

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3709 OF 2016

Rambriksh Rajnath Mishra

..Petitioner.

Vs

M/s Sitaram Enterprises and Ors.

.. Respondents

Mr. R.B.Singh i/b R.B. Singh & Associates, Advocates for
Petitioner.

Mr.Shreepad Murthy i/b Abhishek Patil, Advocate for Respondents
no. 1 and 4.

**CORAM : R.G.KETKAR,J.
DATE : 25/07/2016**

PC:

1. Not on board. At the request of Mr. Singh, taken up for admission. Heard Mr. R.B.Singh, learned counsel for the petitioner and Mr. Shreepad Murthy, learned counsel for respondents no.1 and 4 at length. Mr. Singh seeks leave to delete respondents no.2 and 3, being formal party and against whom no relief was claimed. In view thereof, on the oral application made by Mr. Singh, leave to delete respondents no. 2 and 3 is granted. Amendment shall be carried out forthwith.

2. Rule. Mr. Murthy waives service on behalf of respondents no.1 and 4. At the request and by consent of the parties, Rule is made returnable forthwith and petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the Judgment and order dated 10.12.2015 passed by the learned Judge presiding over Court Room no.40 in R.A.E.Suit No.879 of 1998. The learned trial Judge passed order regarding admissibility of documents filed along with the list Exhibit-50. The learned trial Judge marked the documents at sr.no. 1 and 2, namely, Agreements dated 1.12.1971 and May 1972 in Hindi and English language as Articles X/7 and X/8 respectively.

4. Mr. Singh states that the plaintiffs have produced original Agreements dated 1.12.1971 and May 1972. The learned trial Judge, however, relying upon the decision in the case of Prabhakar Balasa Saoji Vs. Subhash Baburao Malode, 2005 (2) ALL MR 127, declined to admit these documents and declined to exhibit them on the ground that the plaintiffs cannot rely upon Section 19 of the Indian Evidence Act, 1872.

5. As the plaintiffs have produced original agreements dated Exhibit 1.12.1971 and May 1972, in my opinion, the learned trial Judge should have marked these documents as exhibits subject to proof of contents thereof. Mr. Murthy states that all objections of respondents no.1 and 4 may be kept open.

6. In view thereof, impugned order is set aside and original Agreements dated 1.12.1971 and May 1972 shall be admitted

and marked exhibits subject to proof of contents thereof. All objections of respondents no.1 and 2 in that regard are expressly kept open.

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

(R.G.KETKAR, J.)