

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

Present:-

The Hon'ble Justice Subhasis Dasgupta.

CO. No. 1254 of 2021

Jiyarul Mondal & Ors.

Vs.

Ainur Haque & Anr.

For the Petitioners/Plaintiffs : Mr. Malay Bhattacharyya, Adv.
Mr. Subhrajyoti Ghosh, Adv.

For the Defendants/
Opposite Parties : Mr. Shyamal Mukherjee, Adv.
Ms. Priyanka Chatterjee, Adv.

Heard On :01.09.2021.

Judgment :10.09.2021

Subhasis Dasgupta, J:-

The impugned order no. 49, dated 20th July, 2019, passed by learned Civil Judge (Junior Division), Kalyani, Nadia in T.S. No. 141 of 2014, rejecting the application under Order XXVI Rule 10A of Code of Civil Procedure, praying for hand writing expert opinion is subject of challenge in this revisional application.

Mr. Malay Bhattacharyya, learned advocate for the petitioners/defendants submitted that the learned court below had mechanically rejected the prayer for hand writing expert opinion without

having understood the true purport of the provisions contained in Order XXVI Rule 10A of C.P.C, together with the specific averment taken by petitioners in their written statement challenging the authenticity and genuineness of the deed being no. 779 of 1983, said to have been executed by one Janab Ali Mondal, and thereby alleging therein that the purported deed under reference had been fraudulently prepared, collusive, null and void, and not binding upon the petitioners and further that no possession of proposed land had been handed over in favour of the opposite parties/plaintiffs in any manner whatsoever.

Adverting to the impugned order, learned advocate for the petitioners contended that learned court below was not justified in denying the hand writing expert opinion merely on the ground that the purported deed under challenge had already been exhibited and further the evidence of the opposite parties/plaintiffs had been concluded including cross-examination.

Mr. Shyamal Mukherjee, learned advocate representing opposite parties making use of an affidavit in opposition submitted that the learned court below had rightly rejected the application under Order XXVI Rule 10A of C.P.C., praying for hand writing expert opinion on the ground that there had been closure of the evidence of plaintiffs and the purported document had already been marked exhibit providing ample scope to the petitioners to challenge the veracity of the purported document doing necessary cross-examination.

More so, the prayer for hand writing expert, according to learned advocate for the opposite parties, was unnecessary in the given facts and circumstances of this case, as there could be effective comparing of signature and as well as thumb impression of vendor of opposite parties appearing in the two deeds produced after resorting to provisions available under Section 73 of Evidence Act.

It is a suit for declaration wherein sale deed dated 12.06.2014, was sought to be declared illegal, baseless, non-operative, void and not binding upon the opposite parties.

The case of the opposite parties made out in Para-1 & 2 of the plaint is that the suit property was previously owned and purchased by one Janab Ali Mondal. Said Janab Ali Mondal sold out in the year 1983, four (4) decimals of land, out of 35 decimals in plot no. 246, receiving valuable consideration to opposite parties/plaintiffs. The opposite parties had their own land property in southern side of such newly purchased property.

The defendant nos. 4-13 being the descendants of vendor of opposite parties/plaintiffs, knowing fully well that their predecessor had already sold out property to the extent mentioned hereinabove to opposite parties/plaintiffs, they again sold away the same to defendant nos. 1 to 3 by sale deed dated 12.06.2014, which is under challenge before the learned court below.

As against the case made out in the plaint, the specific defence of the petitioners set out in their written statement is that Janab Ali Mondal

never executed the purported deed of 1983 in favour of opposite parties/plaintiffs, and the possession of the same had not been delivered thereby.

Upon perusal of the pleadings of both the parties, it appears that since beginning petitioners had challenged the veracity and genuineness of the signature of vendor of opposite parties/plaintiff appearing on the deed, stated to have been executed by their predecessor Janab Ali Mondal.

The point to be addressed by this Court, is whether the learned court below had rightly rejected the prayer for hand writing expert opinion or not.

Contention was raised by the opposite parties/plaintiffs that filing of such application for hand writing expert opinion was purposive, simply to drag the proceedings by any means with mala fide intention, even after closure of evidence of plaintiffs, and also when petitioners/defendants were called upon to adduce their respective evidence.

This Court was thus, sought to be impressed by the learned advocate for the opposite parties that when the purported document under challenge had already been marked exhibit, providing adequate scope to challenge the veracity of the document doing necessary cross-examination for the purpose, soliciting any opinion from hand writing expert in the given facts and circumstances of this case would be an unnecessary exercise having no sanction of law.

The genuineness and the veracity of the deed being No. 779 of 1983, said to be executed by Janab Ali Mondal is under challenge, which would be evident from the written statement filed by the petitioners. Order XXVI Rule 10A C.P.C. deals with scientific investigation by hand writing expert for extracting the truth even after the purported document might have been made exhibit. Section 73 of the Indian Evidence Act of 1872, permits the Court to compare signature/hand writing of vendor of opposite parties/plaintiffs appearing in the deeds produced, (both admitted and disputed document) simply for strengthening the finding, to be reached by court below, upon production of cogent material and evidence, which is of course independent of hand writing expert's opinion, as available under Order XXVI Rule 10A C.P.C., but is always subject to the discretion of Court, to be rationally and judicially exercised, depending upon the facts and circumstances of a particular case.

Pertinently, it may be mentioned that the impugned deed, the execution of which by the predecessor of the petitioners has been grossly challenged by the petitioners, was marked exhibit for the plaintiffs upon calling the required staff of Registry Office with production of volumn for proving a document, the certified copy of which was produced by the plaintiffs requiring proof of such document on the same date itself of adducing evidence by the staff of Registry Office.

In such context, denial of such hand writing expert opinion on the ground of causing prolixity to the suit is not justified upon visualization of

the nature of the defence being put up by the petitioners/defendants in the given circumstances of this case.

For the reasons as aforesaid, the impugned order rejecting hand writing expert opinion is not sustainable. Soliciting hand writing expert opinion with respect to the signature/hand writing appearing on the disputed, and admitted documents, said to have been executed by the vendor of the plaintiffs/opposite parties, in the given context of this case, is must.

The impugned order dated 20th July , 2019, passed by learned Civil Judge (Junior Division), kalyani, Nadia in T .S. No. 141 of 2014, rejecting the hand writing expert opinion under Order XXVI Rule 10AC.P .C. is set aside.

The revisional application succeeds.

Learned Court below is directed to take necessary steps initiating correspondence with the appropriate authority concerned within two (02) months from the date of communication of this order to the learned court below, for examination of the disputed and admitted documents by hand writing expert, and ascertain the anticipated costs, to be deposited by the petitioners/defendants within fortnight after the date of collection of report, as regards expenses necessary for hand writing expert opinion under Order XXVI Rule 10A C.P .C.

Both the parties to this case are accordingly directed to co-operate with the learned court below in the matter of proposed hand writing expert

opinion, so that no unnecessary delay is caused to the ultimate disposal of this case, even after obtaining hand writing expert opinion.

Petitioners are further directed to make communication of this order to the learned court below .

Urgent certified copy of this order and judgment, if applied for, be given to the appearing parties as expeditiously as possible upon compliance with the all necessary formalities.

(Subhasis Dasgupta, J.)