

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

945 WRIT PETITION NO.10011 OF 2022

Arvind Narayan Mulay and Another .. Petitioners

Versus

Krushnarao Shankar Jadhav and Others .. Respondents

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Advocate for Petitioners : Mr. Pratik P. Kothari

Advocate for Respondent No.1 : Mr. D.R. Jayabhar and
Mr. B.N. Survase

Advocate for Respondent No.2 : Mr. V.S. Bedre

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 14th JUNE, 2023

ORDER :

. The petitioners are aggrieved by the order dated 13.07.2022 passed by the learned 18th Jt. Civil Judge Senior Division, Ahmednagar below Ex.158 in Special Civil Suit No.60 of 2011.

2. The petitioners – original plaintiff nos.1 and 3 filed suit contending that the respondent no.1 – the defendant no. 1 purchased the suit property in the capacity of Chief Promoter of the proposed housing society. The name of the society was decided as 'Proposed Mauli Sahakari Gruha Nirman Sanstha Maryadit, Ahmednagar'. The defendant no.1 was elected as Chief Promoter of the said Society. After considering various

properties, ultimately the suit property was purchased on 01.01.1981 in the name of the Chief Promoter of the proposed Society. The defendant no.1, however, did not form the Society and has sold out the said property of the Society to defendant no.2 as if it was his own property and therefore, the suit is filed for declaration.

3. The defendants opposed the suit by filing written-statement. The recording of evidence commenced and during the course of recording evidence of defendant no.1, the page on which his name is mentioned as Chief Promoter and 10 other members names are written below it in his handwriting was confronted to him. He denied his handwriting, however accepted that he is ready to call the report of the handwriting expert in respect of the said document. Then the petitioners filed application requesting the Trial Court to forward the said document along with the handwriting of the defendant no.1 to the handwriting expert. The Trial Court has rejected the application. Hence, the present petition.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondents. Perused the memo of writ petition, annexures thereto and the impugned order.

5. The case of the petitioners is that the suit property was purchased in the name of Chief Promoter (defendant no.1) of the said Society of which the petitioners were members. It is further case of the petitioners that in the plaint the specific pleading is made by the petitioners that the defendant no. 1 has prepared list of the members of the said Society in his own handwriting. The said list is confronted to the defendant no. 1 during cross-examination and he has denied that it is in his handwriting. He has admitted that he is ready to call the report of the handwriting expert in respect of the said list, by giving his specimen handwriting. Considering these aspects and in view of the specific pleading of the petitioners, the said list has bearing on the issues in the matter.

6. The Trial Court has committed an error in arriving at a finding that list at Exh.96/3 is a half rough page on which names of 11 persons are entered and it does not bearing anybody's signature and the purpose for which it has been written and therefore it cannot be said to be a document.

7. The Trial Court has ignored the definition of document given under Section 3 of the Indian Evidence Act, 1872. Section 3 of the Indian Evidence Act, 1872 (hereinafter,

'Act of 1872') interprets 'Document' as "*Document' means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter.*" In the illustration, it is stated that "*writing*" is a document. Therefore, the said finding of the Trial Court that the rough page on which names of 11 persons are written and since it does not bear signature and the purpose for which it has been written cannot said to be a document, is perverse and unsustainable in law and in the facts of the case. Since the said document is relevant for effective adjudication of the dispute between the parties, the handwriting expert's report would enable the Trial Court to arrive at just decision of the matter. In the result, the following order is passed.

ORDER

- (i) Writ petition is allowed.
- (ii) The impugned order dated 13.07.2022 passed by the learned 18th Jt. Civil Judge Senior Division, Ahmednagar below Exh.158 in Special Civil Suit No.60 of 2011 is quashed and set aside.
- (iii) The application at Exh.158 is allowed.
- (iv) Trial is expedited.

- (v) Parties to co-operate for early disposal of the suit.

[NITIN B. SURYAWANSHI]
JUDGE

GGP