

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14468 OF 2019

SHAIKH AFTAB AHMED AND ANOTHER
VERSUS
BHIMRAO SANDU WAGHMARE AND OTHERS

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Advocate for Petitioners : Shri Kasliwal Ajit D.
Advocate for Respondents 1 to 4 & 6 : Shri Kawade A.R.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 05, 2019

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PER COURT :-

1. The petitioners / plaintiffs in Special Civil Suit No. 331 of 2014, are aggrieved by the order dated 12.11.2019, passed by the trial Court, by which, application Exhibit 28, filed by the plaintiffs seeking permission to lead secondary evidence to prove the contents of the agreement to sell dated 12.6.2014, has been rejected.

2. I have considered the strenuous submissions of the learned Advocates for the respective sides. The respondents have relied upon the judgment delivered by this Court in the matter of Gayabai Hemlal Jadhav Vs. Hiranman Rama Chavan [2011 (4) Mah.L.J. 798].

3. The issue raised before this Court is as regards the proving of the contents of the agreement to sell by leading secondary evidence. The petitioners have putforth a story that the original agreement to

sell dated 12.6.2014 was lost by the petitioners when they moved from their old office into a new office. In an earlier round before this Court in Writ Petition No. 8442 of 2019, out of inadvertence, it was mentioned that the said original was lost when the Lawyer moved into his new office. Now, an affidavit has been filed before the trial Court clarifying that the petitioners have lost the original and no blame lies on the Lawyer for losing the original document.

4. When these parties were before this Court earlier, in the above stated Writ Petition, this Court had noted that the defendants had stated in paragraph No.26 of their written statement that such an agreement to sell (Isar Pavati), dated 12.6.2014 was actually executed between the parties. Such admission was also found in RCS No.962 of 2014, filed by Bhimrao Sandu Waghmare, who had so stated in his plaint. Bhimrao is now defendant No.1 in the present suit.

5. In view of the above, it is apparent that the defendants admit the execution of the Isar Pavati dated 12.6.2014 and also admit the transaction that had occurred on the basis of such Isar Pavati. The defendants have also admitted in paragraph No.35 of the Written Statement that they have received two cheques pursuant to the agreement - Isar Pavati dated 12.6.2014. It is a matter of

circumspection, as to why these defendants are now stating that the contents of the Isar Pavati are denied. Be that as it may, the fact remains that the original Isar Pavati dated 12.6.2014 is admitted and the transaction that occurred on the basis of such Isar Pavati is also pleaded in the written statement in this suit and in the plaint in RCS No. 962 of 2014.

6. This Court has concluded in the judgment dated 1.10.2019 delivered at Aurangabad in Writ Petition No.8442 of 2019, on the basis of the law standing over five decades, that if the existence of the original is admitted, secondary evidence can be led on the basis of a copy of such document.

7. In view of the above, the impugned order dated 12.11.2019 is quashed and set aside. Application Exhibit 28 is allowed only to the extent of permitting the petitioners to lead secondary evidence on the copy of the said Isar Pavati dated 12.6.2014.

(RAVINDRA V. GHUGE, J.)

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