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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3241 OF 2021**

Shri Sanjay Kumar Ashta
Prorietor of M/s Sarathi Enterprises
V/s
Eviction Officer, Airport Authority
of India & Ors.
.... Petitioner.
..... Respondents.

Smt. Meena A. Ruparel for the Petitioner.
Mr. Tejas Bhide for Respondent No.2.
Ms. Shoma Maitra a/w Naziya Khan i/b Wadia Ghandy & Co. for
Respondent No.3.

CORAM: NITIN W. SAMBRE, J.

DATE: AUGUST 04, 2021

P.C.:-

1] Impugned in the Petition are orders dated 3rd March, 2020 and 18th December, 2020 passed by Respondent No.1 – Eviction Officer of Respondent Nos. 2 and 3, Airport Authority of India and Mumbai International Airport.

2] The claim of the Petitioner, a Proprietor of Proprietary Firm is, land along with construction on CTS No.422 at Village Sahar admeasuring 511.06 Sq. Mtrs is in possession of the Petitioner vide

agreement of sale dated 8th December, 1991. It is claimed that since Respondent No.2 attempted to dispossess, which was resisted by the Petitioner, eviction proceedings came to be initiated. In the said eviction proceedings, an application came to be moved by the Petitioner for marking certain documents as exhibits, which came to be partly allowed. However, claim of the Petitioner to mark a certified true copy of the agreement of sale which is not a registered document as exhibit, came to be rejected in the light of the provisions of Section 17 and 49 of the Indian Registration Act.

3] Apart from aforesaid impugned order dated 3rd March, 2020, vide another impugned order dated 18th December, 2020 the application filed by the Petitioner seeking permission to lead secondary evidence to prove the documents which are part of affidavit of evidence which were not marked as exhibits vide order dated 3rd March, 2020 and for exhibiting document at Serial No.1 i.e. agreement for sale being an unregistered document, came to be rejected.

4] Counsel for the Petitioner Mrs. Meena Ruparel would urge that

both these orders are not sustainable in law, particularly when Section 49 of the Indian Registration Act permits unregistered agreement of sale to be read in evidence for collateral purpose. According to her, exhibiting document does not mean that contents thereof are admitted, as contents of the document need to be proved by its author. In the aforesaid backdrop, she would urge that atleast agreement of sale ought to have been exhibited. So as to substantiate her contention, she has placed reliance on the judgment of the Supreme Court in the matter of *Sait Tarajee Khimchand and Ors. vs. Yelamarti Satyam Alias Satteyya* reported in AIR 1971 SC 1865 and on the Order of the Supreme Court in the case of *Prakash Sahu vs. Saulal & Ors* delivered in Civil Appeal No.(s) 6772 of 2019 as also on the Order of this Court in the case of *Vijay Dhondu Kadam vs. Union of India* dated 9/01/2017 in Civil Writ Petition No.182 of 2017.

5] Counsel for Respondents opposed the aforesaid submissions, as according to them proceedings are at initial stage of recording of evidence. According to them, Petitioner has an appropriate remedy at an appropriate stage.

6] Considered submissions.

7] As far as non-marking of true copy of the unregistered agreement as exhibit is concerned, it appears that Respondents are not parties to the said agreement. As such, unless the said document is proved by adducing appropriate evidence, same cannot be marked as exhibit and admitted in evidence. Of-course, Petitioner has every right to prove the same and the Petitioner has sought permission to lead secondary evidence. However, such permission cannot be granted unless necessary ingredients of Section 65 of the Evidence Act are satisfied.

8] Be that as it may, I see no reason to cause any interference at this stage of the proceedings in extraordinary jurisdiction as non-receipt of the admissible evidence could be a ground in appeal to be preferred by the Petitioner in case if order of eviction of the Petitioner is made. Keeping such right of the Petitioner intact, Petition stands rejected.

(NITIN W. SAMBRE, J.)