



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

Writ Petition No.847 of 2024

M/S LUCKY DEVELOPERS AND BUILDERS YAVATMAL, THR. PARTNERS,
SUBHASH S/O DAYARAMJI RAI AND ANOTHER

VS

SHRI BALAJI MANDIR DEOSTHAN TRUST, PULGAON, THR. ITS
TRUSTEES, KESHAV PURSHOTTAM DANDEKAR AND ORS

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.P. Dhruv, Advocate for the Petitioner/s

CORAM : ANIL S. KILOR, J.

DATED : 23.02.2024

1. Heard.
2. This petition takes exception to the orders below Exhs.220 and 222 dated 03.02.2023 and 04.04.2023, respectively, passed by the Jt. Civil Judge Senior Division, Wardha in Spl. Civil Suit No.178 of 2011.
3. The order below Exh.220 was passed on the application moved by the petitioner/defendant No.5 for issuance of witness summons to the Hand Writing Expert, as the plaintiff has disputed the signature on the sale deed dated 02.05.2000 in respect of the suit property executed in favour of the defendant Nos.1 and 2.
4. The application Exh.222 was filed by the petitioner/defendant No.5 for issuance of summons to Hasmukhlal Thakkar to produce the original sale deed dated

21.04.1988, executed by the plaintiff in favour of Mr Hasmukhlal Thakkar.

5. The learned trial Court, while rejecting the application Exh.220, has recorded the following observations:

“5. At the outset, it is an admitted fact that the suit property was owned by the plaintiff-Trust. It is to be noted that defendant No.5 claims the title to the suit property through defendant Nos.3 and 4 whereas defendant Nos.3 and 4 claim the title through defendant Nos.1 and 2. According to the plaintiff, no sale-deed was ever executed by it in favour of defendant Nos. 1 and 2. The alleged sale-deed dated 02.05.2000 was never registered in the Sub-Registrar Office. No permission was ever granted by the Joint Charity Commissioner for execution of the sale-deed. This is the reason, none of the defendants have produced on record the original sale-deed dated 02.05.2000.

6. Since, the original sale-deed is not produced on record, it is obvious that such original sale-deed was not sent for report of handwriting expert about the genuineness of the signature. Mr. Dhruv has submitted in this regard that Mr. Ulhas Athwale, being private practitioner, he is first required to be summoned in court. Thereafter, with the permission of the court, he would take photographs of disputed and admitted signatures. After analysis, he would submit his report.”

6. Considering the above referred observations, I have no hesitation to hold that no error has been committed by the learned trial Court in rejecting the application Exh.220 for the reason that, unless the original document and the signature is brought on record, it is difficult to give any opinion by any expert by comparing the signatures. The learned trial Court has rightly denied the prayer saying that it is difficult to get a definite opinion by asking the Hand Writing Expert to examine signatures available on photocopy.

7. As far as the Exh.222 is concerned, the learned trial Court has observed thus:

“4] At the outset, it is to be noted that Mr.Hasmukhlal Thakkar is not a party to the suit. It is also not case of defendant No.5 that Mr.Hasmukhlal Thakkar has ever agreed in writing to produce the title-deed in this suit. This being the position, section 130 of the Indian Evidence Act restricts power of this court to order production of title-deed of a witness who is not party to the suit. Section 130 is reproduced below for ready reference;

130. Production of title-deeds of witness not a party-

No witness who is not a party to a suit shall be compelled to produce his title deeds to any property, or any document by virtue of which he holds any property as pledgee or mortgagee, or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.”

8. Considering the finding recorded by the learned trial Court while rejecting the application Exh.222, the learned trial Court has rightly appreciated the provision of Section 130 of the Indian Evidence Act and as such, I do not find any reason to interfere with it.

9. Having held that the learned trial Court has rightly rejected the both the applications Exhs.220 and 222 filed by the petitioner, the writ petition is **dismissed**.

[ANIL S. KILOR, J.]