

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1898 OF 2016

Kumar Balu Nikam	..	Petitioner
vs.		
Namdev Sadashiv Nikam	..	Respondent

Sandeep S. Koregave for Petitioner.
Mr. Pradeep Dalvi for Respondent.

CORAM : M. S. SONAK, J.
DATE: 12 JUNE 2018

ORAL JUDGMENT :

1] Heard Mr. Koregave for the petitioner and Mr. Dalvi for the respondent.

2] Rule. With the consent of and at the request of the learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 3rd December 2015 made by the learned trial Judge dismissing the petitioner's application at Exhibit 78 for exhibiting the certified copy of the sale deed dated 7th January 2006 registered under No. 5104 of 2006.

4] Mr. Koregave, the learned counsel for the petitioner submits that by the order dated 27th March 2015, the learned trial Judge had directed the respondent to produce the sale deed dated 7th January 2006 on record. However, the respondent failed to

produce the same by stating that such sale deed is not in possession of the respondent. Thereafter, in the course of cross-examination, the respondent, was confronted with the certified copy of such document and the respondent, denied the same as being true. Mr. Koregave submits that in such circumstances, the learned trial Judge failed to exercise jurisdiction vested in it by dismissing the application at Exhibit 78 which merely sought for exhibiting certified copy of this document. Mr. Koregave points out that in the impugned order, the learned trial Judge has observed that admittedly the respondent is not author of the said sale deed. Mr. Koregave submits that from the perusal of the certified copy of the sale deed, it is clear that the respondent is in fact purchaser in terms of this sale deed. For all these reasons, Mr. Koregave submits that the impugned order is liable to be set aside and the application at Exhibit 78 be allowed.

5] Mr. Dalvi, the learned counsel for the respondent submits that there can be no compulsion on the respondent to produce a document which is not in his possession. Mr. Dalvi further submits that in this case even the certified copy was never produced in the course of evidence and therefore, there is no jurisdictional error whatsoever in the impugned order which declines leave to exhibit the sale deed. Mr. Dalvi submits that the petitioner is the plaintiff and the burden of proving the case as set out in the plaint is always

upon the plaintiff. He submits that such burden cannot be shifted upon the respondent in this manner. Mr. Dalvi submits that in the application at Exhibit 78, the only case set out by the petitioner that the sale deed is a public document and therefore the same ought to be accepted. Mr. Dalvi submits that this contention has been rightly rejected by the learned trial Judge. For all these reasons, Mr. Dalvi submits that this petition may be dismissed.

6] Rival contentions now fall for determination.

7] From the perusal of the order, it is seen that the trial Judge has rejected the application at Exhibit 78 not only on the ground that the sale deed is not a public document but further, the learned trial Judge has observed that admittedly, the defendant i.e. the respondent herein is not the author of the said sale deed. Later part of the reasoning, appears to be an error apparent on the face of the record.

8] The certified copy of the sale deed very clearly indicates that it is the defendant – respondent herein who is the purchaser of the property in question. Further, in passing the impugned order, the learned trial Judge, has completely overlooked the earlier order dated 27th March 2015, which was never challenged by the respondent. The order dated 27th March 2015 was made at the stage when the petitioner desired to cross-examine the witness of

the defendant in the context of the sale deed dated 7th January 2006. Accordingly, the respondent, was directed to produce such sale deed on record. Because the respondent failed to produce such sale deed on record, the application at Exhibit 78 was taken out after the certified copy of the sale deed was referred to in the course of cross-examination of the defendant – respondent herein.

9] All this is sufficient to allow the petitioner's application at Exhibit 78. The fact that such application is allowed does not obviate the necessity of proving the contents in accordance with law. Similarly, the effect of such document, is again a matter open to argument and such argument, will not stand preempted merely because the application Exhibit 78 is allowed.

10] Accordingly, subject to the aforesaid observations, the impugned order dated 3rd December 2015 is set aside and the petitioner's application at Exhibit 78 is hereby allowed.

11] Rule is made absolute to the aforesaid extent.

12] All parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)