

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.2744 OF 2016**

Harish Chunilal Uppal

..Petitioner

Vs.

Chunilal Maniram Uppal & Anr.

..Respondents

**Mr. Pradeep Thorat a/w Mr. Prayag Joshi i/b Mr. B. J. Joshi for the
Petitioner**

Mr. P. P. Pathare/b Mr. R. D. Bindra for the Respondent Nos.1 & 2

CORAM : R. M. SAVANT, J.

DATE : 24th FEBRUARY, 2016

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 13-1-2016 passed by the Trial Court by which order the Leave and Licence Agreement dated 3-3-2012 and the Gift Deed dated 5-6-2012 have been marked as exhibits.

2 In so far as the Leave and Licence Agreement is concerned, the same is executed by the Plaintiff No.1 Chunilal Maniram Uppal who is the Respondent No.1 to the Petitioner allegedly in favour of the Petitioner herein. In so far as the Gift Deed is concerned, the same is also executed by the Respondent No.1 in favour of his grandson i.e. the Respondent No.2 to the Petition Jugal Ashok Uppal. The exhibition of the Leave and Licence Agreement is sought to be questioned on behalf of the Petitioner / Defendant on the

ground that during the evidence of the P.W.-1 who is the executant of the said document. The said documents has not been held to be proved. However, it is in the evidence of the P.W. -3 who was the witness to the execution of the said document and that the said documents are held to be proved in so far as the signatures and presence of the parties is concerned. The exhibition of the Gift Deed is also challenged on the same ground namely that during the evidence of the P.W.-1, the said document has not been proved.

3 It is required to be noted that the cross-examination of P.W.-3 is being undertaken prior to the cross-examination of the P.W.-2. The P. W. -2 being the Plaintiff No.2 is the beneficiary under the Gift Deed executed by the Plaintiff No.1-Chunilal Uppal in pursuance of which Gift Deed the property would come to the Plaintiff No.2 i.e. the grandson. In so far as the Leave and Licence Agreement is concerned, the Trial Court seems to have proceeded on the basis of the principles which are applicable to a lease and not a Leave and Licence Agreement and on the said basis has opined that since the lease is for a period of less than one year, the registration of the document is not required. Hence the issue arises as to whether the Leave and Licence Agreement was required to be registered for it being admissible as a piece of evidence. The issue also arises whether the document can be said to be proved on the basis of the evidence of P.W.-3 who is supposedly a witness who has seen the document being executed.

4 In my view, the Trial Court ought to have awaited the cross-examination of the P W-.2 and thereafter taking into consideration the objection raised on behalf of the Petitioner / Defendant decided one way or the other where the said document was required to be exhibited. In my view, therefore, the order passed by the Trial Court directing exhibition of the said Leave and Licence Agreement as Exhibit 42 is required to be set aside and the exhibition of the said document would have to be postponed until the cross-examination of the P.W.-3 and thereafter would be decided on the basis of the submissions that would be made on either side as regards the admissibility of the said document.

5 In so far as the Gift Deed is concerned, since the said document is undisputedly a registered document, the order passed by the Trial Court exhibiting the said document cannot be found fault with. However, the evidentiary value of the said document would be considered by the Trial Court at the proper stage. Hence in so far as the exhibition of the Leave and Licence Agreement is concerned, the Trial Court would follow the course of action as propounded in the instant order.

6 With the aforesaid directions, the Writ Petition is dismissed.

[R.M.SAVANT, J]