

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA

Civil Revisional Jurisdictionn

Appellate Side

Present :

The Hon'ble Justice Hiranmay Bhattacharyya

C.O. 1777 of 2025

**Smt. Jaba Goswami
-Versus-
Nemai Chandra Sardar**

For the petitioner : Mr. Aninda Sarkar.

For the Opposite parties : Mr. Dyutiman Banerjee.
Mr. Arnab Sinha.

Heard On: : 12.06.2025 & 02.07.2025.

Judgment On: : 02.07.2025.

Hiranmay Bhattacharyya, J.

This application under Article 227 of the Constitution of India is at the instance of the plaintiff and is directed against an order being no. 61 dated March 24, 2025 passed by the learned Civil Judge (Junior Division), 2nd Court at Alipore in Title Suit No. 158 of 2013.

By the order impugned the application filed by the petitioner under Order 26 Rule 10A of the Code of Civil Procedure praying for appointment of a hand writing expert for comparison of the signature of the defendant/opposite party herein with her signature appearing in the agreement for sale was rejected.

The learned advocate appearing for the petitioner submits that the opposite party herein entered into an agreement with the petitioner for the purpose of sale of the property in question. He submits that in the evidence the DW-1 has stated that the signature on exhibit 'A' is not her signature.

Mr. Banerjee, learned advocate appearing for the opposite party submits that the learned trial judge has compared the signatures of DW-1 in the agreement for sale as well as the deposition sheet and observed that two signatures are different and the person appearing as DW-1 did not sign on the document marked as exhibit 'A'.

The petitioner filed a suit for specific performance of contract wherein it has been stated that the opposite party herein was in need of money and for which he executed one agreement for sale with the petitioner for selling the property on 18th December, 2002. The opposite party in the written statement has specifically stated that the plaintiff and her husband compelled the defendant to sign in some blank/stamp papers and the plaintiff with a malafide intention has converted that paper into the alleged sale agreement.

After going through the averments made by the opposite party in the written statement it appears to this Court that the opposite party admitted to have put her signature on some blank /stamp papers which, according to the opposite party, was converted into the impugned sale agreement. However, the opposite party in her evidence has denied her signature on the agreement for sale.

It is not in dispute that Section 73 of the Evidence Act permits the Court to compare the admitted signature with the disputed one and for such purpose the Court may also direct any person present in court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

Section 45 of the Evidence Act states that when the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts, such persons are called experts.

Though there is no legal bar in comparing the disputed signature with the admitted signature by a Judge using her own eyes, it is well settled that courts should not normally take upon itself the responsibility of such comparison and should be slow in

basing his findings with regard to the identity of the signatures solely on such comparison made by itself.

It is also well settled that while arriving at a decision as to identity of signature, it is prudent to obtain the opinion and assistance of experts in the field.

This Court is, therefore, of the considered view that even though the Court has the power to compare the admitted signature with a disputed one but in order to form an opinion in this regard an expert ought to have been appointed more particularly in view of the specific defence case that the defendant had put her signature on some blank papers which was subsequently converted into the impugned sale agreement.

It is also well settled that the report of a hand- writing expert is only a piece of evidence which will be considered by the court along with other evidences at the time of final adjudication of the suit.

For such reason, this Court is inclined to interfere with the order impugned. Accordingly, the order impugned stands set aside. The application for hand writing expert stands allowed.

The trial judge is directed to pass a consequential order pursuant to this order by sending the disputed signature and the admitted signature to the handwriting expert to be appointed by the learned trial judge.

With the above observations and directions, C.O. 1777 of 2025 stands disposed of.

There shall be, however, no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Hiranmay Bhattacharyya, J.)