

Order below Exhibit No.237 in Reg. Civil Suit No.22/2009.
(CNR No. : MHDH06-000565-2009)

This is an application filed by defendant No.1 to 4 for referring the document agreement to sale Exh.174 to hand writing expert for verify the genuineness of signatures of deceased Daga Bhaidas Patil and plaintiff No.2 bears upon agreement to sale Exh.174.

2. It is contentions of the defendant No.1 to 4 that deceased Daga Bhaidas Patil and plaintiff No.2 have executed agreement to sale Exh.174 in favour of defendant No.1. Deceased Daga Bhaidas Patil and plaintiff No.2 had signed the said agreement to sale. It is further contended that plaintiffs have denied the signatures of deceased Daga Bhaidas Patil and plaintiff No.2 bears upon agreement to sale Exh.174. It is further contended that during cross-examination of plaintiff No.1 she has also denied the signature of deceased Daga Bhaidas Patil and plaintiff No.2 when said document confronted to plaintiff No.1 during her evidence. Therefore, the signatures of deceased Daga Bhaidas Patil and plaintiff No.2 bears upon agreement to sale Exh.174 become disputed signatures. It is further contended that therefore, the said agreement to sale Exh.174 requires to be sent to hand writing expert to verify genuineness of signatures of deceased Daga Bhaidas Patil and plaintiff No.2. It is further contended that it will assist to find out the truth. It is further contended that plaintiff No.2 has signed plaint Exh.1 and Vakalatnama Exh.2 therefore, the signatures of plaintiff No.2 bears upon plaint Exh.1 and Vakalatnama Exh.2 are admitted

signatures. Therefore, the said admitted signatures and signature bears upon agreement to sale required to be sent to hand writing expert.

3. Defendant No.1 to 4 have further contended that the admitted signatures of deceased Daga Bhaidas Patil are brought on record by them in evidence of witness Dnyaneshwar Hari Deore by producing document i.e. affidavit of deceased Daga Bhaidas Patil at Exh.203. The said affidavit Exh.203 submitted by deceased Daga Bhaidas Patil to office of Chimthane Co-operative Society. The said affidavit Exh.203 bears signatures of deceased Daga Bhaidas Patil and said document is proved by witness Dnyaneshwar Deore in his evidence before the Court. Therefore, the signatures of deceased Daga Bhaidas Patil bears upon affidavit Exh.203 are his admitted and proved signatures. On these grounds defendant No.1 to 4 have prayed for sent the agreement to sale Exh.174 along with admitted signatures of deceased Daga Bhaidas Patil and plaintiff No.2 to hand writing expert.

4. Plaintiffs have strongly opposed to this application by filing their say below this application itself. It is contended by them that the application is illegal and not tenable. The defendant No.1 to 4 have filed this application at belated stage and the matter is old one. Defendant No.1 to 4 have filed this application with intention to prolong the matter. Lastly, they have prayed for rejection of the application.

5. Perused the application and say filed thereon. Heard

both side. The present suit is filed by the plaintiffs for perpetual injunction and possession contending that they are owners of the suit property and it was in their possession. The defendant No.1 to 4 have forcibly taken the possession of the suit property during the pendency of the suit, therefore, they have prayed for relief of recovery of possession of suit property.

6. On the contrary defendant No.1 to 4 have raised defence that the deceased Daga Bhaidas Patil and plaintiff No.2 have executed agreement to sale in respect of suit property in favour of defendant No.1 on 14/03/1986. They have also handed over the possession of the suit property to defendant No.1 at the time of said agreement to sale. It means it is defence of the defendant No.1 to 4 that the suit property is in their possession as per agreement to sale Exh.174. The plaintiffs have denied execution of said agreement to sale Exh.174. They have also denied the signatures of deceased Daga Bhaidas Patil and plaintiff No.2 bears upon said agreement to sale Exh.174.

7. It is contentions of the defendant No.1 to 4 that deceased Daga Bhaidas Patil had executed agreement to sale Exh.174 in favour of defendant No.1 and as per said agreement to sale the suit property is in their possession. Therefore, the burden lies on the defendant No.1 to 4 to prove this fact.

8. Initially, the defendant No.1 to 4 have filed application below Exh.146 for sending agreement to sale Exh.174 to hand writing expert. The said application came to be rejected. Thereafter, defendant No.1 to 4 challenged order passed below

Exh.146 by filling Writ Petition No.212/2015 before Hon'ble High Court. In this Writ Petition the Hon'ble High Court disposed Writ Petition on the ground that till the said document not confronted to the plaintiffs in their evidence. It is further observed by Hon'ble High Court that after evidence the defendants may again request for referring said document to hand writing expert and said application be decided on its merit.

9. From the perusal the order below Exh.146, it appears that the said application is not decided on merit but it is rejected on the ground that the defendants have filed application at belated stage with intention to prolong the matter. Therefore, the present application can be decided on merit as per order of Hon'ble High Court.

