

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

WRIT PETITION NO. 2984 OF 2019

SAKHARABAI RAJENDRA SHINDE
VERSUS
SHRI MARUTI SHANKAR SALUNKE

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Advocate for the Petitioner : Shri M. S. Kulkarni
Advocate for the Respondent – sole : Shri S. G.
Chapalgaonkar

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 28th NOVEMBER, 2019.

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PER COURT :

1. The petitioner / original defendant in Regular Civil Suit No. 364/2013 is aggrieved by the order dated 27/11/2018 passed by the Trial Court, by which, application Exhibit 96 has been allowed and a document produced after the evidence of the plaintiff, has been granted an exhibit number and the prayer that it should be read in evidence, is tacitly accepted.

2. I have considered the strenuous submissions of the learned Advocates representing both the

sides.

3. On 21/07/2018, the plaintiff filed Exhibit 96 requesting the Trial Court to accept the production of a registered sale-deed dated 24/08/1977 bearing No. 927/1977. It was also prayed that an exhibit number be granted and the contents be read in evidence.

4. I find that Exhibit 96 is a skeletal application in which no reasons are assigned as to why was the said document not produced earlier, why did the petitioner not take steps for its production and what are the circumstances in which it is sought to be produced after the evidence of the plaintiff is over. It requires no debate that the suit is not too old and is about 6 years of age.

5. The Trial Court, with the intention of doing justice, has noted that the document was registered with the registration office on

24/08/1977 and was allotted the registration number as 927/1977, based on this circumstance, the Trial Court referred to Section 90 of the Indian Evidence Act which deals with the documents that are more than 30 years old and are presumed to be genuine documents. The application was, therefore, allowed.

6. It is well settled law that a document which is exhibited, cannot be de-exhibited. It is equally settled that an original document or a public document which is produced by way of a certified true copy obtained from a statutory authority's office, can be exhibited. Granting an exhibit number does not mean that the contents of the documents are proved under the Indian Evidence Act, save and except the effect of Section 90.

7. The learned Advocate for the petitioner submits that though the said document is granted exhibit number, there cannot be a conclusion at

this stage that the contents of the documents are proved.

8. The learned Advocate for the plaintiff submits that the plaintiff is confident that the said document is squarely covered by Section 90 and he would also consider whether he desires to lead evidence to prove its contents or whether he would only rely upon the factum of the document and the effect of Section 90.

9. The Trial Court has recorded in paragraph 5 of the impugned order that as the registered sale deed indicates its registration more than 30 years ago, the presumption under Section 90 about its execution and attestation, would also exist.

10. I find that this conclusion can not be drawn at this stage since it would amount to pre-judging the case. As the document is a public document and the proof of registration with a statutory authority

being available, the Trial Court would be justified in granting an exhibit number and consider the effect of Section 90 while deciding the suit. Nevertheless, it would not preclude the plaintiff, by way of abundant precaution, to take steps as may be advised and as may be permitted in law with regard to the contents of the said document.

11. In view of the above, though this petition is disposed off, it shall be noted that the observation of the Trial Court in paragraph 5 that there is a presumption under Section 90 about the execution and the attestation of the document, shall not influence the Trial Court and it would consider the contentions of the parties with regard to the said document on their own merits.

(RAVINDRA V. GHUGE, J.)

shp/-