

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

APPEAL FROM ORDER NO.68 OF 2017

VINOD NAMDEV AHIRRAO  
VERSUS  
KANTILAL RATILAL CHAUDHARY

...  
Advocate for Petitioner : Shri Choudhari N. L.

...  
CORAM : RAVINDRA V. GHUGE, J.  
Dated: April 22, 2019

...

PER COURT :-

1. The appellant is the original plaintiff, who is aggrieved by the judgment and order dated 31.8.2017, delivered by the appellate Court, by which, Civil Appeal No.57 of 2012 filed by the original defendant, challenging the judgment and decree dated 29.10.2009 in Special Civil Suit No.18 of 2006, has been allowed. The decree has been set aside and the suit has been remitted to the trial Court to permit the plaintiff to prove documents Exhibits 24 to 28 and 30 (six documents), in accordance with the Indian Evidence Act.

2. I have considered the strenuous submissions of Shri Choudhari, learned Advocate for the appellant. I have considered the grounds formulated by him in the memo of the appeal and I have also considered the record available.

3. It is well settled that merely because Exhibit Nos. have been granted to certain documents, would not mean that the contents of the documents have been proved, thereby, converting the said documents into admissible evidence. Original documents are normally granted Exhibit numbers and the onus and burden to prove the contents of such documents lies on the party, which produces the document, in view of the principle '*onus probandi*'.

4. In the instant case, the appellate court noticed that these documents have to be proved, either as primary evidence or, subject to the fulfillment of the requirements of Section 65 of the Indian Evidence Act, as secondary evidence. In fact, by the impugned judgment, the plaintiff is granted an opportunity to prove these documents as the trial Court has casually relied on the said documents merely because they were exhibited, though not proved through oral evidence.

5. In view of the above, I do not find that the impugned judgment could be branded as being perverse or erroneous or likely to cause gross injustice to the plaintiff. This appeal, being devoid of merits, is therefore, dismissed.

6. Since the suit before the trial Court has been lodged in 2006 and is almost 13 years old, I deem it appropriate to direct the trial Court to decide SCS No.18 of 2006, as expeditiously as possible and in any case, on/or before 29.2.2020. The litigating sides shall be precluded from seeking adjournments on unreasonable or trivial grounds.

( RAVINDRA V. GHUGE, J. )

...

akl/d