10. In the present suit the burden lies on defendant No.1 to 4 to prove the agreement to sale Exh.174. The plaintiffs have denied the signatures of deceased Daga Bhaidas Patil and plaintiff No.2 bears upon agreement to sale Exh.174. The said document Exh.174 confronted to plaintiff No.1 during her evidence, even though she has denied the signatures of deceased Daga Bhaidas Patil and plaintiff No.2 bears upon the said document. Actually, Daga Bhaidas Patil has executed said document and plaintiff No.2 Himmat Daga Patil also signed same. Admittedly, Daga Bhaidas Patil is died. Plaintiffs have not examined plaintiff No.2 as a witness, therefore, the opportunity could not get by defendant No.1 to 4 to confront said disputed document to plaintiff No.2 to prove the signatures of plaintiff

No.2 as well as deceased Daga Bhaidas Patil. Therefore, opportunity should be given to defendant No.1 to 4 to prove their case. Defendant No.1 to 4 have relied on the Judgment of Hon'ble Bombay High Court in case of **Srikant Balwant Nalawade Vs. Bajrang Yashwant Nimbalkar & Others reported in 2014(4) ALL MR 302.** In this Judgment Hon'ble Bombay High Court directed to sent signatures to the hand writing expert observing that it is just and proper to bring the truth on record.

11. Defendant No.1 to 4 wants to take assistance of hand writing expert to prove the signatures of deceased Daga Bhaidas Patil and plaintiff No.2 Himmat Daga Patil bears upon agreement to sale Exh.174. The plaintiffs have denied the said signatures in their pleading and evidence. Therefore, the signatures of deceased Daga Bhaidas Patil and plaintiff No.2 Himmat Daga Patil bears upon agreement to sale Exh.174 are become disputed signatures. In such situation to find out the truth it is necessary to refer said document agreement to sale Exh.174 to hand writing expert to verify whether the admitted signatures of deceased Daga Bhaidas Patil and Plaintiff No.2 Himmat Daga Patil are same or matches to their disputed signatures bears upon agreement to sale Exh.174.

12. The plaintiffs have filed Plaint Exh.1 and Vakalatnama Exh.2 which bears the signatures of plaintiff No.2. Therefore, the said signatures can not be said that it is disputed. Therefore, the said signatures of plaintiff No.2 bears upon plaint Exh.1 and

Vakalatnama Exh.2 are admitted signatures of plaintiff No.2. The defendant No.1 to 4 have brought on record original affidavit Exh.203 of deceased Daga Bhaidas Patil which was submitted before Chimthane Co-operative Society. The signatures of deceased Daga Bhaidas Patil bears upon affidavit Exh.203 are proved by witness Dnyaneshwar Deore. The said affidavit Exh.203 submitted by deceased Daga Bhaidas Patil in the office of Chimthane Co-operative Society for the purpose of obtaining loan. Therefore, it can be said that signatures of deceased Daga Bhaidas Patil bears upon affidavit Exh.203 are his admitted and proved signatures. Therefore, the admitted signatures of plaintiff No.2 Himmat Daga Patil bears upon Plaint Exh.1 and Vakalatnama Exh.2 and admitted signatures of deceased Daga Bhaidas Patil bears upon affidavit Exh.203 can be sent to hand writing expert for the purpose of comparing said admitted signatures with disputed signatures bears upon agreement to sale Exh.174. Hence, I proceed to pass the following order.

ORDER

1. Application Exh.237 is hereby allowed.
2. The original agreement to sale Exh.174 be sent to the Coordinator, Central Forensic Science Laboratory, Directorate of Forensic Science Services, Ministry of Home Affairs, Government of India. 38/4 Krushna Complex, Karadi Bypass Road, Pune – 411 014 (Mah) for ascertain following purpose -

- i) whether the disputed signatures of deceased Daga Bhaidas Patil bears upon the document agreement to sale Exh.174 are same or matches with his admitted signature bears upon affidavit Exh.203.
- ii) Whether the disputed signature of plaintiff No.2 Himmat Daga Patil bears upon document agreement to sale Exh.174 is same or matches with his admitted signatures bears upon Plaint Exh.1 and Vakalatnama Exh.2.
3. Defendant No.1 to 4 shall file demand draft of Rs.5,000/- Pre payable in favour of 'The Pay and Accounts Officer, D.C.P.W., M.S. Government Of India, New Delhi'.
4. The original Agreement to sale Exh.174, Affidavit Exh.203, Plaint Exh.1 and Vakalatnama Exh.2 be sent to hand writing expert and certified copies of all above mentioned documents kept on record.

(S. L. Vaidya)

Date :- 12/01/2021.

Civil Judge, J.D., Shindkheda

-: CERTIFICATE :-

I certify that the contents of this PDF File are word to word as per Original Judgment / Order.

Name of the Steno : N.C. More,

Name of the Court : Court of J.M.F.C., Shindkheda Dist. Dhule.

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Sd/- xxx
Stenographer.