

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 550 OF 2019

M/s. Landmark Builders &
Developers ... Petitioner

V e r s u s

1. Mr. Lourdes Xavier Zuzarte & Ors. ... Respondents

Mr. Shivan Desai, Advocate for the Petitioner.

Mr. Vedraj Toraskar, Advocate for the Respondent no.3.

CORAM : C. V. BHADANG, J.

Reserved for Order on: 25th September, 2019.

Order Pronounced on : 20th November, 2019.

ORDER

1. The challenge in this petition is to the order dated 26.04.2018 passed by the learned Trial Court in Special Civil Suit No.9 of 2010/B. By the impugned order, the learned Trial Court has refused to exhibit an unsigned/unexecuted agreement which is marked 'X' for identification.

2. The brief facts are that the petitioners have filed the aforesaid suit against the respondents which is pending before the learned Senior Civil Judge at Panaji. That is a suit for specific performance of an oral agreement of sale, entered into between the petitioners/plaintiffs and the original defendant nos. 1, 3 and 4.

3. The petitioner examined Mr. Rohan Khaunte (Pw.1) and during the course of his chief examination, produced an unsigned draft agreement of sale which the learned Trial Court marked 'X' for identification. During the cross examination of Pw.1 by the learned Counsel for the respondent nos.3 and 4, the draft agreement of sale was referred to the witness and Pw.1 was cross examined with regard to the amount of consideration as mentioned in the said agreement. Pw.1 was also asked as to whether the said agreement was confirmed by the second respondent.

4. In view of the fact that the document was referred to Pw.1 during his cross examination and Pw.1 was cross examined on the contents of the said document, a request was made on behalf of the petitioner to formally exhibit the same, as according to the petitioner, the right of the respondents to object to the said document being marked as exhibit, stood waived, once the document was referred to Pw.1 in his cross examination.

5. The learned Trial Court has refused to exhibit the said document with the following order :

"I have duly considered the submissions of ld. Counsels. The draft agreement of sale has been marked as 'X' for identification as it is a unsigned document and does not fall within the ambit of the definition of document. It seems that the case of the plaintiff revolves round the said document and there are pleadings to that effect in the plaint as such, the defendants have all the right to rebut those pleadings viz-a-viz the said document. Merely the pleadings are sought to be rebutted in the cross examination, the said document is already marked

for identification cannot be exhibited unless the same falls within the definition of the document as none of the parties have taken the authority of the said document, same being unsigned. Hence the objection raised by Id. Advocate Shri Desai does not sustain.”

Feeling aggrieved, the petitioner is before this Court.

6. I have heard Mr. Desai, the learned Counsel for the petitioner and Mr. Toraskar, the learned Counsel for the respondent no.3.

7. Mr. Desai, the learned Counsel for the petitioner, has submitted that once the document was referred to the witness and the witness is cross examined with reference to the contents of the document, it ought to have been exhibited. It is submitted that the Trial Court was in error in holding that an unsigned agreement will not come within the ambit of the definition of a document. On behalf of the petitioner, reliance is placed on the following decisions, (i) **Hemendra Rasiklal Ghia vs. Subodh**

Mody 2008 (6) Mh.L.J. 886 [FB], (ii) **Walter D'Souza vs. Anita D'Souza**, 2015(2) AIR Bom R 90; and (iii) **Ram Janki Devi & anr. vs. M/s. Juggilal Kamlapat**, (1971) 1 SCC 477.

8. On the contrary, Mr. Toraskar, the learned Counsel for the petitioner has supported the impugned order. It is submitted that the unsigned/unexecuted agreement cannot be said to be a document within the legal parlance so as to be exhibited and proved in evidence. The learned Counsel has submitted that the Trial Court has rightly found that the said document is already marked 'X' for identification and it cannot be exhibited unless the same falls within the definition of a document as "none of the parties have taken the authority of the said document." Mr. Toraskar, has placed reliance on the decision of the Supreme Court in the case of **Omprakash vs. Laxminarayan & Ors.**, (2014) 1 SCC 618.

9. I have considered the submissions made and I do not find the any case for interference is made out at this stage.

Admittedly, the agreement which is marked 'X' for identification is an unsigned/unexecuted document which has already been marked 'X' for identification as it was produced during chief examination of Pw.1. The only contention on behalf of the petitioner is that the document having been referred to Pw.1 and he being cross examined with reference to the contents of the said document, the respondents have waived their right to object to the said document being exhibited. I have gone through the relevant part of the cross examination. It is now well settled that mere exhibition of the document does not tantamount to its proof. The relevancy/admissibility, the proof and the probative value to be attached to the document and the contents thereof are all different aspects which need to be gone into by the Court at the trial of the suit. Thus, even assuming that the document is given an exhibit (in the place of it being only marked for identification), no different considerations can arise.

10. The decisions relied on behalf of the petitioners turned on their own facts and in none of these cases, an unsigned/unexecuted document was involved or was sought to be exhibited.

11. Thus, keeping the issue open to be decided at the final hearing of the suit, the petition is dismissed. Needless to mention, that the petitioner would be entitled to challenge the finding recorded on the said issue in an appeal in the event the decree in the suit is adverse to that of the petitioner.

12. In the circumstances, there shall be no order as to costs.

C. V. BHADANG, J.

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