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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 249 OF 2025

Bajirao Sudam Khandave Deceased
Through LRs

.....Appellants

Vs.

Vasant Kerba Nawale and ors

.....Respondents

Mr. Vineet B. Naik, Senior Advocate a/w Ms. Gunjan Jyakar, Mr.
Miheer Jayakar for the appellants

CORAM : GAURI GODSE, J.

DATE : 28th MARCH 2025

ORDER:

1. Heard learned counsel for the appellants. This appeal is preferred by the plaintiff to challenge the concurrent judgments and decrees refusing to grant specific performance of a contract which according to the plaintiff was executed by defendant no. 1. The plaintiff filed a suit based on an agreement termed as Visar Pavti dated 14th March 2011 signed by defendant no. 1. Defendant no. 1 is mother of defendant nos. 2 to 6f. During the pendency of the suit, defendant no. 1 expired. However, she had filed written statement denying the

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execution of the agreement. Both the Courts disbelieved the execution of the agreement and refused to grant specific performance.

2. Learned senior counsel for the appellants submits that both the Courts compared the signature and thumb impression of defendant no. 1 on a gift deed that was executed by defendant no. 1 in favour of defendant nos. 4 to 6 with the suit agreement. He submits that both the Courts instead of comparing the signatures and thumb impressions on both the documents, ought to have called for an expert opinion as contemplated under Section 73 of The Indian Evidence Act. He submits that defendant no. 1 had expired and hence, it was not possible to examine her for proving the signature and the thumb impression. He, further, submits that the attesting witness to the agreement was examined. Hence, in these facts, it was more appropriate for the Courts to call for an expert opinion. To support his submissions, learned senior counsel for the appellants relied upon the decision of the Hon'ble Apex Court in the case of *The State (Delhi Administration) vs. Pali Ram*¹. He submits that though the learned Judge can compare the writings for arriving at a conclusion, the Hon'ble Apex Court held that it is as a matter of prudence and caution

¹ (1979) 2 Supreme Court Cases 158

that the aid of evidence of hand writing expert is taken for arriving at a conclusion. He, thus, submits that in the absence of any evidence of defendant no. 1, it would have been appropriate not to compare the signature and the thumb impression from the two documents, but to call for an expert opinion. He, thus, submits that the second appeal would require consideration on the applicability of Section 73 of The Indian Evidence Act and the requirement to call for an expert evidence for recording findings on the validity of the execution of the suit agreement.

3. I have considered the submissions made on behalf of the appellants. A perusal of both the judgments indicate that defendant no. 1 had denied execution of the agreement relied upon by the plaintiff. The plaintiff contended that Visar Pavti was executed by defendant no. 1 for Rs. 11 Lakhs. An amount of Rs. 75,000/- was paid by cash towards earnest amount. To prove the execution of the agreement, evidence was led on behalf of the plaintiff and the attesting witness. Considering the execution of the registered document of a gift deed by defendant no. 1, the trial Court found it appropriate to compare the signature and thumb impression on the admitted document of gift deed and the suit agreement. The trial Court disbelieved the execution of

the suit agreement by comparing the signature and the thumb impression on the gift deed and the Visar Pavti. Considering the difference in the two signatures, the trial Court refused to accept it as a genuine document.

4. The first Appellate Court confirmed the findings of the trial Court and disbelieved the execution of the agreement. The plaintiffs admittedly did not file any application for appointment an expert for comparison of the signatures and the thumb impression. There is no absolute proposition that for arriving at an opinion on the signature for the purpose of validity of the execution of the document, an expert opinion has to be called for. A comparison of the signature based on the document on record is permissible as contemplated under Section 73 of The Indian Evidence Act. The observations by the Hon'ble Apex Court in the decision relied upon by the learned senior counsel for the appellants also refers to the permissible comparison by a Judge based on the documents on record or comparing the admitted writing with the disputed one. Defendant no. 1's admitted signature was available with the Court by way of registered gift deed which was on record. Hence, I do not see error in the comparison done by the learned trial Court for arriving at the conclusion on the validity of the agreement, based on

the difference in the signature of defendant no. 1 on the admitted document and the suit agreement.

5. Considering the documents on record and the oral evidence, the first Appellate Court has confirmed the trial Court's findings. In view of the facts of the present case, the legal principles settled in the decision of the Hon'ble Apex Court would not be of any assistance to the arguments raised on behalf of the appellants. I do not find any error or illegality in the reasons recorded by both the Courts in disbelieving the execution of the agreement. Hence, the grounds raised on behalf of the appellants would not require any consideration by this Court.

6. The second appeal does not raise any question of law. Hence, the second appeal is dismissed.

[GAURI GODSE, J.]