

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
Writ Petition NO. 8569 OF 2016

Sultan Suleman Qureshi

...Petitioner

Versus

Mrs. Anisa Rafiq Charolia

And Ors

...Respondents

....

Mr. Manoj Harit i/b. Manoj Harit & Co. for the Petitioner.

....

CORAM : R. G. KETKAR, J.

DATE : 18th August, 2016

P.C.

1. Heard Mr. Manoj Harit, learned Counsel for the petitioner, at length.

2. By this Petition under Article 227 of the Constitution of India, the petitioner hereinafter referred to as the 'defendant', has challenged the judgment and order dated 22.4.2016 passed by the learned Judge, presiding over Court Room No.10 of the Court of Small Causes at Bombay below Exhibit-36 in R.A.E. & R. Suit No.103/163 of 2004. By that order, the learned trial Judge rejected the application Exhibit-36 made by the defendant for de-exhibiting the documents at Exhibits-24 to 28 and reject same from the evidence.

3. Mr. Harit has invited my attention to the order

dated 27.3.2012 passed by the learned trial Judge regarding admissibility of the documents filed by the plaintiff. In particular he submitted that while marking the documents as Exhibits-21 to 23, the learned trial Judge has observed that the contents in the letters dated 16.7.1998 and 26.4.1998 are proved in evidence of PW-1 Mr. Rashid and accordingly marked those documents at Sr. Nos.1 to 3 as Exhibits-21 to 23.

4. Mr. Harit further submitted that the learned trial Judge has also marked the letters dated 5.12.1998, 7.12.1998 and 28.10.1999 as Exhibits-25 to 27 by observing that same are proved in evidence of PW-1 Mr. Rashid. He submitted that the learned trial Judge was not justified in observing that these documents are proved in evidence of PW-1 Rashid. Said stage will come while deciding the suit on merits.

5. I have considered the submissions advanced by Mr. Harit. I have also perused the material on record. It is settled position in law that once the documents are marked as Exhibits, they cannot be de-exhibited. At the same time, while deciding the suit finally, the learned trial Judge will decide the same uninfluenced by the observations made in the order dated 27.3.2012 in relation to Exhibits-21 to 23 and 25 to 27. Subject to this clarification, no case is made out for invocation of powers under Article 227 of the

Constitution of India. Petition fails and the same is dismissed.

6. It is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proposed proceedings as contended by section 105(1) of C.P.C.

(R. G. KETKAR, J.)

Deshmane (PS)