

MHLA110001102012



Order below Exh.181 in RCS No.94/2012

Sharnappa Vs. Rajappa

By this application plaintiff has requested for calling upon the report of handwriting expert filed in Spl.C.S.No.47/2010, on the grounds stated in the application. The contents of application in short are:- That the plaintiff has filed present suit for cancellation of registered sale deed in respect of the suit properties mentioned in the plaint. That prior to filing of this suit the plaintiff has filed Spl.C.S.No.47/2010 and in the said suit the Court was pleased to call the opinion of government approved handwriting expert namely Dr. Shailesh S. Chandajkar. After due procedure the said handwriting expert has filed the report in the said proceedings but however due to the technical difficulties the plaintiff has withdrawn Spl.C.S. No.47/2010 with liberty to file fresh suit. However, as the said suit came to be withdrawn prior to examination of handwriting expert, the said report remained unexhibited.

2. That record and proceedings of Spl.C.S.No.47/2010 are on the verge of destruction and the report of handwriting expert which is part and parcel of said suit were also be destroyed. That the main controversy in the suit revolves around the registered sale deed and Kabuliyatnama, on which the defendant has denied signatures. For complete adjudication of the matter and to rest the controversies, it is necessary to call the opinion and the report of handwriting expert, which is still intact in Spl.C.S.No.47/2010. That this Court vide **Exh.50** has allowed the application to call the handwriting

expert Shri Shailesh Chandajkar, but the report given by him is lying in Spl.C.S.No.47/2010. In the interest of justice and to avoid the time for reappointment and calling the report of handwriting expert, it is desirable that the report of handwriting expert filed in Spl.C.S.No. 47/2010 be called. Hence, the application.

3. Defendants have filed their say and raised strong objections. The contents of their say in short are:- That the plaintiff is at liberty to obtain the copy of documents from concerned office and he is not prevented by any order from doing so. The plaintiff can obtain alleged document/report by filing appropriate steps and procedure. The alleged document/report has not relevancy with the suit and the said report is manipulated by the plaintiff as he is influential and economical strong person. The application is itself vague and the plaintiff himself has sought liberty to produce the said report at his own accord. On these and other grounds, the defendants have requested to reject the application.

4. Perused application and say. Heard learned advocate Shri J.K.Deshpande appearing for plaintiff, who tried to convince the Court as to how the report filed by handwriting expert in Spl.C.S.No.47/2010 is relevant and how it can save the time of this Court. Defendants failed to argue. I have perused record of the case and also considered rival submissions of both the learned counsels. Record shows that plaintiff has filed this suit for cancellation of sale deeds bearing registration Nos.359/2009 and 360/2009 both executed on 10/02/2009 in respect of the suit lands described in para No.4 of the plaint. It is the contention of plaintiff that he was in need of money and therefore he had obtained hand loan of Rs.2,90,000/- from defendant No.1 and at the instance of latter he executed nominal sale deeds of the suit lands in favour of defendant No.2

towards security of loan amount. It is further contended that defendant No.2 executed Kabuliyatnama, thereby admitting that after repayment of loan amount reconveyance will be made in favour of plaintiff.

5. Record further shows that the application filed by plaintiff at Exh.50 for issuing witness summons to handwriting expert Shri Shailesh Chandjekar came to be allowed by order dated 21/07/2014. However, the original report and the opinion of handwriting expert was filed in Spl.C.S.No.47/2010, which came to be withdrawn by plaintiff with liberty to file fresh suit. Now, the only issue before this Court is whether the report/opinion prepared by handwriting expert in Spl.C.S.No. 47/2010, which came to be disposed of, can be called in the present suit or not. From the contents of application, it reveals that the handwriting expert after following due procedure has examined the disputed document and has furnished his report in Spl.C.S.No.47/2010. In case, if the said report is not called in the present suit then plaintiff, who is a Septuagenarian, will again file similar application for examination of disputed signature of defendant No.2 on the disputed Kabuliyatnama and the present proceeding will be dragged for years together and it will ultimately result in protraction of trial. Whether the report of handwriting expert which is filed in Spl.C.S.No.47/2010 is manipulated, as alleged can be seen once it is filed in the present suit and in my considered opinion the defendants will have every opportunity to cross examine Shri Shailesh Chandajkar, who has prepared the report. In nutshell, I am of the opinion that no prejudice will be caused to defendants, if the report of handwriting expert is called in the present suit. However, if it is not done then grave injustice will be cause to plaintiff as he will be compelled to pay the

charges of handwriting expert for doing similar exercise as done in Spl.C.S.No.47/2010. To say the least, it will be a futile exercise. From the report of the concerned Clerk which is at **Exh.186**, it seems that the record of Spl.C.S.No.47/2010 is on the verge of destruction and the exercise of destroying the record will be carried out in the month of August-2023 i.e. next month. At last, the report/opinion of handwriting expert filed in Spl.C.S.No.47/2010 has relevancy with the present suit. If it would not have been the position then there was no reason for this Court to allow the application at **Exh.50**. For these reasons, I pass following order:-

ORDER

1. Application is partly allowed.
2. The report/opinion of handwriting expert forming part of Spl.C.S.No.47/2010 be called from record section and plaintiff is permitted to file the same in the present suit, subject to filing its photo-copy in Spl.C.S.No.47/2010.
3. Necessary correspondence, if required be made with the record section.
4. No order as to costs.

Order dictated and pronounced in open court.

Date : 25/07/2023

(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.