

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5814 OF 2015

M/s. Shree Krishna Trading Company ... Petitioner
Vs.
Lahu Dagdu Kadu and others ... Respondents

Mr. Rajesh Kachare i/b. Mr. Sameer M. Bhandari for Petitioner.
Mr. Akhilesh Dubey a/w. Mr. A. A. Khan and Mr. Rajendra Tambe i/b. Law
Counsellors for Respondent No.1.

CORAM : R. G. KETKAR, J.
DATE : 10TH JULY, 2015

P.C. :

Heard Mr. Kachare, learned Counsel for petitioner and Mr. Dubey, learned Counsel for respondent No.1 at length. Mr. Kachare submits that respondent No.1 – original defendant No.1 is the only contesting respondent as he had objected to exhibition of Agreement for Development executed by respondents No.1 to 6 (original defendants No.1 to 6) in favour of the petitioner (original plaintiff). He also states that no reliefs are claimed against respondents No.2 to 11 and they are the formal parties in this Petition. He, therefore, applies for deletion of respondents No.2 to 11.

2. On the oral application made by Mr. Kachare, respondent No.2 to 11 are deleted from the present proceedings. Rule. Mr. Dubey waives service for respondent No.1. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, original plaintiff has challenged the judgment and order dated

15.04.2015 passed by the learned Civil Judge, Senior Division, Panvel below exhibit-101 in Special Civil Suit No.255 of 2008. By that order, the learned trial Judge allowed the application exhibit-101 filed by the defendant No.1 raising objection as regards exhibiting the disputed Agreement for Development as also for rejecting the said document for the reasons stated in the application.

4. Mr. Kachare submitted that plaintiff has instituted Suit for declaration that the registered Agreement for Development dated 21.03.2003 signed by and between defendants No.1 to 5 and deceased Dattatraya D. Kadu is valid, subsisting and binding upon the said defendants; for cancellation of the registered Tripartite Agreement dated 02.04.2008; for declaration that the Tripartite Agreement dated 02.04.2008 entered into by and between defendants No.1 to 6 and defendants No.7 and 8 is illegal, unlawful and not binding upon the plaintiff and for direction to defendants No.1 to 6 to specifically perform their part of Agreement for Development dated 21.03.2003; for perpetual injunction and among other reliefs. Mr. Kachare submitted that along with the plaint, plaintiffs have filed list of documents. One of the documents filed at the time of instituting the Suit is original registered Agreement for Development dated 21.03.2003. He submitted that defendants did not object to this document. Even in the written statement, no plea was taken on the ground that there is discrepancy or interpolation in the Agreement for Development. He submitted that during the course of evidence, when plaintiff wanted that document to be exhibited, defendant No.1 filed application exhibit-101 raising objections to the exhibition of the document. By the impugned order, the learned trial Judge has allowed the application. He submitted that the document produced by the plaintiff has to be marked as exhibit.

5. On the other hand, Mr. Dubey supported the impugned order. He submitted that defendant No.1 has produced certified copy of the Agreement for Development. In fact, defendants have denied execution of Agreement for Development. In other words, defence of the defendants is that this Agreement for Development is not in existence.

6. It is evident that plaintiff has produced original copy of the Agreement for Development and defendant No.1 has produced the certified copy of the Agreement for Development. On one hand, plaintiff claims that it is executed on 21.03.2003 and on the other hand, certified copy shows that it is executed on 03.03.2003. Defendant No.1 has objected exhibition on the following grounds:

- a. On page number 2, from the above line No.2, the plaintiff has made alterations in the date of the execution of the disputed Agreement for Development as executed on 21.03.2003, whereas in the certified copy obtained by the defendant No.1, it shows that it is actually executed on 03.03.2003;
- b. On page number 4, in paragraph which is numbered as 6, in line No.5, the plaintiff has filled up the blank space regarding the registered document under serial number by incorporating number as 2296 whereas in the certified copy obtained by defendant No.1, it shows the blank space;
- c. On page number 4, in paragraph which is numbered as No.6, in line No.5, the plaintiff has made alterations regarding the date of registration of Agreement to Lease as registered on 21.03.2003, whereas in the certified copy obtained by the defendant No.1, it shows that it is actually executed on 03.03.2003.

7. By the impugned order, the learned trial Judge has refused to exhibit the document produced by the plaintiff on the ground that at present, this document cannot be exhibited because of the discrepancies in the date of the Agreement for Development and other portions.

8. In my opinion, the learned trial Judge ought to have exhibited the original Agreement for Development produced by the plaintiff as also the certified copy produced by the defendant No.1 and should have investigated the matter by permitting the parties to lead evidence in that regard. The learned trial Judge was not justified in refusing to exhibit the document produced by the plaintiff.

9. In view thereof, by consent of the parties, Petition may be disposed of in the following terms:

- a. The impugned order dated 15.04.2015 is set aside;
- b. The document produced by the plaintiff shall be marked as exhibit;
- c. Certified copy produced by the defendant No.1 shall also be marked as exhibit;
- d. The learned trial Judge will permit the parties to lead evidence on this aspect and investigate whether there is any interpolation in the document produced by the plaintiff during the course of the trial or before tendering that document in the trial Court and pass appropriate order in accordance with law;

10. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)