

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

WRIT PETITION NO. 6170 OF 2015

Nirmala Prabhubhai Chudasama. ... Petitioner.
Versus
Mrudulaben Chotalal Changela & ors. ... Respondents.

Ms. Shirin Shaikh a/w. Ms. Aishwarya Ranawat i/b. Mr. Raval Shah,
advocate for petitioner.

Mr. Dinesh C. Shah, advocate for respondent No. 1.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : NOVEMBER 13, 2017**

P.C.:

1 Heard the learned Counsel for the petitioner and learned
Counsel for the respondents.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioner herein happens to be the original defendant No.
2 in Special Civil Suit No. 7997 of 2000. The plaintiff had filed an

application on 10/11/2014 contending therein that the plaintiff has filed affidavit of evidence alongwith compilation of documents which needs to be exhibited. Since the plaintiff cannot be examined to prove the documents by virtue of the plaintiff being usual resident of U.K., the plaintiff had filed affidavit of evidence of the advocate of the plaintiff i.e. Shri Bharat Raghani and had requested that the documents to be exhibited.

4 It was also submitted that the documents were signed and prepared by him. The learned Court by an order dated 24/1/2014 had observed that -

“Document at Sr. No. 1 is Deed of Transfer in respect of flat where as the document at Sr. No. 8 is a Deed of Release in respect of the flat. Both these documents are neither registered nor duly stamped, they can not be read in evidence, as they can not be exhibited. Documents at Sr. Nos. 4 and 5 are photocopies, they can not be exhibited. Documents at Sr. Nos. 6 and 7 are the office copies of correspondence. Considering the averments in affidavit, they are marked as exhibit No.8 and 9 respectively. Ld. Counsel for Plff. States that he would examine the attesting witness to the court.”

5 The learned Court by an order dated 8/1/2015 was of the opinion that the earlier order dated 24/1/2014 was passed at that particular stage and the same order need not be passed again. The order was reviewed. Since the earlier order was passed by the Judge Shri S.B. Agarwal, there was a change in the opinion by the subsequent judge before whom the affidavit of evidence and compilation of documents was filed. The Court was of the opinion that the advocate can prove only execution, attestation, preparation and maintenance of these documents but the contents therein being not within his personal knowledge, the contents would not be part of the proof in support of plaintiff's claim. According to the learned Judge, the documents were exhibited only to prove the existence of those documents. As far as this aspect is concerned, there is no doubt that existence of documents need not be the genuineness of the correctness of the contents of the documents. In the said affidavit, it is contended that the said documents are prepared upon the instructions of the plaintiff.

6 The learned Counsel for the petitioner submits that the instructions or the communication between the client and his advocate would be a matter of privileged communication and the same is inadmissible evidence. The learned Court has allowed the application seeking execution of the documents. The said documents are not public documents. They are unregistered and unstamped documents. Hence, the said documents can not be treated as proved documents and need to be proved in consonance with the Indian Evidence act, 1872. The existence of the said documents cannot be denied. They would be part of the record and proceedings. Hence, the documents shall remain as part of the record and proceedings of the Civil Suit No. 7997/2000. However, the documents need to be exhibited and proved by the plaintiff in person, since the contents of the documents are within the special knowledge of the plaintiff and cannot be proved through the plaintiff's advocate.

7 The learned Counsel for the respondent submits that the said documents are duly stamped. However, the order dated 24/1/2014 clearly shows that the Court had observed that both the documents are neither registered nor duly stamped.

8 In view of this, the impugned order dated 8/11/2015 passed by the learned City Civil Court, Greater Mumbai stands quashed and set aside. The documents at Sr. No. 1 page Nos. 1 to 9 shall be exhibited and they shall be exhibited only in the event that they are proved under the provisions of the Indian Evidence Act.

9 The learned trial Court shall not be influenced by any of the observations made hereinabove. All contentions are kept open.

10 Rule is made absolute in the above terms. Writ Petition is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)