

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1077/2019

Shri Satya Sai Baba Swagruh Sukh Nirman Sanstha Maryadit

..VS..

Chandrakant Gulabrao Sonole & ors.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Y. Maheshwari, Advocate for the petitioner

CORAM : Z.A.HAQ, J.
DATED : 12/02/2019

Heard.

The defendants had filed an application before the trial Court seeking permission to lead secondary evidence under Section 65 of the Indian Evidence Act, 1872 (for short “the Act of 1872”) in respect of the power of attorney alleged to have been executed in favour of the defendant no. 2 and registered with the Sub-Registrar, Hingna on 02/03/2006. According to the defendants, the original power of attorney is not traceable. This application is allowed by the trial Court by the impugned order.

According to the plaintiff, the defendants had not filed any application seeking permission from the Court to adduce secondary evidence and without there being such application, the trial Court could not have permitted the defendants to adduce secondary evidence in respect of the power of attorney dated 02/03/2006. The advocate for the petitioner – plaintiff submitted that the trial Court has

committed an error by permitting the defendants to adduce secondary evidence without there being any application seeking permission for it. It is submitted that an application seeking permission to adduce secondary evidence is necessary so that the other party gets an opportunity to point out that permission to lead secondary evidence cannot be granted. The advocate for the petitioner - plaintiff referred to the judgment in the case of State of Rajasthan and others vs. Khemraj and others reported in AIR 2000 SC at page 1759, judgment given in the case of H. Siddiqui (dead) by LRs vs. A. Ramalingam reported in AIR 2011 SC at page 1492 and the judgment given by this Court in the case of Ganpat Pandurang Ghongade and others vs. Nivrutti Pandurang Ghongade reported in 2008 (5) Mh.L.J. at page 153. It is submitted that the judgment given in the case of Parasanbai Dhanraj Jain & Ors. vs. Sunanda Madhukar Jadhav reported in 2017 (6) ALL MR at page 877, requires re-consideration in view of the proposition laid down in the above referred judgments.

After examining the material placed on record of the petition, I find that the defendants had filed an application seeking permission of the Court to lead secondary evidence under Section 65 of the Act of 1872. Hence, reference to the judgment given in the case of Parasanbai Dhanraj Jain (supra) in the impugned order is inconsequential and the submission made by the advocate for the petitioner – plaintiff relying on the judgments given in the cases of Khemraj, H. Siddiqui and Ganpat Pandurang Ghongade (supra) does not require any consideration. I further find that the learned trial Judge has applied his mind to the grounds pointed out by the defendants for seeking

permission to lead secondary evidence. The learned trial Judge has rightly observed that there is no apparent reason as to why the defendants will withhold the original document. The learned trial Judge has also rightly observed that the plaintiff will get opportunity to cross-examine the witness / witnesses of the defendants on the relevant point relating to the power of attorney.

I find that the impugned order is passed after considering the legal position. The impugned order does not suffer from any patent illegality or error of jurisdiction which necessitates interference by this Court in the extra-ordinary jurisdiction.

The writ petition is **dismissed**. No costs.

JUDGE

Ansari