

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.1559 OF 2017

Vikas s/o Mahendrasingh Saini

... Petitioner

-vs-

Dwarkanath Sansthan/Akhil Bhartiya
Shrinimbarkacharyapeeth, Salemabad,
Dist. Ajmer (Rajasthan)
And ors.

... Respondents

Shri A. S. Deshpande, Advocate for appellant.
Shri A. J. Gilda, Advocate for respondent Nos.1 to 6.
Shri S. Alaspurkar, Advocate for respondent No.7.

CORAM : A.S.CHANDURKAR, J.

DATE : April 02, 2019

P.C.

The petitioner is aggrieved by the order passed by the trial Court below Exhibit-1 refusing to exhibit the correction deed dated 04/01/1991 during the course of the petitioner's evidence.

2. The facts in brief are that the petitioner is the original plaintiff No.2 who has filed suit for declaration, permanent injunction as well as for cancellation of sale-deed dated 04/05/2011 alongwith other ancillary reliefs. Written statement has been filed by the defendants opposing the reliefs as sought. During the course of evidence of the plaintiff the sale-deed dated 14/10/1988 was marked as Exhibit-56. Thereafter when the witness sought to refer to the correction deed dated 04/01/1991, an objection was raised by the defendants stating therein that in absence of any pleadings in respect of the correction deed, the

witness should not be permitted to refer to that correction deed and that it was not liable to be exhibited. After hearing both the sides the trial Court passed an order dated 21/11/2016 upholding the objection and refusing such permission. Being aggrieved the said order has been challenged in the writ petition.

3. Shri A. S. Deshpande, learned counsel for the petitioner by relying upon the judgment of the Full Bench in ***Hemendra Rasikal Ghia vs. Subodh Mody 2008(6) Mh.L.J. 886*** submitted that the document in question could have been permitted to be exhibited as the objection was not with regard to its admissibility. Since the correction deed was based on the sale-deed dated 14/10/1988 the same could have been marked as exhibit so as to have enabled adjudication by referring to the correction deed. As a result of the impugned order the plaintiff was precluded from referring to that document.

4. On the other hand Shri A. J. Gilda, learned counsel for respondent Nos.1 to 6 and Shri S. Alaspurkar, learned counsel for respondent No.7 supported the impugned order. Reliance was placed on the decisions in ***Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust, Virudhunagar vs. Chandran and ors. (2017) 3 SCC 702*** and ***P. C. Purushothama Reddiar vs. S. Perumal 1972(1) SCC 9***. It was submitted that in absence of any pleadings in respect of the correction deed the trial Court was justified in refusing permission to refer to said document in the deposition of the plaintiff. They referred to the averments in the plaint to substantiate their contentions.

5. After hearing the learned counsel for the parties and after perusing the pleadings on record it is seen that the plaintiff has not pleaded as to

the execution of correction deed dated 04/01/1991. Reference has been made only to the sale-deed dated 14/10/1988. Since reference to the correction deed was sought to be made in the examination-in-chief by the plaintiff, the objection as regards absence of any pleadings in that respect was rightly raised by the defendant and the same was validly upheld. The question is not with regard to admissibility of the document but with regard to absence of pleadings for referring to the same in the deposition. Thus considering the ratio of decisions relied upon by the learned counsel for the respondents, it is found that the trial Court was justified in passing the order below Exhibit-1 dated 24/11/2016. There is no jurisdictional error committed while passing the impugned order. The writ petition is rejected. No costs.

JUDGE