

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

WRIT PETITION NO. 2087 OF 2021

Late Girirao s/o Nagarao Kalbande, Thru. LRs

Vs.

Sher Mohammad s/o Sheikh Chand and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
Orders.
or directions and Registrar's orders.

Court's or Judge's

Mr. Deepak S. Khushalani, Advocate for petitioners.
Mr. K.J. Topale, Advocate for respondents.

CORAM : MANISH PITALE J.

DATE : 14.06.2022.

By this writ petition, the petitioners have challenged order dated 08.04.2021 passed by the Court of Civil Judge Junior Division, Ashti, whereby an application at Exhibit 122 praying for calling for the report of Handwriting expert in respect of signature of the original plaintiff appearing on a document dated 23.01.1989, was rejected. The petitioners are the original defendants.

2. The learned counsel appearing for the petitioners submits that the Court below erred in rejecting the application mainly on the ground

that the Court was entitled to compare the signatures and arriving at a proper conclusion. It is submitted that in the facts and circumstances of the present case, a report from the Handwriting expert was necessary and it would certainly assist the Court in arriving at a proper conclusion as regards the crucial aspect of the matter concerning the aforesaid document, which was claimed to be a relinquishment deed.

3. The learned counsel for the petitioners further submitted that when the matter had been remanded to the Court below specifically in the context of the said document, it was all the more necessary to allow the said application. The learned counsel placed reliance on the judgments of the Hon'ble Supreme Court in the cases of ***State (Delhi Administration) Vs. Pali Ram, AIR 1979 SC 14*** and ***Ajay Kumar Parmar Vs. State of Rajasthan, 2012 ALL.M.R. (Cri.) 3792 SC***.

4. On the other hand, learned counsel appearing for the respondent submitted that the whole endeavour was an exercise in futility because a bare comparison of signature on the said document with signatures available on the

record of the Court would show that there is marked difference. It is submitted that in these circumstances, the Court below was justified in rejecting the application. It was submitted that sending the signatures for report of Handwriting expert was unnecessary and it would further delay the proceedings. Much emphasis was placed on the fact that the suit was of the year 2007 and it was still languishing before the trial Court, as a consequence of the appellate Court remanding the proceedings.

5. This Court has considered the rival contentions in the backdrop of the material placed on record. A perusal of the impugned order shows that the Court below has proceeded more on the aspect of the power of the Court to compare the signatures and hence, it has held that once such power is recognized under the provisions of law, the exercise of sending the document for a report to the handwriting expert is unnecessary.

6. In this backdrop, it would be appropriate to refer to the judgments relied upon by that the learned counsel appearing for the

petitioners. In the case of *State Vs. Paliram (supra)*, the Hon'ble Supreme Court held thus :

“29. The matter can be viewed from another angle, also. Although there is no legal bar to the Judge using his own eyes to compare the disputed writing with the admitted writing, even without the aid of the evidence of any handwriting expert, the Judge should, as a matter of prudence and caution, hesitate to base his finding with regard to the identity of a handwriting which forms the sheet-anchor of the prosecution case against a person accused of an offence, solely on comparison made by himself. It is therefore, not advisable that a Judge should take upon himself the task of comparing the admitted writing with the disputed one to find out whether the two agree with each other; and the prudent course is to obtain the opinion and assistance of an expert.”

7. In the case of *Ajay Kumar Parmar Vs. State of Rajasthan (supra)*, the Hon'ble Supreme Court in the context of opinion by Handwriting expert, held as follows :

“23. The opinion of a handwriting expert is fallible/liable to error like that of any other witness, and yet, it cannot be brushed aside as

useless. There is no legal bar to prevent the Court from comparing signatures or handwriting, by using its own eyes to compare the disputed writing with the admitted writing and then from applying its own observation to prove the said handwritings to be the same or different, as the case may be, but in doing so, the Court cannot itself become an expert in this regard and must refrain from playing the role of an expert, for the simple reason that the opinion of the Court may also not be conclusive. Therefore, when the Court takes such a task upon itself, and findings are recorded solely on the basis of comparison of signatures or handwritings, the Court must keep in mind the risk involved, as the opinion formed by the Court may not be conclusive and is susceptible to error, especially when the exercise is conducted by one, not conversant with the subject. The Court, therefore, as a matter of prudence and caution should hesitate or be slow to base its findings solely upon the comparison made by it. However, where there is an opinion whether of an expert, or of any witness, the Court may then apply its own observation by comparing the signatures, or handwritings for providing a decisive weight or influence to its decision.”

8. It is obvious from the said position of law clarified by the Hon’ble Supreme Court that

it would be a matter of prudence and caution for the Court to call for a report of a Handwriting expert and then to proceed in matters where such disputes arise. What is advised to be a prudent course could not be ignored by the Court below, solely on the ground that the Court itself under Section 73 of the Indian Evidence Act, indeed has the power to compare signatures and handwriting.

9. The application at Exhibit 122 filed on behalf of the petitioners is nothing but an attempt to assist the Court to reach proper findings of facts, particularly in the backdrop of the statements given in cross-examination by the plaintiff on 07.01.2021. The Court below failed to appreciate the context in which the said application was moved on behalf of the petitioners.

10. In view of the above, it is found that the impugned order is unsustainable. Accordingly, the writ petition is allowed. The impugned order is set aside and the application at Exhibit 122 is allowed in terms of prayer made therein.

11. The Court below shall now proceed accordingly.

12. Considering the fact that the suit pertains to the year 2007, the Court below is expected to proceed expeditiously and to dispose of the suit, preferably within a period of one year from today.

JUDGE