

**CNR NO. MHSI070000292016****Order passed below Exh. No.43
in R.C.S. No. 04/2016**

This is an application preferred by plaintiff under Order 26 Rule 10-A of the Code of Civil Procedure. (hereinafter in short referred C.P.C.)

2. The plaintiff has averred that plaintiff has filed the present suit to declare that sale deed executed in favour defendant bearing registration No. 150/1989 dated 23/05/1989 forged and fabricated. The defendant has filed written statement below Exh.10 and denied the contentions raised by the plaintiff. The said sale deed is filed below Exh.32/1. The defendant contents that the said sale deed bears signature of the plaintiff's deceased husband Shivaji Narayan Tari. Therefore, in order to ascertain that the said sale deed bears signature of plaintiff's husband or not, it is necessary to send the said sale deed to the hand-writing expert to compare signature of deceased Shivaji Narayan Tari with his original signature made with Janata Sahakari Bank which is at Exh.36/1. Therefore, prayed to allow the application.

3. The defendant has resisted the application by filing say on overleaf of the application. The defendant has contended that the plaintiff is having other option to prove signature on disputed sale deed. Therefore, prayed to reject the application.

4. Heard learned advocate Shri.U.B.Kulkarni for the defendant. Despite sufficient time and opportunity the learned advocate for the plaintiff has failed to argue on the application. Therefore, the application is decided without the argument of the learned advocate for the plaintiff. The learned advocate for the defendant submitted that Shivaji Narayan Tari was died, therefore, his specimen signature could not be obtained. Therefore, prayed to reject the application.

5. From the provision of Order 26 Rule 10-A of the C.P.C. it is clear that a discretion has been vested in the civil court to get any scientific investigation conducted only if it thinks necessary or expedient in the interest of justice. The basic rationale of the provision that if the opinion of the scientific investigation is going to help in extracting the truth and determining the controversy raised in the dispute before the court then such an investigation could be permitted. The basic idea is whether such scientific investigation is going to advance the cause of justice and would be necessary for adjudication for the rights of the parties.

6. When a document is alleged to be forged and one party specifically denies the signature on a document, such party should certainly have an opportunity to send the document to hand-writing expert for comparison with admitted signature. In the present case, the plaintiff has come with specific case that sale deed at Exh.32/1 did not bear signature of her husband. Accordingly, the plaintiff's claimed that the said sale deed is a

forged and fabricated. In order to prove the said fact, the plaintiff must have get an opportunity to furnish good material to support her claim. In order to prove the plaintiff's case, it is necessary to allow the present application. If the present application is refused, the plaintiff will not get fair chance to prove her case. In order to grant the chance of fair trial it would be just and proper to allow the present application.

7. So far as objection raised by the learned advocate for the defendant is concerned, it is not always required that in each and every case specimen signature and hand-writing should be furnished before the court. Section 73 of the Indian Evidence Act itself give an opportunity to compare disputed signature and hand-writing with the admitted signature and handwriting. Therefore, the contentions of the defendant is not having any merit that application could not be entertained due to demise of deceased Shivaji Narayan Tari. Thus, I am of considered opinion that the present application is liable to be allowed. Hence, I pass following order.

ORDER

1. The application at **Exh.43** is hereby allowed.
2. The plaintiff shall deposit necessary charges for the expert opinion, within the period of one month from the date of order, on failure to deposit necessary charges the right of the plaintiff would come to an end.

3. After receiving necessary charges the disputed sale deed at Exh.32/1 be sent to Handwriting Expert for comparison and opinion with signature made by the deceased with Janata Sahakari Bank at Exh. 37.
4. After receiving the said documents the handwriting expert shall give his opinion over the said documents regarding the similarity or dissimilarity of signature made on the said documents.
(Pronounced and dictated in open Court.)

Place : Malvan
Date : 27/11/2024

Mahesh R. Devkate
Judicial Magistrate F.C., Malvan.