

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

WRIT PETITION NO. 3635 OF 2018

Shankar Irana Dhuppe

..PETITIONER

VERSUS

Nagnath Ramji Bhutte and Others

..RESPONDENTS

....
Mr. S.N. Janakwade, Advocate for petitioner

Mr. U.B. Bilolikar, Advocate for respondent no.1

....

CORAM : R.G. AVACHAT, J.

DATED : 26th AUGUST, 2019

PER COURT :

Heard.

2. The challenge in this petition is to order dated 12th July, 2017 passed by learned Civil Judge, Junior Division, Dharmabad thereby rejecting application (Exh.107) in Regular Civil Suit No. 25 of 2010 moved by present petitioner (original plaintiff). The suit, being Regular Civil Suit No. 25 of 2010, is stated to have been filed for redemption of mortgage of house property. Sale deed was executed between the parties on 02nd May, 1989.

3. According to petitioner (original plaintiff), it was a transaction of mortgage and not sale. Meaning thereby, the question before the Court is of interpretation of term of document dated 02nd May, 1989. The execution of said document has been admitted by respondent (original defendant). Since the said

document is stated to be in the custody of defendant, petitioner (original plaintiff) issued a notice calling upon him to produce the original one. Since it was not in the custody of defendant, it could not be produced. Petitioner (original plaintiff), therefore, moved an application to allow him to lead secondary evidence of the original document dated 02nd May, 1989.

4. In my view, since the execution of document dated 02nd May, 1989 is an admitted fact, the trial Court ought to have admitted the said document i.e. certified copy of it, in evidence and allowed the parties to lead relevant and admissible evidence in proof of their respective contentions.

5. In view of the above, writ petition stands disposed of with a direction that the trial Court shall admit the certified copy of the sale deed dated 02nd May, 1989 in evidence and allow the parties to lead relevant and admissible evidence, in proof of their respective contentions.

(R.G. AVACHAT, J.)

SSD