

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

WRIT PETITION NO. 6608 OF 2019

Prakash S/o Khushalrao Gajbhiye

..VS..

Vijay Kumar Narsu Singh

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

Court's or Judge's orders

Shri S.G. Karmarkar, Advocate for petitioner.

CORAM : AVINASH G. GHAROTE, J.

DATED : 22nd October, 2019

Heard Shri S.G.Karmarkar, learned Counsel for the petitioner. This present petition has been filed challenging the order dated 17.08.2019 passed below Exhibit 55 an application for permission to adduce secondary evidence, rejecting the application. The secondary evidence sought to be adduced was in respect of sale-deeds dated 29.05.1991 and 16.10.1997. The originals of these sale-deeds were in fact, some time, prior in point of time, filed before the Trial Court, however it is contended by the learned Counsel for the petitioner that as they were required in another suit filed by the petitioner being Regular Civil Suit No. 674 of 2014, the sale-deeds, have on an application being filed by the petitioner returned to the petitioner and have been filed in Regular Civil Suit No. 674 of 2014. Photo copies as certified

have been filed on record, however the trial Court has recorded the findings that from the photo copies there appears to be over writing in the sale-deed dated 29.05.1991 and the Court has found substance in the submission of the defendant that in order to conceal the fact regarding plot number and boundaries, plaintiff is trying to lead secondary evidence.

Considering this position, when the originals are in existence and are infact available and accessible, it was proper for the plaintiff/petitioner, to place the original documents on the record for the perusal of the Court while deciding the lis. It is stated at the bar that Regular Civil Suit No. 674 of 2014 as of present is pending at the stage when an application under Order I Rule 10 of Code of Civil Procedure has been decided by the Court allowing it and the stage has reverted back to the point of filing of written statement by the added party.

That being the position, nothing prevents the present petitioner/plaintiff from obtaining the originals of the sale-deeds from the Court, in Regular Civil Suit No. 674 of 2014 and placing them on record in the present proceedings being Regular Civil Suit No. 1270 of 2014 so that the Court

can have an opportunity to peruse the original sale-deeds in order to have an effective decision of the lis. In that view of the matter, I do not find any infirmity in the order passed by the learned Trial Court. It is open for the petitioner, to either requisition the record in Regular Civil Suit No. 674 of 2014 or file an application in Regular Civil Suit No. 674 of 2014 for return of the original and present the same in the present suit for perusal of the Court for satisfying itself as to the entries therein in light of the observations as made in the impugned order, whereupon the further proceedings can be taken.

This being the position, there is no merit in the present petition, therefore, the Writ petition is **dismissed**. No order as to costs.

JUDGE

Trupti.