

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5754 OF 2021
WITH
INTERIM APPLICATION NO. 2433 OF 2021
IN
WRIT PETITION NO. 5754 OF 2021

Bapu Shiva Mali and Ors .. Petitioners

Vs.

Sandeep S. Koregave and Ors. .. Respondents

...

Mr. Sandeep S. Koregave for the Petitioners.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 07TH OCTOBER, 2021.

P.C:-

1. The Petitioner has challenged the interim order dated 6th March 2020, passed below Exhibit 170 by the learned Civil Judge Junior Division, Peth-Vadgaon. The said order came to be passed on an application filed by Defendant No. 2B and 3B, by which they sought permission to adduce secondary evidence in respect of the sale deed dated 3rd August 1960 and the permission was granted by the said impugned order.

Y.S.Patil

2. Heard learned Counsel for the Petitioner. The counsel for the Petitioner has invited my attention to the first round litigation before this Court when in the second appeal, the suit filed by the plaintiff was withdrawn with liberty to file a fresh suit on the same cause of action. The appeal was allowed with liberty as prayed. Pursuant to the order passed by this Court, a fresh suit has been instituted which is numbered as Regular Civil Suit No. 137 of 1989.

3. In the said suit, the application is moved, seeking permission to adduce secondary evidence in respect of a sale deed dated 3rd August 1960 registered vide number 1854 of 1960 and this document is sought to be brought on record in the background that the plaintiff had alleged that the defendant had purchased the property from Laxman Mali, Annappa Krishna Mali, Shripati Krishna Mali, Akkatai Vasant Mali and Radhabai Yashwant Mali vide this sale deed dated 3rd August 1960. Therefore, production of this document is very much essential. In the application, it is specifically averred that though a notice was issued to the other side for production of said document by issuing witness summons, they have failed to bring it to the Court and further registered document vide No. 1854 of 1960 is also not to be found in the office. Resultantly, a request is made for adducing secondary evidence for the said document.

4. The application has been duly considered by the learned Judge and even the objection has been recorded. Relying

upon decision of this Court in **Kartik Gangadhar Bhat Vs. Nirmala Namdev Wagh**, (2019 SCC online Bom 7454), it has been held that there is no need of permission to lead secondary evidence. Learned Judge has recorded that the sale deed No. 1854 of 1960 is not traceable in its original and contents of the said document will have to be proved as per the law. Recording that the application moved satisfied the ingredients of Section 65 (c) of the Evidence Act, the Court deem it appropriate to permit the defendant to lead secondary evidence.

5. The position of law as regards permitting to adduce secondary evidence being clarified in the judgment of **Kartik Bhat** (supra) and particularly when in the application, the applicant has categorically averred that inspite of search of the original document, it is not found and it is not even available with the other side. The submission of learned Counsel for the Petitioner to the effect that in the earlier round, this document did not feature and therefore, though the document is alleged to have been executed in the year 1960, it cannot be brought at this belated stage, cannot be accepted, the reason being simple that when the permission was granted to file a fresh suit by this Court, suit will have to proceed in accordance with law and merely because in the earlier round of litigation, the document is not brought before the Court cannot be a ground, to reject it and being produced in this suit, particularly when and the determination of one of the issue in the suit rest upon the said document.

Y.S.Patil

For the reasons aforesaid, there is no merit in the submissions. The writ Petition is therefore dismissed.

Needless to state that the proceedings are long standing and are in the second round of litigation; in the earlier round, it had reached the stage of second appeal, the learned Judge shall make every endeavour to dispose off the suit as expeditiously as possible and in any case, on or before 31st May 2022.

[SMT. BHARATI DANGRE, J.]