be sustained.

5. Under the circumstances, and in view of discussion supra,

(i) The Petition is allowed, the impugned order dated 09.12.2019 at Exhibit 88 is set aside.

(ii) The handwriting expert is permitted to inspect the Original Will at Exhibit 61 as well as the affidavit of evidence of PW2- Naileshsingh Bhagwansingh Rathod (Exhibit 60) and to take photographs of the same for comparing the disputed signature with admitted signature.

(iii) The aforesaid exercise be completed on or before 30.08.2022.

. Petition stands disposed of. Interim application, stands disposed of in view of disposal of writ petition..

(ANUJA PRABHUDESSAI, J.)