



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2768 OF 2025**

Balu @ Vijay Prabhakar Avasarkar and Ors. ... Petitioners
versus
Shirish Baburao Gujar and Anr. ... Respondents

Mr. Sachin Gite, for Petitioners.

CORAM: N.J.JAMADAR, J.

DATE : 3 MARCH 2025

P.C.

1. Heard the learned Counsel for the Petitioners.
2. This Petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order dated 16 October 2024 passed by the learned Civil Judge, Jr. Division, Sinnar, Nashik, whereby the application (Exhibit 116) preferred by the Petitioners – Defendants to send a document titled as 'Agreement' for the opinion of the hand-writing expert, came to be rejected.
3. Respondent No.1 has instituted a suit for perpetual injunction to restrain the Defendants from causing obstruction to the possession of the Plaintiff over the suit property as a tenant thereof. It was alleged that during the pendency of the suit, the Plaintiff was unlawfully and forcibly dispossessed, and, therefore, a decree for restoration of possession was also sought. It is the case of the Defendants that during the pendency of the suit, while the Plaintiff

was incarcerated in prison in connection with a proceeding, the father of the Plaintiff had executed an agreement and delivered the possession of the suit property. Since the Plaintiff disputed the execution of the said agreement and Baburao Gujar, father of the Plaintiff has passed away and two of the witnesses to the said agreement have also passed away, it was necessary to have the genuineness of the signature on the said document ascertained by sending the same to the hand-writing expert.

4. The learned Civil Judge was persuaded to reject the application as the evidence of the Plaintiff has yet not been completed and the Defendants were yet to adduce their evidence.

5. Mr. Gite, learned Counsel for the Petitioners, invited attention of the Court to the issues which have been settled. Issue No.3 casts burden on the Defendants to establish that, by executing the said agreement dated 24 January 1997, the Plaintiff's father had cancelled the lease deed. In these circumstances, the Defendants were required to seek an expert opinion, urged Mr. Gite.

6. Evidently, Defendants No.1 – Prabhakar, is one of the parties to the said agreement. The evidence of the Plaintiff is yet to be recorded, in the sense that the cross-examination of the Plaintiff was not over. It does not appear that the Plaintiff has been confronted with the said document, or for that matter, the signature of the father of the Plaintiff on the said document

during the course of the cross-examination. Nor the Defendants have adduced their evidence. At this stage, where the parties have yet not adduced evidence and, particularly, the Defendants have not made attempt to discharge the burden to prove the said document in evidence, the learned Civil Judge was justified in rejecting the application to send the document for the opinion of the hand-writing expert.

7. Thus no interference is warranted in exercise of supervisory jurisdiction.
8. The Writ Petition stands dismissed.

(N.J.JAMADAR, J.)