

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10932 OF 2016

Balkrushna Shamrao Bodhe ... Petitioner
Vs.
Appaso Shamrao Bodhe and others ... Respondents

Mr. Amit Palkar i/b. Mr. Sandip Babar for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : MARCH 07, 2017

P.C. :

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

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 11.02.2016 passed by the learned 2nd Joint Civil Judge, Junior Division, Koregaon below exhibit-101 in Regular Civil Suit No.66 of 2006. By that order, the learned trial Judge rejected the application made by the plaintiff for sending register maintained by the office of the Sub-Registrar, Koregaon in respect of sale deed dated 08.04.1999 at Sr. No.1154. The said sale deed was in respect of Gat No.177. Plaintiff has also prayed for issuing witness summons to the Sub-Registrar, Koregaon.

3. In support of this Petition, Mr. Palkar submitted that plaintiff called upon defendant No.1 to produce the original sale deed. However, defendant No.1 came with the case that the original sale deed is misplaced. The burden is on the plaintiff to establish that there is cheating by impersonation. The sale deed does not bear signature of the plaintiff. It is, therefore, necessary to send the sale deed dated 08.04.1999 for the opinion of the handwriting expert. It is also

necessary to issue witness summons to the Sub-Registrar's office, Koregaon for producing the register in respect of the sale deed dated 08.04.1999.

4. I have considered the submissions advanced by Mr. Palkar. I have also perused the material on record. While rejecting the application, the learned trial Judge noted that basically plaintiff has not prayed for cancellation of the sale deed dated 08.04.1999. That apart, plaintiff claims that at the time of execution of the sale deed, several other vendors were present. Plaintiff's case that the sale deed does not bear his signature can be established by examining the vendors, who were present at the time of execution of the sale deed. For the reasons recorded in paragraphs 4 to 7 of the impugned order, I do not find that the learned trial Judge has committed any error in rejecting the application. Hence, Petition fails and the same is dismissed. However, it is made clear that where a decree is challenged 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 the proceedings as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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