

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12999 OF 2016**

Balu Babanji Kamat (Decd) thr.lrs.... .. Petitioners

vs

Ningappa Bhavku Kalkhambkar .. Respondent

Mr.Anand S.Patil for Petitioner

CORAM: RAJESH G.KETKAR, J

DATE: 24 NOVEMBER 2016

P.C.

Not on Board. At the request of Mr.Anand S.Patil taken
in Production Board.

2. By this Petition, under Article 227 of the Constitution the Petitioner (hereinafter referred to as 'Plaintiff') has challenged the Judgment and order dated 2 September 2016 passed by the learned Trial Judge below Exhibit 101 in Regular Civil Suit No.90 of 2001. By that order, the learned Judge has allowed the application made by the Defendant for admitting the Agreement of sale dated 4 April 1989 in evidence. In support of the Petition, the Petitioner contended that the Agreement of sale dated 4 April 1989 is a fabricated document. It does not bear the signature of the Defendant. It is also not a Registered instrument. He submitted that the said document was produced at the fag end of the trial. The learned trial

Judge was not justified in passing the impugned order.

3. Perusal of the impugned order and in particular paras 3 and 5 shows that the learned Judge observed that the defendant has filed on record the original document dated 4 April 1969 along with list Exhibit 71 at serial no.1. In para 5, the learned Judge observed that DW1 has given details about execution of the documents. DW1 is a party to the document. The learned Judge observed that the document being of the year 1969 and therefore, presumption under section 90 of the Indian Evidence Act for execution of the document of 30 years old is attracted. The learned Judge accordingly admitted the document in evidence,.

4. In view thereof, I do not find that the learned Judge has committed any error in passing the impugned order. Writ Petition is rejected. It is made clear that I have not expressed any opinion on merits of the matter. All contentions of the parties in that behalf are expressly kept open.

5. It is however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set

forth as a ground of objection in the memorandum of appeal as contemplated by Section 105 (1) of C.P.C.

{RAJESH G.KETKAR, J }

