

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3250/2016

Pradip Narayan Konde & Ors.

... Petitioners

V/s.

Jagannath Kashinath Konde & Ors.

... Respondents

Mr. V. V. Ugle for the Petitioners

Mr. V. B. Tapkir for the Respondents

CORAM: K.K. TATED, J.

DATED : JANUARY 3, 2019

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 14.01.2016 passed by the Additional Judge of the Small Causes Court, Pune below Exhibit- 20 in Special Civil Suit No. 307/2013 rejecting the Plaintiff's Application to lead secondary evidence to place on record a certified copy of the sale deed dated 20.10.1967 which was registered with the office of Sub Registrar, Haveli No.1 at Sr. No.2971/67.

2 The learned counsel for the Petitioner submits that the Trial Court has rejected their Application mainly on the ground that the said sale deed was executed by the Plaintiff's grandmother. The learned counsel for the Petitioner submits that the Petitioner had specifically filed *pursis* dated 07.12.2015 before the Trial Court stating that both the executants of the said

sale deed expired, therefore, there is no question of issuing any notice as required u/s.66 of the Indian Evidence Act, 1872. He further submits that the Trial Court has failed to consider the fact that the said document was executed between Khanderao Yashwantrao Konde and Anusayabai Kashinath Konde. The Plaintiff was not a party to the said sale deed and/or acceptance of the same. Therefore, said order is liable to be set aside.

3 On the other hand, the learned counsel for the Respondent – Defendant has vehemently opposed the Writ Petition. He further submits that the Trial Court has rightly considered the documents on record and rejected the Application to lead secondary evidence. He further submits that the Trial Court has rightly held that the Plaintiff has failed to comply with the provisions of section 66 of the Indian Evidence Act, 1872. Therefore, there is no question of allowing the Writ Petition.

Section 66 of the Indian Evidence Act, 1872, which reads thus:

66. Rules as to notice to produce –

Secondary evidence of the contents of the documents referred to in Section 65, Clause (a), shall not be given unless the party proposing to give such secondary evidence has previously given to the party in whose possession or power the document is, ¹ or to his attorney or pleader such notice to produce it as is prescribed by law; and if no notice is prescribed by law, then such notice as the Court considers reasonable under the circumstances of the case;

Provided that such notice shall not be required in order to

render secondary evidence admissible in any of the following cases, or in any other case in which the Court thinks fit to dispense with it:

1. When the document to be proved is itself a notice;
2. When from the nature of the case, the adverse party must know that he will be required to produce it;
3. When it appears or is proved that the adverse party has obtained possession of the original by fraud or force;
4. When the adverse party or his agent has the original in Court;
5. When the adverse party or his agent has admitted the loss of the document;
6. When the person in possession of the document is out of reach, or not subject to, the process of the Court.”

4 Heard both sides at length. Admittedly, the Plaintiff was not party to the sale deed dated 20.10.1967. Not only that, there is no question of complying with the provisions of section 66 of the Evidence Act because both the executants were expired on the date of filing the Application to lead secondary evidence. Apart from that, the Plaintiff wants to place on record a certified copy of the said document duly issued by the competent authority.

5 Considering these facts, I am of the opinion that the Petitioner has made out a case for setting aside the impugned order dated 14.01.2016 passed by the Trial Court not allowing the Application below Exhibit- 20 in Special Civil Suit No. 307/2013.

6 Hence, following order is passed:

- a. Order dated 14.01.2016 passed by the Additional Judge, Small Causes Court, Pune below Exhibit- 20 in Special Civil Suit No. 307/2013 is set aside.
- b. The Application made by the Plaintiff to lead secondary evidence below Exhibit- 20 is allowed.
- c. The Plaintiff is permitted to place on record a certified copy of the sale deed dated 20.10.1967.
- d. No order as to costs.

(K. K. TATED, J.)