

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4180 OF 2016

Shri Pranjeevan Krishnadas
Mistry and Ors.

..Petitioners.

Vs

Estate Manager, Shri Kshetra
Mahabaleshwar Trust and Anr.

.. Respondents

Mr.Rushikesh Barge, Advocate for Petitioners.
Mr.Rameshwar Totla, Advocate for Respondent No.2.

CORAM : R.G.KETKAR,J.
DATE : 16/01/2017

PC:

1. Heard Mr.Rushikesh Barge, learned Counsel for the petitioners and Mr.Rameshwar Totla, learned Counsel for respondent No.2, at length. Learned counsel appearing for the parties state that respondent no.2 is the only contesting respondent. Even otherwise, by order dated 22.4.2016, notice was issued to the second respondent only. In view thereof, notice on the rest of the respondents is dispensed with.

2. Rule. Mr.Totla waives service on behalf of respondent no.2. At the request and by consent of the parties, Rule is made returnable forthwith and Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, the petitioners have challenged the judgment and order dated 19.12.2015 passed by the learned Civil Judge, Senior Division, Satara below Exhibit-83 in S.C.Suit No.185/2012. By

that order, the learned trial Judge rejected the request made by the plaintiffs to exhibit Will dated 26.2.2004 and Codicil dated 22.7.2004 made by Krishnadas Mistry as also sale-deeds.

4. In support of this Petition, Mr. Barge invited my attention to the order dated 19.12.2015 passed by the learned trial Judge below Exhibit-76. By that order, the learned trial Judge allowed the production of true copies of the sale deeds. He submitted that after permitting production of the sale-deeds, the learned trial Judge was not justified in rejecting the application Exhibit-83 thereby refusing to exhibit sale-deeds. He further submitted that PW-2 Smt. Amita Parpiya has produced the original Will dated 26.2.2004 and Codicil dated 22.7.2004 made by Krishnadas Mistry. He has taken me through the evidence of PW-2 and submitted that the learned trial Judge ought to have exhibited the Will and Codicil. The learned trial Judge, however, refused to exhibit the Will and Codicil on the ground that PW-2 has not proved the contents of the Will and Codicil. He submitted that the learned trial Judge was not justified in concluding the issue of proof of contents of Will and Codicil when the stage was for marking Exhibits.

5. On the other hand, Mr. Totla supported the impugned order. He relied upon the decision of this Court in the case of *Saifuddin Saheblal Vazir v Smt.Habjabai Mishra Patel*, AIR 2003 BOM 36 and in particular paragraphs-8 and 9 thereof. He submitted that

the plaintiffs have not referred to the sale-deeds. Merely by allowing production does not mean that the plaintiffs are entitled to mark the sale-deeds as Exhibits.

6. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. Perusal of evidence of PW-2 shows that PW-2 has produced the original Will and Codicil. Mr. Barge states that original Codicil is produced on record. Statement made by Mr. Barge is recorded. In view thereof, the learned trial Judge should have marked them as Exhibits subject to proof of contents thereof.

7. Mr.Barge, upon instructions, submits that the petitioners have produced certified copies of sale deeds on record and not original sale deeds. Mr.Totla submits that the petitioners have not filed application for leading secondary evidence. In view thereof, I do not find that the learned trial Judge has committed any error in refusing to exhibit the certified copies of sale deeds. It will be open to the petitioners to file application for leading secondary evidence in respect of the certified copies of the sale deeds, if permissible in law. All contentions of the parties in that regard are expressly kept open.

8. Rule is partly made absolute in the aforesaid terms with no order as to costs.

(R.G.KETKAR, J.)