

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

WRIT PETITION NO. 1554 OF 2015

Prakash Pandurang Palodkar

...

Petitioner

VERSUS

Subhadrabai w/o Balaji Kadam
& others

...

Respondents

.....

Mr. N.P. Patil-Jamalpurkar, Advocate for petitioner

.....

CORAM : RAVINDRA V. GHUGE, J.

DATED : 23rd FEBRUARY, 2015

PER COURT :

1. The petitioner is the original defendant in R.C.S. No. 142 of 2011 which has been filed by the respondents seeking declaration of ownership and perpetual injunction. A map said to have been issued by the Talathi of Tq. Purna, Dist. Parbhani having its seal and signature, is placed on record by the plaintiff as the map pertaining to the suit land. The said document has been exhibited in the year 2012 under the orders of the Trial Court.

2. The petitioner / defendant has moved an application Exhibit 68 on 18-11-2014 praying for an order to cancel the order of exhibiting the map passed on Exhibit 37 in the year 2012. Contention is that the map exhibited is not a public document as understood under Section 36 and 74 of the Indian Evidence Act, 1872. By the impugned order dated 15-01-2015, the application Exhibit 68 has been rejected by the Trial Court.

3. Shri Patil, has vehemently canvassed that a document which does not have any semblance of a public document under Section 36 and 74 of the Evidence Act, need not be exhibited under Order XII Rule 1 & 2 of the Code of Civil Procedure. His further grievance is that merely because the Talathi has issued a map would not mean that it is a public document and more so when the Talathi has made an endorsement on the map itself to indicate that it has been issued on the oral request of the plaintiff, same would not amount to a public document. It is, therefore, prayed that the impugned order deserves to be set aside.

4. I have considered the submissions of the learned Advocate for the petitioner and have gone through the petition paper book. Primarily it needs to be considered as to whether the petitioner had raised any grievance about the said document prior to it being

exhibited or at the time of cross-examination of the plaintiff. There is a clear recording by the Trial Court that the order granting exhibit number to the map was passed in 2012. Application Exhibit 68 has been filed on 18-11-2014.

5. This Court has dealt with a similar issue by order dated 11-02-2015 passed in Writ Petition No. 848 of 2015 in the matter of *Rajiv Laxminarayan Jaju Vs. Gopal Motilal Baheti and others*. I have considered the scope and ambit of order VIII Rule 3 along with the ratio laid down by this Court in the matter of *M/s. Conwood Agencies Pvt. Ltd., Vs. Namdeo Pandurang Panchal and another*, reported at **2005 (1) ALL MR 335**.

6. Paragraph Nos. 5, 5.1, 5.2 and 5.3 of the *M/s. Conwood Agencies Pvt. Ltd., 's Judgment* (supra) reads as under :-

“5. Order 18, Rule 4 of the Code of Civil Procedure (for short, CPC) contemplates that the examination-in-chief of a witness has to be on affidavit and a copy of the affidavit has to be supplied to the opposite party who calls him for evidence. The proviso to sub-rule (1) provides that the question of the proof and admissibility of the documents which are sought to be relied upon is subject to the orders of the Court. Order 18 does not exclude the application of the provisions of Order 13 which speaks of the production, impounding and return of documents. Under Rule 3, the Court is, at any stage of the suit, empowered to reject a document which it considers irrelevant or otherwise inadmissible recording the grounds of rejection. A document which is admitted in evidence has to be

enforced by the Court in the manner specified under Rule 4 of Order 13. Under Rule 7, every document which is admitted in evidence or a copy whereof has been submitted shall form part of the record of the suit.

5.1 After considering the aforementioned provisions of the CPC, this Court in Dargashankar S. Trivedi (supra) in paragraphs 9 and 10 observed thus:-

“9. While allowing the parties to lead evidence in the form of affidavits, the Courts, therefore, have to bear in mind that though the parties are entitled to produce documents alongwith affidavit, the admissibility of such document is to be decided by the Court before documents are being exhibited in evidence and the decision cannot be postponed till the final disposal of the case or any time after the documents are exhibited in accordance with Order XVIII, Rule 4, CPC. The objection to the admissibility of the document should be dealt with and decided at the time the affidavit with documents is produced and being taken on record.

