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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12552 OF 2017.**

M/s Mistri Lalji Development
Pvt. Ltd.

... Petitioner

V/s.

The State of Maharashtra and 2 ors

... Respondents

Mr. Vivek N. Kantawala with Mr. Virel M.
Sharma I/by Vivek Kantawala & Co., for
the Petitioner

Mr. Drupad S. Patil, for the Respondents.

Mr. J. A. Madane, AGP for the State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 19th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the petitioner and learned counsel for the respondents.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 23rd March, 2017, passed by the Jt. Civil Judge S.D. Pune. By the said order, the trial Court has rejected petitioner's prayer for exhibiting certified copy of the Conveyance Deed. Two reasons are given for the same by the trial Court. First, that the said sale deed is not executed between the parties to the suit and secondly it was not produced from the custody of proper person.

3] The submission of learned counsel for the petitioner is that the petitioner is producing certified copy of the sale deed which was executed on 11.12.1948 between Daulatram Shivaldas Ahuja as vendor and Seth Tulsidas Kassandas and Parmanand Kassandas Moolji, as purchasers. The petitioner being not party to the said Conveyance Deed, is not having the custody of the original sale deed. Therefore, he has applied for certified copy of the said sale deed and he is producing the same. The said sale deed pertains to the suit property itself and therefore, the trial Court should not have refused to exhibit the said certified copy of the sale deed.

4] It is the submission of learned counsel for the Petitioner that so far as contents of the sale deed are concerned, the trial Court can keep the issue open to be decided at the time of judgment. To substantiate his submissions, he has placed reliance on the Full Bench judgment of this Court, in **Hemendra Rasiklal Ghia -vs- Subodh Mody, 2008 (6) Mh.L.J. 886**, wherein making reference to observations of the Apex Court in the case of **Ameer Trading Corpn Ltd -vs- Shapoorji Data Processing Ltd (2004) 1 SC 702**, it was observed that if any objection is taken to the admissibility of the document, it can be admitted at any stage of the suit reserving the decision in question until final judgment in the case.

5] In my considered opinion, in the facts of the present case,

these observations cannot be made applicable, because in the instant case, document which the Petitioner wants to be exhibited is the certified copy of the sale deed to which he is not a party. Secondly, he has not explained where the original sale deed is. Thirdly, certified copy of the sale deed is not a public document within the meaning of section 74 of the Evidence Act, hence cannot be exhibited directly. Even if the document is proved to be 30 years old under Section 90 of Evidence Act also it cannot be exhibited directly unless it is proved to be coming from proper custody. Here in the case certified copy of the sale deed goes to show that it was not obtained on the application given by the petitioner but by some person by name Dhanaji Vengurlekar.

6] Therefore, in considered opinion of this Court, the trial Court has rightly held that as the certified copy of the sale deed to which petitioner or respondent are not parties and when it is not explained where the original is and it is also not coming from proper custody, it cannot be exhibited, even keeping open the issue relating to its admissibility. The impugned order passed by the trial Court, therefore, does not call for any interference.

7] The Writ Petition, hence, stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]