
(2013) 01 MP CK 0081

In the Madhya Pradesh High Court

Case No : Writ Petition No: 21774 of 2012

Madhu Pawar

APPELLANT

Vs

Gulab Rao Patankar and State of M.P.

RESPONDENT

Date of Decision : 03-01-2013

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 45

Citation : (2013) 01 MP CK 0081

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Sanjay Sanyal, for the Appellant; Samdarshi Tiwari, Government Advocate, for Respondent No. 2/State, for the Respondent

Judgement

Rajendra Menon, Judge

1. Challenge in this writ petition under Article 227 of the Constitution is made to an interlocutory order dated 5.12.2012, passed by the 4th Civil Judge Class II, Betul in Civil Suit No. 42-A/2012, by which an application filed by the petitioner u/s 45 of the Evidence Act, for getting certain document and its signature verified by a hand-writing expert, has been rejected. Petitioner is plaintiff and has filed the suit for specific performance of a contract with regard to certain land situated in Village Sawanga in District Betul. Claim of the petitioner is based on certain documents executed in the presence of a notary and after the recording of evidence by the parties, petitioner filed an application seeking verification of the signature in the documents by a hand-writing expert. The said application has been rejected by the learned court below and, therefore, petitioner is before this Court challenging the aforesaid order of the court below.

2. Having heard Shri Sanjay Sanyal, learned counsel for the petitioner, and on a perusal of the reasons given by the learned court below in the impugned order-dated 5.12.2012, it is seen that the document in question - Ex.P/1 is an agreement, which has been executed in the presence of a notary, it is a notarized

document and at the time of recording of evidence to prove this document, it is found by the Court that neither the document has been proved by examining the executant or other witnesses to the document nor is the notary Smt. Narayani Upadhaya examined. Accordingly, finding that the petitioner has not led proper evidence to prove the document, now after close of evidence the document cannot be examined by a hand-writing expert, the prayer is rejected.

3. Rejection of the prayer for getting the document examined by a hand-writing expert for the reasons as indicated hereinabove cannot be termed as erroneous or illegal to such an extent that interference at this interlocutory stage in a proceeding under Article 227 of the Constitution is called for.

4. Accordingly, finding no case for interference at this interlocutory stage, the petition is dismissed with liberty to the petitioner to challenge the order again after the suit is finally decided.

5. With the aforesaid, the petition stands disposed of. Certified copy as per rules.