

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

WRIT PETITION NO. 4829 OF 2016

Shri Madhukar Vasudev Lad

...Petitioner

Versus

Smt. Sujata Kishor Kadam & Ors.

...Respondents

Mr. M.L. Patil for the Petitioner.

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CORAM: MRS.MRIDULA BHATKAR, J.

DATED: JULY 24, 2018

P.C. :

1. Though served, none appears for the respondents.
2. Rule. Rule made returnable forthwith. The Petition is heard finally and disposed of at the stage of admission.
3. This Writ Petition by invoking the writ jurisdiction of this Court under Article 227 of the Constitution of India is filed which takes exception to the order dated 5th January, 2016 passed by the learned Civil Judge Senior Division, Ratnagiri below Exhibit 123 in Special Civil Suit No. 26 of 2010 and also to the order dated 18th March, 2016 passed by the learned Civil Judge Senior Division, Ratnagiri below Exhibit 124 in Special Civil Suit No. 26 of 2010. The second order is passed for review of the order of rejection of the witness viz. Ravikant Kanekar.

4. Respondent Nos.1 to 3, who are the original plaintiffs, have filed a suit for specific performance in respect of the Development Agreement of the land, which is owned by the petitioner/defendant No.1. The plaintiff's suit is based on the Development Agreement, which has taken place between defendant No.1 and the husband of plaintiff No.1. Defendant No.1 has moved an application for issuing witness summons to Mr. Ravikant Kanekar, who has signed the Development Agreement as a witness. However, the said application was rejected by the learned Judge of the trial Court.

5. The learned Counsel for the petitioner has submitted that Mr. Ravikant Kanekar was a middleman between defendant No.1 and the husband of plaintiff No.1. Besides, the present written Agreement, there was another subsequent Agreement and on that basis, the present written Agreement was to be executed between the husband of plaintiff No.1 and defendant No.1. However, before execution of another subsequent proposed Agreement, the husband of plaintiff No.1 expired. Therefore, Mr. Ravikant Kanekar is necessary witness to throw light on such subsequent Agreement.

6. Heard submissions. Perused impugned orders and the review application. Also perused reply filed by the petitioner and pleadings in

the plaint. It is to be noted that no averments were made in the reply and in the written statement of defendant No.1 in respect of such subsequent Agreement. If there was some mention in respect of such Agreement in the presence of Mr.Ravikant Kanekar, then he would be necessary witness for defendant No.1. However, in the absence of such pleadings, Mr. Ravikant Kanekar cannot be called as a necessary witness. The learned Judge of the trial Court has rightly observed that though he is an attesting witness to the Development Agreement, which is already exhibited and, therefore, the contents of the Agreement can be read in the evidence. If at all, defendant No.1 has to prove some oral Agreements besides that written Agreement, then the facts ought to have been mentioned either in the reply or in the written statement to justify his prayer of issuance of witness summons to Mr. Ravikant Kanekar. The orders passed by the learned Judge of the trial Court are well reasoned. No interference is required in the orders dated 5th January, 2016 and 18th March, 2016 passed by the learned Civil Judge Senior Division, Ratnagiri. Hence, Writ Petition is dismissed. Rule is discharged.

(MRIDULA BHATKAR, J.)