10. The admissibility of the document cannot be established by mere filing of the affidavit by the parties but the documents are necessarily required to be tendered by the deponent, while allowing the other side to have an opportunity to contest the admissibility of the document and an appropriate decision of the Court on such contest by the parties is necessary. Undoubtedly, this decision has to be prior to exhibition of the documents in evidence as already stated above. Merely because under Rule 4 of Order 18 the parties are allowed to produce documents along with affidavit it cannot be construed that such documents are to be exhibited without testing the admissibility of such documents. In fact, proviso to Sub-rule (1) of Rule 4 of the CPC itself discloses that the Court has to decide about the admissibility of documents before they are being exhibited in the evidence.”

5.2 In *Bharat R. Desai* case (supra). This Court reiterated the principle of law laid down in *Durgashankar Trivedi* case. The relevant observations in the said judgment read thus:-

... The question of proof and admissibility must be resolved by the Court in order to ensure that the cross-examination and re-examination, if any, then proceeds to take place on the basis of documents which have been held to be proved and which have been admitted in evidence. Referring the question of proof and admissibility of documents to an uncertain date in the future is neither in the interests of justice nor does it subserve the object of expedition. The Court must therefore at the outset determine the question of proof of admissibility of documents.

5.3 Considering the dictum in the aforementioned judgments of this Court and the provisions of Sections 33, 34, 36 and 37 of the Act of 1958 and Sections 17, 18 and 49 of the Registration Act, in my opinion, if the admissibility of the instrument is being objected to on the ground that it is insufficiently stamped the Court must at the outset, determine the question of its admissibility before allowing the party to rely on such document even for collateral purpose. Insufficiently stamped document cannot be received in evidence for any purpose whatsoever. The question of proof and admissibility must be resolved by the Court in order to ensure that the cross-examination or re-examination, if any, then proceeds to take place on the basis of documents which have been held to be proved and which have been admitted in evidence. Allowing the party to prove such document by examination of a witness or inviting the opposite party to cross-examine such witness in respect of such document cannot be permitted without determining the question of proof or admissibility of document”

7. As such, the law laid down in the *M/s. Conwood Agencies Pvt. Ltd., 's Judgment* (supra) would squarely apply to the instant

case. The petitioner has not raised any objection when the Trial Court granted an Exhibit number to the map at issue. There is no provision for de-exhibiting a document. As is held by this Court in the *M/s. Conwood Agencies Pvt. Ltd., 's Judgment* (supra), had an objection been raised prior to granting an exhibit number, the Trial Court would have considered the said objection as regards its admissibility,

8. This Court while dealing with *Rajiv Laxminarayan Jaju's* case (supra), has observed in paragraph Nos. 16 & 17 as under :-

"16 In M/s Conwood Agencies Pvt. Ltd. judgment (supra), this Court has noted that an objection to the admissibility of a document is to be decided by the Court before such an document is exhibited in evidence (see paragraph 9 of the said judgment). So also in paragraph 10 it has been observed that "Undoubtedly, this decision has to be prior to exhibition of the documents in evidence as already stated above." Similar are the observations in paragraphs 5.2 and 5.3 of the said decision.

17 In such circumstances, I do not find that the Trial Court has shunted out the objections of the Petitioner by passing the impugned order. Had such objections been raised before the said document was confronted to the said witness, who has deposed to prove it and subsequently which was granted an exhibit number, the Trial Court would have been obliged to consider such objections of the Petitioner in the light of the ratio laid down in the judgments of this Court in the matters of KBC Pictures and M/s Conwood Agencies (supra). Since these objections have been raised after the document was referred to and was granted an exhibit number, that the Trial Court has rightly

observed that it's admissibility cannot be decided at that stage without recording evidence of the parties."

9. In the light of the above, the Trial Court has rightly held that the petitioner / defendant can lead evidence in order to disprove the map. So also, in my view, the petitioners can address the Trial Court while advancing final submissions in the suit as regards the probative value of the map. Since the observations of the Trial Court dated 15-01-2015 are on the application Exhibit 68, both the litigating sides can, therefore, address the Trial Court on the probative value of the said map. With these observations, the petition is disposed off without causing interference in the impugned order.

(RAVINDRA V. GHUGE, J.)