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

WRIT PETITION NO.7911 OF 2016

Dr. Kishor s/o Nimba Desale
Age 56 years, Occu. Doctor & Agriculturist,
R/o Thalner, Tq. Shirpur,
District Dhule ... PETITIONER

VERSUS

1. Sau. Pushpabai w/o Yograj Patil,
Age 56 years, Occu. Agriculturist,
R/o Bhatpura, Tq. Shirpur,
District Dhule
2. Bharatsing s/o Gabru Rathod,
Age 34 years, Occu. Agriculturist,
R/o Bhatpura, Tq. Shirpur,
District Dhule ... RESPONDENTS

.....
Shri P.R. Patil, Advocate for petitioner
Shri S.P. Brahme, Advocate for respondents
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CORAM: R.G. AVACHAT, J.

DATED : 27th AUGUST, 2019.

J U D G M E N T :

Heard Mr. P.R. Patil, learned counsel for the petitioner
and Mr. S.P. Brahme, learned counsel for the respondents. The
challenge in this Writ Petition is to the order dated 18/6/2016,

passed by the 3rd Jt. Civil Judge, Senior Division, Dhule, in a suit, being Special Suit No.64/2012.

2. The petitioner herein is the plaintiff in the suit. The suit has been filed for specific performance of oral contract for sale of immovable property. The petitioner/ plaintiff filed his affidavit of evidence along with three documents. The documents are, two unregistered mortgage deeds and the third one is stated to be a receipt, acknowledging payment of part of consideration amount. In proof of these documents, the petitioner/ plaintiff examined the witness – namely Gokul Govinda Marathi. On the text of the evidence of this witness, the first so called mortgage deed dated 18/3/1998 came to be marked exhibit since this witness is stated to be one of the attesting witness to the said deed. The witness also referred to the other two documents. The trial Court, however, did not exhibit these documents so as to admit them in evidence.

3. Admittedly, the witness Gokul Marathe was not an attesting witness to the second mortgage deed, dated 30/4/2004. Needless to mention that a deed of mortgage has to be attested by not less than two witnesses. I do not state here the way how the document need to be proved to get it admitted in evidence.

The trial Court has rightly not accepted the second mortgage deed on the strength of the evidence of the witness Gokul Marathe. The petitioner/ plaintiff is at liberty to examine any of the attesting witnesses to the said deed or if they are not available, to lead other evidence so as to get the said mortgage deed admitted in evidence. Admittedly, both these documents are unregistered. Whether those could be read in evidence as deed of mortgage or for collateral purpose, would necessarily be decided by the trial Court. The writ petitioner/ plaintiff has got impounded both these documents since they were insufficiently stamped.

4. As regards the third document sought to be produced in evidence, the trial Court ought to have marked it exhibit with a view to admit it in evidence, since witness Gokul Marathe has in no uncertain terms, stated to have signed the said document. He also identified the signature of others appearing thereon. The trial Court is, therefore, directed to ensure that the said document is admitted in evidence, by giving it exhibit number. So far as regards impounding of the said document, which is stated to be an acknowledgement, the petitioner/ plaintiff is at liberty to move the competent authority in that regard under the Bombay Stamps Act. Needless to state that, merely exhibiting the document does not constitute proof of contents of those documents.

5. In view of the above, the Writ Petition is disposed of in terms of the following order :

ORDER

The petitioner/ plaintiff has every liberty to adduce evidence in proof of the second so called deed of mortgage, dated 30/4/2004.

The trial Court shall exhibit the third document (chit) with a view to admit it in evidence.

The petitioner/ plaintiff is at liberty to move the competent authority under the Bombay Stamps Act so as to get the said chit/ document impounded, if required.

(R.G. AVACHAT)
JUDGE

fmp/-