

Order Below Exh. 30 in R.C.S. No. 1552/2015
(Prakash Mahadik Vs. Nitin Mahadik etc.)
MH SO110043102015

1. This application is filed by the defendant no.5 praying that the disputed will dated 16.07.2011 and the sale deed dated 27.01.1981 be sent for examination to the Handwriting expert.

2. The defendant contends that the plaintiff has filed this suit for declaration and partition. The defendant nos.1 and 2 are claiming right over the suit property on the basis of the alleged will dated 16.07.2011 executed by their father Sukhdeo Shankar Mahadik. However, the plaintiff and the defendant no.5 have challenged the validity of the said will and signature thereon. However, the sale deed dated 27.01.1981 bears signature of Sukhdeo Shankar Mahadik which is admitted to the defendant no.5. Therefore, it is necessary to compare the signatures of the Sukhdeo Shankar Mahadik on those documents. Hence, he prays that both the disputed will and the sale deed dated 27.01.1981 will be sent to the handwriting expert for comparison for the signature of Sukhdeo Shankar Mahadik appearing thereon.

3. The plaintiff did not file any say despite sufficient chances. Hence, the application is taken up for order without his say.

4. However, the defendant nos.1 and 2 filed their say at Exh.33 and resisted the application on the grounds that the burden of proving the disputed will does not fall on the defendant no.5 and therefore there is no need to send the said document to the handwriting expert at this stage. They further contend that

the application is false and not tenable and deserves to be rejected.

5. Perused the application, says and record of the case. Heard learned advocate for both sides.

6. The suit is for declaration that the disputed will dated 16.07.2011 is void and illegal and that the plaintiff and the defendant no.5 are the owners of the suit property 'A'. The suit is also for partition and separate possession of the suit properties 1B and 1C. While the the plaintiff has disputed the signature of his father Sukhdeo Shankar Mahadik on the disputed will, the defendant nos.1 and 2 have affirmed that signature and claimed ownership over the suit properties on that basis. The defendant no.5 appeared in the suit on 06.02.2023 and presented his written statement. However, vide order dated 03.08.2019 passed below Exh.01, the suit has already proceeded exparte against the defendant no.5. He has not sought to set aside that order as of yet. Therefore, his written statement has not been accepted as of yet. Therefore, the contentions in the present application are not being supported by the pleading of the defendant no.5 as of yet. Moreover, the suit is pending for hearing on the application Exh.05 filed by the plaintiff for temporary injunction. Issues are not framed in the suit as of yet. As such, hearing has not begun. Under such circumstances, I find that it would not be necessary to send the concerned documents to the handwriting expert at this stage. Therefore, the application deserves to be rejected at this stage. Hence, the following order.

ORDER

1. The application Exh.30 stands rejected.
2. Both sides to argue on Exh.5 on the next date without fail.

Date : 12.03.2025.

(Alok V. Deshpande)
3rd Jt. Civil Judge J. D., Malshiras.

CERTIFICATE

I affirm that the contents of this PDF file/order is same word to word as per the original order.

- a) Name of the Stenographer : Arun K. Vibhute (Grade III)
- b) Court : 3rd Jt. C.J.J.D. and J.M.F.C.,
Malshiras.
- c) Order signed by P.O. on : 12/03/2025
- d) Order uploaded on : 15/03/2025