

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

WRIT PETITION NO. 5506 of 2015

Smt.Laxmibai Vitthal Kavade

...Petitioner

Versus

Shri. Ramdas Dagadu Kavade & Ors.

...Respondents

.....
Mr.Uday B.Nighot for the Petitioner.

Mr.Soaham Panse i/b. Mr.Ashok M.Joshi for Respondent Nos.1 and 2.

.....

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: AUGUST 03, 2017

P.C. :

1. Rule. Rule made returnable forthwith. By consent, petition is heard finally and disposed of at the stage of admission.

2. This petition is directed against the order dated 20.04.2015 passed by the learned Jt.Civil Judge, Junior Division, Junnar, Pune below Exhibit 215 in Regular Civil Suit No. 71 of 1995.

3. The petitioner/original plaintiff has filed a Regular Civil Suit No.71 of 1995 for perpetual injunction. The plaintiff's evidence was over. The defendant's defence is based on Kabuliyat Patra (Sale Deed) dated 13.06.1979, which was executed by the husband of the plaintiff in

favour of the defendants. The execution of the said document is challenged by the plaintiff. On the said document, she was put question in her cross-examination and she has denied the execution of the said documents by her husband. The document is 30 years old and, therefore, by invoking Section 90 of the Indian Evidence Act, the defendants have filed an application and requested the trial Court to exhibit the said document. They did not step in the witness box. The said application was opposed by the petitioner, mainly on the ground that the document cannot be taken on record, as it is not as per the provisions of the Indian Evidence Act. Unless it is proved, it cannot be exhibited as per the law. The trial Court has allowed the said application and hence, this Writ Petition.

4. The learned counsel for the petitioner has submitted that this document cannot be presumed to be true and not to be exhibited. He has further submitted that the trial Court has discretion to allow and disallow the document and use either in favour of the party or not. He has further submitted that not every document which is 30 years old and which is taken on record is presumed to be true and to be exhibited. He relied on the judgment in the case of ***Prabhakar Balasa Saoji vs. Subhash Baburao Malode and Ors.*** reported in **2005 (1) Mh. L.J. 306** and also relied on the judgment in the case of

Gulamuddin /so.Hisamuddin and Ors. vs. Mohd. Bashiruddin Mohd. Saifuddin reported in ***(2003) 5 M.L.J.722.***

5. Per contra, the learned counsel for respondent nos. 1 and 2 has submitted that the document was shown to the plaintiff in her cross examination. During her cross-examination, she has denied the execution of the said document and, therefore, as the defence is based on the said document, it is necessary for the respondents/defendants to take the said document on record. He has further submitted that the document is 30 years old and it is in the custody of the respondents/defendants and, therefore, they are produced. He supported the order passed by the learned trial Judge.

6. Perused the impugned order. In the case of ***Prabhakar Balasa Saoji*** (supra), the learned Single Judge of this Court has held that the proof of contents of the documents are to be proved independently and cannot be held as a proof under Section 90 of the said Act, even though the documents are admitted. In the case of ***Gulamuddin*** (supra), the learned Single Judge of this Court has expressed that if the document is suspicious and the original is not produced, then it is not to be exhibited under Section 90 of the said Act.

7. Section 90 of the Indian Evidence Act is drafted out of necessity and convenience, as human beings do not live long and they are mortal. If the document executed by dead person is required to be admitted and if it is 30 years old, then Section 90 of the said Act facilitates exhibition of the said document in the evidence. It is to be noted that though the document is exhibited and admitted in the evidence, the genuineness of the contents of the documents is always open for challenge and scrutiny. The reasons given by the learned Judge cannot be faulted with. Hence, no interference is required in the order dated 20.04.2015 passed by the learned Jt. Civil Judge, Junior Division, Junnar, Pune. The Suit is of 1995. The trial Court to proceed with the matter and try to endeavour to finish the matter at the earliest. The parties to cooperate with the trial Court.

8. Writ Petition is dismissed.

(MRIDULA BHATKAR, J.)