

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11377 OF 2017

SUKRYA GANPAT DHONE (since deceased))
Through Legal Heirs)
SMT.RAJUBAI SUKRYA DHONE & ORS.)...PETITIONERS

V/s.

NANA DATTU / DATTARAM DHONE & ORS.)...RESPONDENTS

Shri.A.S.Khandeparkar i/b. Khaneparkar & Associates, Advocate
for the Petitioners.

Shri.A.A.Garge i/b. Shri.Kashyap Bhalerao, Advocate for
Respondent Nos.1 to 17.

CORAM : A. M. BADAR, J.

DATE : 11th NOVEMBER 2019

P.C. :

1 Heard finally.

2 By this petition, petitioners, who happen to be
defendants in the suit, are challenging the orders passed below
Exhibits 104 and 105 by the learned trial court thereby rejecting

their application for exhibiting the document at Exhibit 94 as proved and for reading the same in evidence, so also the application for issuing witness summons to the Sub-Registrar of Assurance at Kalyan.

3 Heard the learned counsel appearing for petitioners/defendants. He vehemently argued that the document at Exhibit 94 is duly proved by defendants but the learned trial court has exhibited the said document only for the purpose of identification. It is further urged that defendants have applied for issuance of witness summons to the Sub-Registrar of Assurance at Kalyan for proving the document at Exhibit 94 but the said application is also rejected by the learned trial court by holding that the document is a registered document and therefore, there is no need to issue summons. The learned counsel for defendants submits that Sale Deed at Exhibit 94 is dated 19th December 1935 and as the executor of the Sale Deed is not available, defendants are attempting to prove that document but the learned trial court has refused to grant such permission.

4 The learned counsel appearing for respondents/ plaintiffs vehemently opposes the application by contending that unless and until executor of the document is examined, the contents thereof cannot be proved and no purpose would be served even by issuing summons to the Sub-Registrar, as prayed by defendants, because the Sub-Registrar will not be in a position to prove the contents of the document.

5 I have considered the submissions so advanced and also perused the applications as well as the orders passed thereon.

6 Contention of defendants before the learned trial court is to the effect that the property reflected in the Sale Deed dated 19th December 1935 which is at Exhibit 94, is not a joint family property but it is self acquired property of defendant nos.1 and 2. Therefore, endeavour is being made by defendants to prove the contents of that Sale Deed dated 19th December 1935. The learned trial court has marked that Sale Deed as exhibited but only for the purpose of identification, and therefore, defendants have applied for issuing witness summons to the Sub-Registrar of

Assurance at Kalyan. When the learned trial court has only marked the document as exhibit for the purpose of identification, then in my considered opinion, the learned trial court should have granted all available opportunities to defendants to prove contents of the document at Exhibit 94. One such mode which is sought to be adopted by defendants is calling the Sub-Registrar as a witness for proving the document. Therefore, defendants need to be granted an opportunity to prove that document by calling the Sub-Registrar as a witness. The document is already marked as Exhibit 94 and therefore, after closure of evidence by defendants who are willing to get that document proved, at the time of delivering judgment, the learned trial court will have to see whether the document at Exhibit 94 is proved or not. At the stage of recording evidence, defendants cannot insist the court to give finding on the aspect that the document at Exhibit 94 is proved and can be read in evidence. Hence, the following order :

ORDER

- i) The petition is partly allowed.

- ii) Challenge to the order dated 12th September 2017 at Exhibit F fails. However, the order rejecting the application for issuance of summons to the Sub-Registrar is quashed and set aside.
- iii) The application for issuing of witness summons to the Sub-Registrar of Assurance is allowed.
- iv) The learned trial court to issue the necessary witness summons for calling the Sub-Registrar for adducing evidence on behalf of defendants.
- v) The writ petition is accordingly disposed off.
- vi) Needless to mention that the observation made herein are prima facie in nature and shall have no bearing on the disposal of the suit. All rights and contentions of parties are kept open.

(A. M. BADAR, J.)