

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5577 OF 2016

- 1 Sow.Antikabai w/o Laxmanrao Renge,
Age : 55 years, Occupation : Agri and Household,
R/o Sinhagad Farm House,
Pathri Road, Parbhani.
- 2 Sham s/o Laxmanrao Renge,
Age : 40 years, Occupation : Agril,
R/o As above.
- 3 Shankar s/o Laxmanrao Renge,
Age : 42 years, Occupation : Agril & Service,
R/o Through General Power of Attorney
Petitioner No.2.
- 4 Laxman s/o Ganpatrao Renge,
Age : 65 years, Occupation : Agril,
R/o As above.

...PETITIONERS
(Orig.Plaintiffs)

-VERSUS-

- 1 The State of Maharashtra.
Through the Collector, Parbhani.
- 2 The Deputy Collector,
Parbhani Division, Parbhani.
- 3 The Tahsildar, Parbhani,
Taluka and District Parbhani.
- 4 The Taluka Inspector of Land Records,
Having its office at Administrative Building,
Parbhani.
- 5 The Executive Engineer,
B & C,
having office at

Shaniwar Bazar, Parbhani.

- 6 Sanjay @ Bandu s/o Haribhau Jadhav,
Age : 50 years, Occupation : Agril & MP,
R/o Kadrabad Plot, Parbhani.
- 7 Prayagbai w/o Ganpatrao Kale,
Age : 60 years, Occupation : Household,
R/o Parwa, Tq. & Dist.Parbhani.
- 8 Balasaheb s/o Kundlik Kale,
Age : 45 years, Occupation : Agril,
R/o Parwa, Tq.& Dist.Parbhani.

...RESPONDENTS
(Orig.Defendants)

...

Advocate for the Petitioners : Shri Rathi Swapnil S..

AGP for Respondents 1 to 5 : Shri K.S.Patil.

Advocate for Respondents 6 to 8 : Shri Milind M. Patil (Beedkar).

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 21st August, 2018

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioners/ original Plaintiffs are aggrieved by the order dated 17.03.2016 passed by the Trial Court by which, the application Exhibit-177 filed by the Plaintiffs in RCS No.150/2009 praying for four original sale deeds to be exhibited, has been rejected.

3 The contention of the Petitioners/ Plaintiffs is that four original sale deeds have been produced on record. There is no specific

denial of the existence of the said sale deeds by any of the Defendants. Being the original sale deeds, they should have been exhibited after they were filed since exhibiting the document would not mean that the document is proved in evidence.

4 It is further submitted that one of the Plaintiffs was suffering from age related ailments and his examination-in-chief and cross-examination was conducted through the court commissioner appointed by the court. These four sale deeds have been referred to by the said witness in his examination-in-chief and the Defendants have also referred to the said documents in their cross-examination. As the court commissioner failed to exhibit the said documents, the Plaintiffs had no option but to move an application Exhibit-177 praying for a direction from the Trial Court to grant exhibit numbers to the said documents.

5 The grievance is that the Trial Court has misdirected itself by concluding in paragraph 7 that "*Unless, the contesting defendants clearly admitted the execution and contents of the document would not be read in evidence. Hence, there is no substance in this application. Therefore, it is required to be rejected. Hence, it is rejected.*" (Verbatim)

6 The learned Advocate for the Petitioners/ Plaintiffs further submits that considering that the documents were in original form, referred to in the plaint, referred to by the Defendants in their Written

Statement wherein the execution of the sale deeds alone is denied and when these documents were referred to in examination-in-chief and cross-examination, they ought to have been exhibited. Whether, they have any probative value and whether, their contents are proved or not, would be for the Trial Court to consider when the litigating sides finally address the court.

7 The learned Advocate for Respondent/ Defendant Nos.6 to 8 opposes this petition by contending that merely because a document is exhibited, would not mean that it is proved in evidence.

8 Reliance is placed upon the judgment of the learned Full Bench of this Court in the matter of *Hemendra Rasiklal Ghia vs. Subodh Mody, 2008 (6) Mh.L.J. 886*, to support the contention that an objection to the admissibility or relevancy of evidence contained in the affidavit of evidence can be admitted at any stage and the court can always workout its own modality depending on peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice. The admissibility and/or proof of the document must be decisive at the stage at which it arises.

