

IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11465 OF 2015

Monotype Griha Nirman Private Limited through its
Authorized Representative Mr. Raj Kumar Sarda ... Petitioner
Vs.
Sadhu Kondiba Thorat and others ... Respondents

Mr. P. S. Dani, Senior Advocate i/b. Mr. Nachiket V. Khaladkar for Petitioner.
Mr. Jaydeep Deo for Respondents No.1 to 4.

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

P.C. :

Heard Mr. Dani, learned Senior Counsel for petitioner and
Mr. Deo, learned Counsel for respondents No.1 to 4 at length.

2. Mr. Dani seeks leave to delete respondents No.5 to 18 on the ground that respondents No.1 to 4, original plaintiffs, are the only contesting respondents. On the motion made by Mr. Dani, leave to delete respondents No.5 to 18 is granted. Amendment shall be carried out forthwith. Rule. Mr. Deo waives service for respondents No.1 to 4. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, original defendants No.13 and 14 have challenged the judgment and order dated 29.10.2015 passed by the learned 4th Joint Civil Judge, Senior Division, Pune below exhibit-203 in Special Civil Suit No.2039 of 2009. By that order, the learned trial Judge rejected the application made by the defendant No.13 under Order XIII, Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'C.P.C.') for exhibiting (i) Power of Attorney dated 20.12.2005 executed by plaintiff

and defendant No.1 in favour of defendant No.13, (ii) Deed of Conveyance dated 29.06.2010 executed by the defendant No.1, defendant No.5 represented by defendants No.9 and 19 and the plaintiff in favour of the defendant, and (iii) Ledger extract.

4. Mr. Dani submitted that on behalf of the defendants No.13 and 14, D.W. Ashwin Manohar Sancheti has made affidavit of examination-in-chief on 05.09.2015. In paragraphs 11-B, 11-D and 11-G, he has deposed in respect of Power of Attorney dated 20.12.2005, Deed of Conveyance dated 29.06.2010 and Ledger extract for the period from 01.04.2008 to 10.04.2015 respectively. Mr. Dani submitted that the learned trial Judge rejected the application on the ground that witness is not the author of those documents and even though he is one of the directors of defendant company, the documents which are executed on behalf of No.13 is by another person. It is also recorded therein that though the original documents are produced on record, contents of those documents and author of those documents and /or witnesses are proper persons to depose in respect of the said documents to prove its contents and execution.

5. On the other hand Mr. Deo supported the impugned order on the ground that witness is not the author of those documents.

6. After perusal of paragraphs 11-B, 11-D and 11-G of affidavit of examination-in-chief made by D.W. Ashwin Manohar Sancheti, I find that the learned trial Judge ought to have marked those documents as exhibits subject to the proof of contents thereof. It is settled principle of law that mere marking of the documents does not mean that the contents thereof are proved. Having regard to the fact that the original documents are produced on record, the learned trial Judge ought to have

marked documents as exhibits subject to proof of contents thereof. In view thereof, impugned order is set aside and documents - (i) Power of Attorney dated 20.12.2005 executed by plaintiff and defendant No.1 in favour of defendant No.13, (ii) Deed of Conveyance dated 29.06.2010 executed by the defendant No.1, defendant No.5 represented by defendants No.9 and 19 and the plaintiff in favour of the defendant, and (iii) Ledger extract are marked as exhibits subject to proof of contents thereof. Rule is made absolute in the aforesaid terms with no order as to cost.

(R. G. KETKAR, J.)

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