

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

27 WRIT PETITION NO.280 OF 2021

BHAMABAI BHASKAR KHAKALE AND OTHERS
VERSUS
SARLA GOPINATH KHAKALE AND ANOTHER

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Advocate for Petitioners : Mr. R. L. Kute
Advocate for Respondents : Mr. S. S. Chapalgaonkar

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CORAM : AVINASH G. GHAROTE, J.

DATED : 19th JULY, 2021.

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PER COURT :

1. Heard learned counsel for the petitioners, the basic grievance is that, the notice to produce, or notice to admit, issued by the respondents, is not in the proper format or in the form given in the appendix to the Code of Civil Procedure. The dispute is regarding sale deed dated 11/07/1990 which was sought to be exhibited during the course of examination in chief of the plaintiff, when it was objected to on the ground that it was a certified copy and not an original. The objection to the forms of the notice to produce and the notice to admit, had been rejected by the Trial Court, holding that not adhering to the forms, would not result in a consequence of the application being not tenable in law. The court therefore, rejected the

contentions raised in this regard, and in my considered opinion rightly so. What is required is the compliance with the substance and not the form, which is the settled position of law. Merely because a notice to admit or a notice to produce, is not in the form as given in appendix-C, that would not mean that the same cannot be held to amount to a notice to admit or a notice to produce, if the contents of the application, make it sufficiently clear, that, that is what was intended. The applications at Exhs-69 and 70, sufficiently comply with the requirements and cannot be faulted with.

2. The next contention is that no foundation is laid in the plaint, nor in the affidavit, for leading secondary evidence. It is necessary to note, that in the written statement filed by the petitioner at Exh-29, para 14 thereof, the execution of the sale deed dated 11/07/1990 has specifically been admitted.

3. Since this document, was not in possession of the plaintiff, the two applications notice to produce and notice to admit, were given respectively at Exhs-69 and 70 which have been denied, thus, a conjoined effect of Exhs-69 & 70 as well as the admission given in para 14 of the written statement given by the petitioner/defendant would satisfy the requirement of the foundation.

4. Though the observation of the learned Trial Court that the sale deed dated 11/07/1990 was a public document cannot be sustained, the necessary requirements for permitting the plaintiff to lead secondary evidence, stood satisfied and therefore, permission granted by the impugned order cannot be faulted with. The petition, is therefore, without any merits and is accordingly dismissed. Needless to say, that while exhibiting the sale deed dated 11/07/1990, the trial court shall ensure that proof as is required by law for proving the same is tendered before the same is exhibited.

(AVINASH G. GHAROTE, J.)

vsm/-