9 It is settled position of law that once the documents are exhibited, there cannot be an order of deexhibiting the documents in view of the judgment of the this Court (Coram : RMS Khandeparkar, J.) in the matter of *Sunil Tukaram Bharadkar vs. Santosh Gopichand Rane, 2006*

(5) Bom. CR 237 : 2006 (3) Mh.L.J. 811. The conclusions in paragraph

Nos.9 to 12 read as under :-

- "9. *However, in civil proceedings the situation is totally different. Merely because the trial Court rejects a document to be exhibited in evidence, it does not prohibit the party from producing such evidence even at the appellate stage. The provisions of Order 41, Rule 27 are very clear in that regard. Besides, the Appellate Court in civil proceedings has power to take on record such further evidence in terms of Rule 28 of Order 41 of the Civil Procedure Code without sending the proceedings to the trial Court. Being so, the decision of the Apex Court in Bipin Shantilal Panchal's case in relation to criminal trials will not apply to civil cases.*
10. *As already observed above, the impugned order specifically permits the petitioner to prove the documents as per law. Merely because the petitioner's cross-examination in relation to the admitted documents of the affidavit filed under Order 18, Rule 4 of the Civil Procedure Code is over that will not be an obstacle to the petitioner to prove those documents if the law allows him to prove the same. Once the impugned order specifically provides that the petitioner was allowed to prove the documents as per law, the petitioner cannot be heard to say that the trial Court has refused to give opportunity to the petitioner to prove those documents.*
11. *It was sought to be contended that such an opportunity ought to be given before the cross-examination of the petitioner is completed. The records nowhere disclose that the petitioner had indeed asked for such an opportunity before the cross-examination of the petitioner. In the absence of any material on record disclosing any attempt on the part of the petitioner before the trial Court to prove such document before such cross-examination of the petitioner, the contention of the petitioner in that regard is to be rejected as being totally devoid of substance.*

12. *The proposition that there is no provision in the Civil Procedure Code or under the Evidence Act to de-exhibit the document once exhibited in evidence, cannot be found fault with. However, such exhibition of documents shall be in accordance with the provisions of law. It is not mere endorsement on the document about the exhibit number that will constitute exhibition of the documents in evidence in accordance with the provisions of law. In order to say that the document has been exhibited in evidence, it has to be in accordance with the provisions of law comprised under Order 18, Rule 4 read with Order 13, Rule 4 of the Civil Procedure Code. If the document is exhibited in other manner or by adopting any other procedure, unless it is shown that such procedure has the sanction of law, exhibition of such document cannot be said to be an exhibition of document in evidence in accordance with the provisions of law. Being so, merely because on 19-7-2005 the Court had recorded in the Roznama that the document annexed to the affidavit evidence were exhibited as Exhibits 3 to 9, that itself did not constitute exhibition of those documents in evidence. Besides, the endorsement itself disclosed that the exhibition was "subject to objection". In other words, the documents were yet to be exhibited in evidence in accordance with the provisions of law under Order 18, Rule 4 read with Order 13, Rule 4 of the Civil Procedure Code and that function was performed by the trial Court on 16-8-2005. Being so, merely because the expression "de-exhibited" has been used in the order dated 16-8-2005, it would not amount to de-exhibition of documents in evidence. It would simply mean that the documents other than those which are exhibited in terms of Order 13, Rule 4 on 16-8-2005, are not admitted in evidence."*

10 Learned Advocate for Respondent Nos.6 to 8 places reliance on the judgment of the learned Division Bench of this Court in the matter

of *Chetan Chandrashekhar Swami vs. State of Maharashtra and others, 2008 (6) Mh.L.J. 762*, to support the contention that the public document, as also the sale deed, which is registered, would not become a public document.

11 The learned Advocate for the Petitioners/ Plaintiffs hastens to add that it is not an endeavour of the Plaintiffs to seek a declaration from the Trial Court that the contents of the documents have been proved since there is no objection to the existence of the said documents in original form. The Defendants will get an opportunity to deny the contents of the documents leaving the issue open to the Trial Court to consider whether, the contents of the documents have been proved or not.

12 Considering the above, I find that the following factors need to be taken into account to decide, whether, these four sale deeds deserve to be exhibited or not :-

- (a) These four sale deeds are in original form.
- (b) The boundaries in the sale deeds are disputed by the Defendants.
- (c) These sale deeds are referred to in the plaint and have also been referred to by the Defendants in the Written Statement.
- (d) These sale deeds have been referred to by Plaintiff No.2 on behalf of the Plaintiffs in the examination-in-chief and the Defendants have also referred to the sale deeds in the cross-

examination.

- (e) The documents have to be proved by the author of the documents or by an attesting witness and if the author is not available, by any such person who is conversant with the handwriting or contents or signature of the said document and who can depose on oath to the extent of such contents.

13 Considering the above, I find that the impugned order dated 17.03.2016 is rendered perverse and erroneous. These four sale deeds need to be exhibited. The issue as to whether, the contents of the sale deeds have been proved or not, is an issue which is to be dealt with by the Trial Court while deciding the suit in the light of the rival contentions of the litigating sides.

14 As such, this Writ Petition is allowed. The impugned order dated 17.03.2016 is quashed and set aside. The application Exhibit-177 is allowed to the extent of granting exhibit numbers to the said four sale deeds, which the Trial Court shall forthwith allot.

15 Needless to state, the issue as regards the proving of the contents of the sale deeds and their probative value is left open for the Trial Court to consider the same while deciding the suit.

16 Rule is made absolute in the above terms.