

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11983 OF 2015

Sigma one - Global Venture through Partner
Narayan Ashok Bharekar ... Petitioner
Vs.
Savita @ Savitra Chandrakant Dagde and others ... Respondents

Mr. Joel J. Carlos for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 15, 2016

P.C. :

Heard Mr. Carlos, learned Counsel for petitioner at length.

2. By this Petition under Article 227 of the Constitution of India, original defendant No.6 has challenged the judgment and order dated 04.08.2015 passed by the learned 21st Joint Civil Judge, Junior Division, Pune below exhibit 126 in Regular Civil Suit No.1825 of 2008. By that order, the learned trial Judge rejected the application made by the petitioner, hereinafter referred to as defendant No.6, seeking permission to lead secondary evidence of Power of Attorney dated 25.08.1987 purportedly executed by the plaintiff in favour of defendant No.1.

3. Mr. Carlos submitted that on 25.08.1987, plaintiff who is the sister of the defendant No.1 executed Power of Attorney in favour of defendant No.1 Pundlik Sadhu Matale. On 27.08.1987, the said Pundlik in his capacity as Power of Attorney of – (1) Shidubai Pundlik Matale, (2) Sanjay Pundlik Matale, (3) Raju Pundalik Matale and (4) plaintiff executed the sale deed in favour of Madhukar Sadashiv Kondhalkar - defendant No.2. Defendant No.2 in turn transferred the property in favour of defendant No.3 and ultimately, defendant No.3 transferred the

property in favour of defendant No.6 on 04.04.2008. Mr. Carlos submitted that in pursuance of this Conveyance Deed, defendant No.6 is in possession of the property in dispute. He submitted that defendant No.6 filed application exhibit-126 inter alia contending that plaintiff and defendant No.1 denied execution of Power of Attorney dated 25.08.1987. The said Power of Attorney is in the custody of defendant No.1. Plaintiff and defendant No.1 have instituted Suit in collusion with each other. Plaintiff and defendant No.1 are trying to keep the original Power of Attorney out of reach of the Court. It is further asserted that the Power of Attorney has been executed on stamp paper purchased by the defendant No.1, which is duly identified by an Advocate and notarized before the Notary. Defendant No.6, therefore, prayed for permission to lead secondary evidence of original Power of Attorney dated 25.08.1987 i.e. the photocopy of the said Power of Attorney by mechanical process which ensures the accuracy of the original.

4. Mr. Carlos has taken me through the Power of Attorney dated 25.08.1987 as also the Sale Deed dated 27.08.1987 executed in favour of the defendant No.2 – Madhukar Sadashiv Kondhalkar by defendant No.1, plaintiff and three others. Perusal of the said sale deed shows that after the names of vendors in handwriting, it is written thus,

“Pundlik Sadhu Matale, Power of Attorney Holder of No.2 to 5.”

5. Perusal of the document prima facie shows that except this portion in handwriting, rest of the documents is typewritten. It also does not bear initial against the handwritten portion. Power of Attorney is executed on 25.08.1987 allegedly by plaintiff in favour of defendant No.1 and the sale deed is executed on 27.08.1987. In view thereof, in my opinion, the right course to be adopted by defendant No.6 is to apply for witness summons for production of copy of the Sale Deed from the

office of the Joint District Registrar so as to find out whether the copy of the Sale Deed maintained by the office of the Joint District Registrar also mentions the handwritten portion. In case it is found that the copy of the Sale Deed maintained by the office of the Joint District Registrar also contains recital to the same effect then to apply for leading secondary evidence of the Power of Attorney. If such application is made by defendant No.6 for issue of witness summons, the same shall be decided in accordance with law and in the light of the observations made herein. If after production of the copy maintained by the office of the Joint District Registrar, Pune, the trial Court is satisfied that handwritten portion appears in that copy, in that event, it will permit defendant No.6 to apply for leading secondary evidence and the said application shall be decided in accordance with law and uninfluenced by the observations made in this order and the impugned order. Liberty is reserved to the defendant No.6 to apply to this Court in case of any difficulty.

6. Subject to this, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

(R. G. KETKAR, J.)

Minal Parab