



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4321 OF 2024
IN WP/714/2019

Prakash Valudas Vaishnav
VERSUS
Subhash Gopinath Chavan

- Ms. S. L. Bhilange, Advocate for the Applicant/Petitioner
- Mr. N. N. Bhagwat h/f Mr. S. D. Bhagwat, Advocate for the Respondent No. 1

CORAM : R. M. JOSHI, J
DATE : OCTOBER 09, 2025

PER COURT :

1. For the reasons mentioned in the application and by consent of both sides, application stands allowed.

2. By consent of both sides, Petition is taken up for hearing at the stage of admission.

3. This Petition takes exception to the order passed below Exh. 57 dated 29.09.2018 whereby the application filed by the Plaintiff for seeking documents to handwriting expert came to be rejected, so also application Exh. 65 under Order VI, Rule 17 of Code of Civil Procedure for amendment to the plaint.

4. The facts on record indicates that the Petitioner/Plaintiff filed suit bearing RCS No. 253/2012 for declaration that the document in question is not a sale deed but a mortgage. The written statement filed by the Defendant indicates that the execution of the documents is not in dispute. With these averments, parties started their evidence before Trial Court.

5. An application Exh. 57 came to be filed by the Plaintiff by sending one receipt to the handwriting expert along with the admitted signatures of the Defendant on record. This application came to be rejected by the Trial Court with observations that there are no comparable signatures, as such, there is no purpose in sending the same to the handwriting expert.

6. An application Exh. 65 came to be filed by Plaintiff under Order VI, Rule 17 of Code of Civil Procedure, which came to be dismissed on the ground that this application is sought to be filed belatedly and only after cross-examination of the Plaintiff was

done in this regard.

7. Learned Counsel for the Petitioner/Plaintiff submits that the Trial Court committed error in rejecting the application Exh. 57 in spite of the fact that the Defendant had disputed the signatures on document in question. It is her further submission that the Trial Court ought to have been taken into consideration the provision of Section 73 of the Indian Evidence Act before rejecting the application. On Exh. 65, it is her contention that the nature of the suit is not likely to be changed by amendment sought. It is further argued that in view of the judgment of Hon'ble Supreme Court in case of Revajeetu Builders and Developers vs. Narayanswamy and Sons and Others, (2009) 10 SCC 84, the application ought to have been allowed.

8. Learned Counsel for Respondent supported the impugned orders. It is his contention that the evidence is over and the proceedings before the Trial Court is at the stage of arguments.

9. As far as Exh. 57 is concerned, perusal of the application indicates that the Plaintiff was seeking

examination of the receipt disputed by the Defendant from the handwriting expert by comparing the signature of the Defendant on admitted documents i.e., written statement and vakalatnama. As rightly observed by the Trial Court that the disputed signature of receipt dated 23.05.2004 is in Marathi language whereas admitted signatures on the written statement and vakalatnama is in English language. No fault can be found with the said observations of the Trial Court as those three signatures do not become comparable. Hence, question of referring these documents to the handwriting would have been futile exercise. Consequently, Trial Court has rightly rejected the application.

10. In so far as application under Order VI, Rule 17 of CPC is concerned, in the judgment cited supra it is held that the amendment, which causes prejudice to the other side and cannot be compensated adequately in terms of money, cannot be allowed. Here in this case, as rightly observed by the Trial Court, the amendment is sought in respect of material pleadings which are referred to in the cross-examination by pointing out

the document in question. Thus, after obtaining the answers from the Plaintiff on the said document, if the pleadings are sought to be amended, the prejudice will cause to the Defendant which cannot be compensated in terms of money. Consequently, this Court finds no perversity in the order impugned.

11. In view of above discussion, Petition stands dismissed.

(R. M. JOSHI, J.)