

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11029 OF 2015

Subhas Rupchand Thawani ... Petitioner
Vs.
Sanjiv K. Martand and others ... Respondents

Mr. V. S. Talkute for Petitioner.

CORAM : R. G. KETKAR, J.
DATE : JANUARY 05, 2017

P.C. :

Heard Mr. Talkute, learned Counsel for the 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 11.09.2015 passed by the learned Joint Civil Judge, Senior Division, Satara below exhibit-48 in Special Civil Suit No.48 of 2012. By that order, the learned trial Judge allowed the application filed by the defendant for leading secondary evidence of agreement dated 20.12.2009.

3. In support of this Petition, Mr. Talkute submitted that defendant simply filed application under Order 11, Rule 16 of C.P.C. at exhibit-17 on 20.04.2012 for issuing direction to the plaintiff to produced purported agreement dated 20.12.2009. The learned trial Judge did not pass any order on that application. Apart from that, he submitted that plaintiff has denied very existence of the agreement dated 20.12.2009. While allowing the application exhibit-48, the learned trial Judge did not deal with this aspect as to existence or otherwise of the agreement. He also relied upon the decision in the case of **Ganpat Pandurang Ghongade Vs. Nivrutti Pandurang Ghongade, 2008 (5) Mh.L.J. 153** and

submitted that the learned trial Judge was not justified in allowing the application.

4. I have considered the submissions advanced by Mr. Talkute. I have also perused the material on record. In paragraph 2 of the impugned order, the learned trial Judge has observed that without evidence on record, it cannot be held that the secondary evidence sought to be brought on record by the defendant is a manipulated document. At the time of trial, plaintiff will get opportunity to impeach the genuineness of the document. Apart from that, by permitting defendant to lead secondary evidence by itself does not amount to defendant proving the contents of the said document. In that regard, all the contentions of the plaintiff are expressly kept open. For the reasons recorded in paragraph 2 of the impugned order, I do not find that the learned trial Judge has committed any error in allowing the application. Hence, Petition fails and the same is dismissed.

5. It is, however, expressly made clear that where a decree is appealed from 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 appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)

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