

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO. 14362 OF 2016

Thakarchand Bhikchand Punamiya (HUF) and others] Petitioners

Vs.

M/s. Buddhdev Enterprises and others.] Respondents

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Mr. Rajesh Sudhakar Datar, for Petitioners.

Mr. P.K. Dhakephalkar, Senior Advocate i/b Mr. Amol P. Mhatre, for Respondents No.7 to 11.

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CORAM : R.G. KETKAR, J.

DATE : 11th JANUARY, 2019.

P.C.

Not on board. At the request of Mr. Datar, taken up in the production board.

2. As the Regular Court presided over by the Hon'ble Mr. Justice K.K. Tated passed "Not Before Me" order, Mr. Datar has moved this Court as per the Administrative Order passed by the Hon'ble the Chief Justice.

3. Heard Mr. Datar, learned Counsel for the petitioners and Mr. Dhakephalkar, learned Senior Counsel for respondents No.7 to 11.

4. By this Petition under Article 227 of the Constitution of India, the petitioners, hereinafter referred to as "plaintiffs" have challenged the order dated 4th July, 2016 passed by the 9th Joint Civil Judge, Senior Division, Thane below Exhibit 241 in R.C.S No.846 of 2008. By that order, the learned Trial

Judge has partly allowed the application Exhibit 241 made by the plaintiffs for producing Development Agreement dated 10th April, 2001. The learned Trial Judge accepted the document for identification purpose only and directed the plaintiffs to prove contents of the document.

5. In support of this Petition, Mr. Datar relied on section 74 (2) to section 76 and 77 of the Indian Evidence Act, 1872 (for short 'Evidence Act') and submitted that as the Development Agreement is a registered instrument, in terms of section 77 (2) of the Evidence Act, the same is a public document. Section 77 lays down that certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

6. Mr. Datar also relied on the following the following decisions;

[1] Ramappa Vs. Bhojappa, AIR 1963 Supreme Court 1633
and in particular paragraph 9 thereof,

[2] State of Haryana Vs. Ram Singh, 2001 (4) ALL MR 544
and in particular paragraph 5 thereof.

He submitted that as the certified copies of Development Agreement are admissible in evidence without proof, the learned trial Judge was not justified in directing the plaintiffs to prove contents of this document.

7. On the other hand, Mr. Dhakephalkar supported the impugned order. He submitted that Development Agreement can't be treated as a public document. Decision of **State of Haryana** (supra) was in the context of section 51 A of the Land Acquisition Act, 1894 which lays down that a certified copy of a document registered under the Registration Act, 1908 including a copy

under Section 57 of that Act may be accepted as evidence of the transaction recorded in such documents. He, therefore, submitted that no case is made out for interfering with the impugned order.

8. I have considered the rival submissions advanced by learned Counsel for the parties. I have also perused the material on record. It is not in dispute that the plaintiffs filed application Exhibit 241 for producing certified copy of the Development Agreement dated 10th April, 2001. The question is whether certified copy of the Development Agreement is a public document. It is not in dispute that the said Development Agreement was entered into between Proprietor of respondent No.1 and respondent No.6 who are private parties.

9. Mr. Datar relied on the decision in case of **Ramappa** (supra). In that case, Exhibit A-8 was the certified copy of the Changes Register of Rakatla Village. This document showed names of certain parties as Pattadars. In paragraph 9, the Apex Court referred to the view of the learned Single Judge of the High Court. The learned Single Judge of the High Court was inclined to hold that Exhibit A-8 had not been proved at all and could not be received in evidence. On behalf of the respondent, it was conceded that this was plainly erroneous. It was further observed that the document in question being certified copy of a public document need not be proved by calling witness. It was also observed that no objection has been raised about mode of proof either in the trial Court or in the District Court. In view thereof, decision in case of **Ramappa** (supra) will not advance case of the plaintiffs.

10. In the case of **State of Haryana** (supra), the Apex Court was considering determination of compensation awarded under the Land Acquisition Act, 1894. In paragraph 5, it was observed that Counsel for the

State was right when he submitted that the High Court erred in rejecting Exhibits R/2 and R/3 as inadmissible only on the ground that the parties to the documents had not been examined by the State. It was observed that it is not the law that a certified copy of a registered agreement for sale is inadmissible in evidence unless the parties to the document are examined to prove it. That would be contrary to what section 77 read with Sections 74 (2) and 76 of the Evidence Act and more specifically section 51A of the Land Acquisition Act provide. It was further observed that as far the provisions of the Evidence Act are concerned, a certified copy of the registered sale deed is admissible in evidence and does not need to be proved by calling a witness.

11. Thus, the Apex Court was considering provisions of section 51A of the Land Acquisition Act and it is in that context, observations were made. In view thereof, the said decision also does assist the plaintiffs. In the result, the Petition fails and the same is dismissed.

12. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in memorandum of Appeal as contemplated by Section 105(1) of C.P.C.

[R.G. KETKAR, J.]