

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

WRIT PETITION NO.13702 OF 2019

**BHAUSAHEB @ SAHEBRAO NARAYAN TUPE AND ANOTHER
VERSUS
HARIBHAU NARAYAN TUPE AND OTHERS**

...
Shri Prashant R. Nangare, advocate for the petitioners
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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 13th November, 2019

Per Court:

1 This Writ Petition was not on the board. An extreme urgency was voiced. Hence, taken on the production board.

2 The petitioners are the original plaintiffs in Regular Civil Suit No.251/2009. They are aggrieved by the order dated 20.09.2019 passed by the Trial Court by which, the application exhibit 169 for seeking de-exhibiting of the document exhibit 89, has been rejected.

3 I have considered the strenuous submissions of the learned advocate for the petitioners and have gone through the 12 grounds formulated in the memo of the petition.

4 It is settled law that a document, which is granted an exhibit number, cannot be de-exhibited. It is also settled law that merely because

an exhibit number is granted to a document, its contents would not automatically stand to be proved.

5 The petitioners had moved exhibit 169 at the stage of advancing final arguments in the suit, which is 10 years old, contending that exhibit 89 is not duly proved and that it is wrongly exhibited. It is apparent that the document exhibit 89 was filed before the Court while evidence was being recorded on 13.07.2012 and has been granted an exhibit number in 2012. The application exhibit 169 praying to de-exhibit the document has been filed on 09.04.2019, after about 07 years at the final arguments stage.

6 The learned advocate for the petitioners submits, in the light of the judgment delivered by this Court in ***Rekha Ramrao Bhujang vs. Subhadrabai Keshavrao Bunage and others, 2012 (3) Mh.L.J. 249 : 2012 (3) ALL M.R. 509***, that the procedure for proving a document was not followed by the court. It is, however, conceded that the document was produced along with the affidavit in lieu of examination in chief by the defendant. The learned advocate was called upon to state as to whether, the petitioners had specifically admitted or denied the said document. He submits that it may be kept open to the petitioners to address the mind of the Trial Court that the document exhibit 89 cannot be read in evidence in view of Order XIII Rule 4 of the Code of Civil Procedure.

7 I find that the petitioners would not be restricted from

canvassing their submissions that they desire since it is in their domain to do so. As such, they are at liberty to do so.

8 In view of the above, this Writ Petition being devoid of merit, is, therefore, disposed off. It is open to the petitioners to advance oral submissions before the Trial Court as to whether, the contents of exhibit 89 have been proved as per the Indian Evidence Act and the Code of Civil Procedure.

kps

(RAVINDRA V. GHUGE, J.)