

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7739 OF 2013

Sanjeevkumar S/o Harakchand Kankariya,
Age-53 years, Occu-Business and Agriculturist,
R/o Plot No.77, Bhagwati Colony,
Near Jawahar Colony, Aurangabad,
Dist. Aurangabad

PETITIONER

VERSUS

Ramsing S/o Lumbha Rathod,
Age-52 years, Occu-Agriculturist,
R/o Bhindon, Tq. Aurangabad,
Dist. Aurangabad

RESPONDENT

Mr.G.K.Naik Thigle, Advocate for the petitioner.
Mr.D.K.Kulkarni, Advocate for the respondent.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 06/10/2015

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner / defendant is aggrieved by the order dated 15/03/2013 passed below Exh.42 in RCS No.488/2011, by which the Trial Court has directed the defendant to remain present before the Court and provide his specimen handwriting on 5 separate sheets.

3. The petitioner is the original defendant in RCS No.488/2011.

4. It is submitted that the respondent has sold the suit property to the petitioner by virtue of a registered sale deed on 23/05/2002.

5. The respondent / plaintiff has set out the following prayers in the suit :-

“A) The suit of plaintiff be decreed with cost.

B) By declaring sale deed dt.23/05/2002 as sham and nominal document which was never intended to be acted upon, the defendant by issuing mandatory injunction be mandated to reconvey suit land to plaintiff within particular period by accepting an amount of Rs.75,000/- with 2% interest thereon per month from 23/05/2002 till 23/05/2011.

C) In case of failure on the part of defendant to reconvey suit land in favour of plaintiff within specific period, the same be executed through court by appointing commission to that effect.”

6. The petitioner has opposed the suit contending that the plaintiff has executed the sale deed with the consent of his brothers as the suit land was ancestral property. The recital of the sale deed indicates the transfer of the suit land. The sale deed registered is

executed in Marathi language, which is the mother tongue of the plaintiff and his brothers. There is no transaction pertaining to money lending referred to in the said sale deed, as has been claimed by the plaintiff in the suit.

7. The petitioner submits that the registered sale deed is a document recognized in Law. The said document could be disputed only if the plaintiff has come forward with a case that the registered sale deed is a forged document or that the plaintiff was not the signatory to the deed or that the sale deed is signed by an unknown person posing as the plaintiff, etc. It is, therefore, submitted that in the absence of such contentions and in the light of the admission to the extent of the signatures to the registered sale deed, the Trial Court is not required to look any further while dealing with the probative value of the registered sale deed.

8. The petitioner takes exception to the impugned order for the reason that the plaintiff is relying upon a draft sale deed which contains certain corrections purportedly in the handwriting of the petitioner / defendant. Grievance is that once a sale deed is registered, all earlier drafts in between the parties are rendered a nullity as they all merge in the sale deed, so registered.

9. It is further submitted that even if the said draft is taken at its face value, it cannot be utilized to dislodge the registered sale deed as the plaintiff has not averred in the suit that the sale deed is a false and bogus document. Reliance is placed upon the following judgments by the petitioner :-

- [1] *State Vs. Poonamchand Gupta and others*, AIR 1958 Bombay 207 (Vol.45, C.59)(1),
- [2] *Babubhai Mulchanddas Kapadia Vs. Ishwarlal Devchand Kabrawala*, AIR 1975 Gujarat 95,
- [3] *Sundarjas Kanyalal Bhatija and others Vs. Collector, Thane, and others*, (1989) 3 SCC 396,
- [4] *Ritesh Sinha Vs. State of Uttar Pradesh and another*, (2013) 2 SCC 357,
- [5] *Gaudiya Mission Vs. Shobha Bose and another*, (2008) 17 SCC 714.

10. Mr. Kulkarni, learned Advocate appearing on behalf of the respondent / original plaintiff has opposed this petition. He submits that the plaintiff desires to utilize the draft sale deed, which is written / corrected by the petitioner / defendant. It would indicate that there was a loan transaction between the parties and the registered sale deed could not have indicated an outright sale as the draft deed would establish that it was in fact a re-conveyance deed.

11. Mr.Kulkarni further submits that a notice under Order 12 Rule 3 of the CPC was issued by the plaintiff to the defendant on 10/12/2012. It was brought to the notice of the petitioner / defendant that the documentary evidence produced below list Exh.25 were the draft sale deeds of suit land Gat no.25 of village Bhindon to the extent of 81 R. It was stated that the draft sale deeds were prepared in February 2011, 29/04/2011 and 11/05/2011. It was also stated that the said draft sale deeds were corrected, amended and modified at the hands of the petitioner / defendant. Mr.Kulkarni, therefore, submits that the petitioner / defendant was called upon to examine the original draft sale deeds and admit his handwriting appearing on the said documents.

12. He further submits that the correction of the draft sale deeds by the petitioner would indicate the true transaction between the two sides. It would also indicate that there was a loan transaction and there was no outright sale of the land. The respondent made arrangements to return the loan taken and as such the suit land would be redeemed from the clutches of the petitioner.

13. He further submits that the Trial Court, by its impugned order, has ensured that the ends of justice are met. Once it is established

that the handwriting on the draft sale deeds is that of the defendant, it would nullify the registered sale deed by which the petitioner intends to grab the land of the plaintiff. He, therefore, prays for the dismissal of this petition with costs.

14. The learned Advocate for the respondent has relied upon the following judgments :-

[1] *Sheo Harain and another Vs. Rawat and others, AIR 1986 Punjab and Haryana 174,*

[2] *State (Delhi Administration) Vs. Pali Ram, AIR 1979 SC 14(1).*

15. I have considered the submissions of the learned Advocates and the reports relied upon by them.

16. Undoubtedly, the plaintiff aims at nullifying the registered sale deed. However, there is no allegation in the entire suit that the plaintiff was unaware about the contents of the sale deed or had not read the sale deed or that the sale deed has been got registered by proxy under a signature of a person who has posed as the plaintiff. Without these contentions in the suit, it appears prima-facie that the registered sale deed is not challenged on account of it being a bogus or a forged document.

17. Prima facie, it also appears that the sale deed was executed on 23/05/2002 in the Office of the Sub Registrar, Aurangabad in the presence of witnesses. In that view of the matter, an opinion of a handwriting expert is not likely to take the case any forward. Once a sale deed has been signed and registered, the same is held to be accepted by the parties to the sale deed, unless proved otherwise.

18. In this view of the matter, I do not find that the Trial Court was justified in directing the defendant to submit his handwriting for referring the draft sale deed for the opinion of an handwriting expert. The facts of this case are not similar to the facts set out in the reports cited by the rival sides.

19. Notwithstanding the above, the petitioner contends that the draft sale deeds placed on record are xerox copies. The respondent contends that the original draft sale deeds have been produced. It is stated that Exh.42 was filed when the litigating sides were to advance their final oral submissions as the recording of oral and documentary evidence was already concluded. In this situation and in the light of the above, I do not find that the Trial Court was justified in passing the impugned order dated 15/03/2013.

20. This petition is, therefore, allowed. The impugned order dated 15/03/2013 is quashed and set aside. Application Exh.42 is, therefore, rejected.

21. Nevertheless, in the event the respondent / plaintiff suffers an adverse order in the suit, he would be at liberty to raise all the grounds while preferring an appeal thereon.

22. The Trial Court shall also bear in mind that the observations of this Court in this order are only in relation to the impugned order below Exh.42 and it shall not be influenced by any of the observations of this Court, while considering the effect of the registered sale deed and while deciding the suit on its own merits.

23. Rule is, therefore, made absolute in the above terms.

(RAVINDRA V. GHUGE, J.)