

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

Writ Petition No. 2784 of 2024

Sanjay Appaso Swami ... Petitioner.
V/s.

Nayna Gajanan Phadke
since deceased through Lrs and ors. ... Respondents.

Mr. Rahul P. Walvekar	Advocate for the Petitioner
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CORAM : S.M. MODAK, J

DATE : 14 October 2024.

P.C. :

Heard learned Advocate for the Petitioner-Plaintiff.

2. The correctness of the order passed on an application filed by the Plaintiff is challenged. There are two prayers in the said application. They are as follows:-

- (i) Plaintiff wants examination of signature of defendant No.1 Naina Gajanan Phadke on various documents through hand-writing experts.
- (ii) The plaintiff wants the direction to the treasury department, Kolhapur for knowing from which stamp vendor the stamp paper of Rs.100/- (for the document dated 16 August 1983) and stamp paper of Rs.20/- (for document dated 17 October 2001) were purchased.

3. Both were rejected by the trial Court. The reason will find place in Para Nos.5,6 and 7. They are as follows:-

- (i) There is no reference in the pleadings of the plaintiff about the so called agreement dated 16 August 1993 and subsequent documents.
- (ii) The defendant *inter se* have admitted about these documents. Application is filed to prolong the suit.
- (iii) It is pre mature to call the stamp from the stamp department.
- (iv) The say would be when the defendant would enter into witness box, the application would have been filed at a subsequent stage.

4. The plaintiff's suit is for specific performance of agreement for sale dated 18 October 1985. There is also a prayer for declaration of notice dated 19 January 2007 issued by defendant No.1 as illegal and null and void. It is an admitted fact that the documents whose examination is sought are not pleaded in the plaint and explanation is offered that they are pleaded in the written-statement filed by defendant No.1. The contention is if these documents will stand, it will affect the right, title and interest of the plaintiff (sought to be enforced on the basis of agreement for sale dated 18 October 1985).

5. Plaintiff himself has pleaded in the application that the signature appearing on all these documents of defendant No.4 and of Yamuna Laxman Mali are of different persons. I think best persons who can tell whether signature belongs to them can be the persons who have signed (or the person who is conversant with those signatures). It is no doubt true that a person who wants to challenge the execution has got the right to examine those documents through hand-writing expert but unfortunately for challenging these documents there is no foundation in the plaint. If it is not so then plaintiff cannot seek the assistance of the Court for examination of these documents through hand-writing expert.

6. The information about sale of two stamp papers one of Rs.100/- and another Rs.20/- is sought by way of another prayer.

7. My attention is invited to letter dated 27 June 2007 issued by the Joint District Registrar to one Nilesh Mohan Sawant. It is informed that stamp paper bearing No.565 for Rs.30/- was not sold by any stamp vendor from Kolhapur District (in the prayer clause stamp paper of Rs.20/- is wrongly typed. In fact it should be Rs.30/-) If such information is received, no purpose will be served by seeking information through Court. When another stamp paper dated 16 August 1983 for Rs.100/- will be tendered in evidence, the plaintiff is at liberty to cross-examine the concerned witness on this aspect.

8. I do not find any interference is required. With the above observations, writ petition is dismissed.

(S.M. MODAK, J.)