

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10348/2013

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S. G. Deshmukh i/b. Abhijet Kandharkar for the petitioner

Mr. Rupesh R. Lanjekar for the respondent

CORAM : K. K. TATED, J.

DATE : JUNE 16, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India, the petitioner plaintiff challenges order dated 01.08.2013 passed by the Civil Judge, Senior Division, Kalyan below exhibit 1 declining to take on record agreement dated 03.09.2009 on the ground that the same was not registered.

2. The learned counsel for the plaintiff submits that the trial court erred in coming to the conclusion by the impugned order that the plaintiff failed to prove the genuineness and/or contents of the documents. He submits that it is well settled principle of law that if the document is not proved by adopting proper procedure under law, then also

a party can place a document on record for reliefs, subject to proof of the same according to law. In support of his contention, he relies on the full bench judgment of this court in the matter of ***Mr. Hemendra Rasiklal Ghia Vs. Subodh Mody 2008(6) ALL MR 352*** and unreported judgment of this court in the matter of ***Arvind V. Govande Vs. Smt. Leela Purandare dated 06.10.2009 Writ Petition No. 2750/2009.***

3. On the other hand, the learned counsel for the respondent defendant vehemently opposed the petition. He submits that the trial court rightly declined to take on record the said agreement for sale. He submits that on the said document, the petitioner neither paid stamp duty nor registered the same. Hence, there is no question of allowing the plaintiff to place on record said agreement for sale.

4. Heard both sides at length. It is to be noted that, if the document is not proved, then the court can take the same on record at the request of a party and mark the same for identification, so that if a party wants to prove the said document according to law, he may call any other person as a witness to prove the same. Even in the case of

Hemendra Rasiklal Ghia (supra), it is held that subject to proof of the document and contents thereof, the court can allow a party to place on record a document for identification.

5. Considering these facts and the law declared by this court, I am of the opinion that the order passed by the trial court is required to be set aside. Hence, following order is passed:

a. The trial court is directed to take on record the agreement for sale dated 03.09.2009 produced by the petitioner and mark "X" for identification, which can be read in evidence, if the same is proved according to law.

b. Liberty granted to the plaintiff, if they so desire, to make an appropriate application before the trial court for sending the agreement for sale dated 03.09.2009 to the Collector for payment of requisite stamp duty along with penalty, if any.

c. Writ Petition stands disposed of accordingly.

JUDGE