

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

WRIT PETITION NO.4081 OF 2023

**BALBHIM LAXMANRAO JAHER PATIL
VERSUS
TULSHIRAM VISHWANATH BAGLANI AND OTHERS**

...
Advocate for Petitioner : Mr. Deelip J. Choudhary
Advocate for Respondent Nos. 4 and 6 : Mr. S.S. Jadhav
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 11TH APRIL, 2023

PER COURT :

1. Petitioner is aggrieved by the order dated 23/01/2023, passed by learned 4th Joint Civil Judge, Senior Division, Beed, below Exhibit-31, in Special Civil Suit No.14/2012, thereby rejecting application filed by the petitioner/plaintiff under Section 45 of the Indian Evidence Act, praying for sending signature of deceased Mohammed Naziruddin for comparison to the handwriting expert.
2. The suit for specific performance of contract and for declaration that sale deeds in question are null and void and not binding on the plaintiff, is filed by the petitioner/plaintiff. Naziruddin who executed the agreement dated 30/11/2001, expired on 03/10/2002, i.e. prior to the filing of suit.
3. Defendant Nos.1, 3 to 10 opposed the suit by filing written statement. They also denied signature of Naziruddin on the

agreement to sale dated 30/11/2001. Defendants also filed application for action against plaintiff under Sections 195 and 340 of the Code of Criminal Procedure. In these circumstances, plaintiff had no alternative except to file application Exhibit-31 under Section 45 of the Indian Evidence Act, requesting to send signature of deceased Naziruddin for comparison to the Central Bureau of Investigation, Branch at Aurangabad, for examination and assessment by handwriting expert and to call detail report. The extracts of admitted signature of deceased Naziruddin can be taken from Regular Civil Suit No.49/1987, registered Power of Attorney No.1915/1999 dated 21/07/1999, registered sale deed dated 27/10/1999, executed by deceased Naziruddin in favour of Saraswati Balbhim Jaher (wife of the plaintiff) and Vimal Arjunrao Jaher, plaint Exhibit-1 and Vakalatnama in R.C.S. No.49/1985 along with receipts produced at Serial Nos.2 to 5 in the suit. It may be forwarded for comparison. Said application is rejected by making certain observations. Petitioner plaintiff is aggrieved by the same.

4. Heard learned advocate for petitioner and learned advocate for respondent Nos.4 to 6. Perused the memo of writ petition, annexures thereto and the impugned order.

5. While rejecting application on merits, trial Court has observed that "*This being prime factor, suit for specific performance*

of contract appears to be not tenable, as framed”.

Admittedly, the suit is at preliminary stage, recording of evidence has yet not commenced. Therefore, at this stage trial Court ought to have refrained from making such observations which are likely to cause apprehension to the plaintiff that trial Court is against him.

6. While rejecting application, trial Court has observed that at this stage application could not be entertained and plaintiff should not take support of the Court to prove initial facts by filing such application for collection of evidence without he himself leading any evidence in the suit.

7. This Court is of the opinion that trial Court is right in observing that plaintiff will have to discharge initial burden of proving his case and then only he can move application for sending signature of the deceased to handwriting expert.

8. No fault can be found with the said approach of the trial Court. Writ petition is, therefore, partly allowed. Impugned observation that ‘the suit for specific performance of contract appears to be not tenable as framed’ is hereby quashed and set aside.

9. It is made clear that after the parties lead evidence to

prove their respective contentions, if such application is filed, the same will be considered by the trial Court on it's own merits without being influenced by the order impugned in present petition.

(NITIN B. SURYAWANSHI, J.)