

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

WRIT PETITION NO.377 OF 2017

Shri Ajaykumar S. Gupta	.. Petitioner
Vs.	
Shri Varindarkumar Mittal	.. Respondent

Mr.Piyush N.Shah for the petitioner.
Mr.Nitin P. Deshpande for the respondent nos.1 & 4.

CORAM : R.D. DHANUKA, J.
DATE : 17th October 2018

P.C.:

1. By this petition filed under Article 227 of the Constitution of India, the petitioner (original plaintiff) has impugned the order dated 16th July 2016 passed by the learned trial Judge rejecting the application (Exhibit-62) partly and granting permission to lead secondary evidence only in respect of certified copy of sale dated 21st July 2008 and rejecting the application in respect of power of attorney dated 24th March 1994 and deed of conveyance dated 20th February 1995.

2. This Court passed an order dated 8th February 2017. In paragraph 3 of the said order, this Court has referred to paragraph 2 of the application at Exhibit-62 asserting that by letter dated 20th February 1995 authorised the Oriental Bank of Commerce, Synagouge Street, Pune 411001 to receive the original sale deed from the office of Sub-Registrar, Shirur and that the plaintiff does not have the original sale deed. This Court has directed the petitioner/plaintiff to implead Oriental Bank of Commerce, Main Branch, Synagouge Street, Pune 411001 as

party respondent with a direction to clarify whether the said bank has collected the original sale deed dated 20th February 1995 or not. The Oriental Bank of Commerce though served has not appeared before this Court.

3. The petitioner will have to issue a notice to produce the documents in respect of power of attorney dated 24th March 1994 and deed of conveyance dated 20th February 1995 before seeking permission to lead secondary evidence.

4. If the petitioner complies with this mandatory procedure and satisfies the learned trial Judge, the learned trial Judge shall permit the petitioner to lead secondary evidence on compliance with the provisions of Section 65 of the Indian Evidence Act, 1872 as referred to aforesaid. The defendant shall inform about those notice to the parties. The requisite procedure shall be followed by the plaintiff within four weeks from today. If the notice is not issued by the petitioner, the petitioner would not be entitled to produce evidence in respect of those documents.

5. It is made clear that issue of relevancy and admissibility of those two documents is kept open and the same can be decided by the learned trial Judge after production of such documents.

6. The impugned order dated 16th July 2016 is substituted by this order in so far as those two documents are concerned. Writ petition is accordingly disposed of. No order as to costs.

R.D. DHANUKA, J.