



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3640 OF 2024

Sopan Ganpatrao Nagargoje ...Petitioner

Versus

Vivek S/o Yohan Dupte and Others ...Respondents

WITH

WRIT PETITION NO. 3733 OF 2024

Sopan Ganpatrao Nagargoje ...Petitioner

Versus

Benjamin S/o Yohan Dupte and Others ...Respondents

...

Mr. A. D. Gade, Advocate for Respondent Nos. 1 & 3 in
WP/3640/2024 & for all Respondents in WP/3733/2024

...

CORAM : R.M. JOSHI, J

DATE : JULY 25, 2024

PER COURT :

1. This motion is moved for speaking to minutes
of order dated 24.06.2024.

2. Learned Counsel for Respondents submit that
due to inadvertence after title clause his name is
remained to be mentioned. So also in Writ Petition No.
3733/2024 the name of Respondent is wrongly typed as
"Vivek S/o Yohan Dupte and Others" instead of "Benjamin

S/o Yohan Dupte and Ors".

3. This being inadvertent error, the prayer for speaking to minutes is allowed. Corrected order be uploaded.

(R. M. JOSHI, J.)

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(This order is corrected pursuant to speaking to minutes order dated 25.07.2024)

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WITH
WRIT PETITION NO. 3733 OF 2024

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versus

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Mr. M. V. Nagargoje, Advocate for the Petitioner.

**Mr. A. D. Gade, Advocate for Respondent Nos. 1 & 3 in
WP/3640/2024 & for all Respondents in WP/3733/2024**

Mr. S. P. Kale and Mr. R. D. Kawade, Advocates for Respondent No.
2 in WP/3640/2024

CORAM : R. M. JOSHI, J.

DATE : 24th JUNE, 2024.

PER COURT :

1. In these Petitions, the original Plaintiff in Regular Civil Suit Nos. 56/2007 and 57/2007 seeks to challenge the orders passed below applications filed by Defendant No. 1 to refer the disputed signature of Defendant No. 1 over the respective agreements to sale and receipt to the Handwriting Expert for

examination and opinion.

2. Learned counsel for Petitioner submits that Defendant No. 1 without entering into witness box and without substantiating his case about dispute in respect of the documents in question came to be permitted to seek appointment of Handwriting Expert for his opinion thereon. It is his submission that considering the stage of the suit at which the applications are filed, the same ought to have been rejected by the Trial Court.

3. For want of any dispute made with regard to the above facts by the Respondents, it needs to be recorded that the suit is at the stage of recording of evidence of Plaintiff. Defendant is yet to state his defence on oath. Defendant is required to prove his case by leading substantive evidence. It is trite that Handwriting Expert can only express his opinion, which is not conclusive and will have to be considered by taking into account entire evidence and overall circumstances. This Court, therefore, finds substance in the contention of learned counsel for the Petitioner that learned Trial Court has committed an error in allowing the applications at this stage without Defendant no. 1 substantiating his case by leading atleast is own evidence.

4. In view of above discussion, the impugned orders cannot sustain and hence stand set aside. It is clarified that if it is permissible in the facts and circumstances of the case, Defendant No. 1 may revive his application at appropriate stage.

5. Both the Petitions stand disposed of in above terms.

(R. M. JOSHI)
Judge

dyb