



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5441 OF 2024

PETITIONER :

(Orig. Plaintiff)

Sau. Pujabai Gajanan Tayade,
Aged about 52 years, Occ. Business,
R/o. Godbole Plot, Dabki Road,
Akola, Tq. and Dist. Akola,
Through her Power of Attorney Holder
Gajanan Motiram Tayade,
Aged about 60 years, Occ. Business,
R/o Godbole Plot, Dabki Road,
Akola, Tq. Dist. Akola.

V E R S U S

RESPONDENT :

(Orig. Defendant)

Raju Lalchandji Bundeale,
Aged about 60 years, Occ. Business,
R/o. Old City, Shriwastav Chowk,
Akola, Tq. and Dist. Akola.

Shri P. A. Deshpande, Advocate for petitioner.

Shri J. B. Gandhi, Advocate for respondent-sole.

CORAM: SMT. M.S. JAWALKAR, J.

DATE : 17/02/2025.

ORAL JUDGMENT :

1. **Rule.** Rule is made returnable forthwith.
2. Heard finally with the consent of learned counsel appearing for the parties.
3. It is matter of record that earlier defendant/respondent has filed an application for sending the documents of Agreement to Sale to the Handwriting Expert for comparing the signature available on record.

4. The plaintiff filed a suit for specific performance of contract on the basis of Agreement to Sale dated 14/08/2018. The defendant has specifically denied the execution of Agreement to Sale.

5. It is the contention of defendant that Agreement to Sale is forged by the plaintiff. It is not signed by the defendant. This application came to be rejected by learned Civil Judge, Senior Division, Akola on the ground that admittedly, plaintiff has filed photocopy of Agreement to Sale and according to him, the said original document is in custody and possession of the defendant.

6. Learned Civil Judge, Senior Division, Akola further observed that the photocopy of Agreement to Sale and other admitted signatures on original documents, if sent for obtaining the expert opinion, there will not be effective comparison between the original documents and its photocopies. It is observed that since there is no original Agreement to Sale on record, it is impossible to obtain the expert opinion. Thereafter, the defendant again filed an application on the same ground. However, in this application, the defendant relied upon the opinion given by the Handwriting Expert that the Handwriting Expert can give his opinion by comparing signature in the photocopy of the document.

7. Learned counsel for the defendant placed on record the opinion of private Handwriting Expert about examination and comparison with photocopy. Learned Civil Judge, Senior Division, Akola allowed his application and granted permission to the defendant to obtain the report of the Handwriting Expert from Shri Ulhas Athalye about the signature on copy of Agreement to Sale dated 14/08/2018. The expert is permitted to take photograph of disputed signature on Agreement to Sale and other admitted documents from the record of the suit.

8. In my considered opinion, in absence of any affidavit or letter, the order ought not to have been passed. Even if the learned Civil Judge, Senior Division, Akola is of the opinion that such opinion of Handwriting Expert can be sought it ought to have obtained from any Government Agency like Deputy Director / Deputy Superintendent of Police (FP) Finger Print Bureau to compare the same. As such, the order is passed below Exh.43 cannot sustain in the eyes of law.

9. Learned Civil Judge, Senior Division, Akola is hereby directed to consider the application Exh.43 by granting opportunity to both the parties and also, if at all, he comes to any conclusion, it would be appropriate to send the photocopy of

document to the Handwriting expert of any State Agency. Learned Judge may send document to Deputy Director / Deputy Superintendent of Police (FP) Finger Print Bureau to compare.

10. The parties to appear before the learned Civil Judge, Senior Division, Akola on 25/02/2025.

11. Rule is made absolute in above terms.

[SMT. M.S. JAWALKAR, J.]