

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13978 OF 2018

Jijabai Dattu Sherkhane

..Petitioner.

V/s.

Sushila Mahadeo Karande

..Respondent.

Mr.I.M.Khairdi for the petitioner.

Mr.Sharad T.Bhosale for the respondent.

CORAM: M.S.SONAK, J.

DATE : MARCH 15, 2019

P.C.:-

Heard Mr.I.M.Khairdi, learned counsel for the petitioner and Mr.Sharad T.Bhosale, learned counsel for the respondent.

2. Challenge in this petition is to the order dated July 17, 2017 by which learned trial Court has admitted the alleged agreement for sale in evidence and marked the same as Exhibit-51.

3. Mr.Khairdi, learned counsel for the petitioner submits that the scribe to this document has not been examined, secondly, the witness is a power of attorney holder and, therefore, cannot depose first hand to the document and thirdly, the document itself is not an original but purported to be secondary evidence.

4. The record indicates leave to adduce secondary evidence

was already granted. In so far as other objections are concerned, it is only appropriate that liberty is granted to the petitioner to raise such objections and challenge the impugned order in case the suit is ultimately decided against the petitioner or if even if the suit is decided in favour of the plaintiff, but the original plaintiff appeals the same, the petitioner can challenge the impugned order by instituting an appeal / cross objections. However, this is not a fit case to interfere with the impugned order at this stage itself, particularly, because, mere admission of a document in evidence is still not to be construed as proof of its contents.

5. Accordingly, with liberty as aforesaid, which is consistent with section 105 of the Civil Procedure Code, this petition is disposed of.

6. All contentions of the parties are expressly kept open.

7. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)