

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

WRIT PETITION NO.2913 OF 2022

**VINOD BALKRISHNA KALE AND ANOTHER
VERSUS
RANJEETSING JAGDEORAO JADHAV AND OTHERS**

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Advocate for Petitioners : Mr. Ajay G. Talhar

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 28th FEBRUARY, 2022

PER COURT :

1. The petitioner is aggrieved by the order dated 10-01-2022 passed below Exhibit-221 and the order dated 13-01-2022 passed below Exhibit-226 in S.C.S. No.208/2008, by the learned 3rd Joint Civil Judge, Senior Division, Jalgaon.

2. By application Exhibit-221 the respondent/defendant No.7 sought permission for production and exhibition of documents. By the impugned order the said application is partly allowed, by granting permission for production of the proposed documents. Respondent/defendant is also permitted to confront document No.2 to the witness. The prayer for exhibition of documents and its admissibility is kept open. The document No.1 filed along with application Exhibit-221 is photocopy of the alleged agreement to sell dated 28-09-2004 executed by the plaintiff and deceased Jagdeo Dodhu Jadhav. The trial

Court, therefore, held that defendant No.7 has not sought the discovery of the said document from the plaintiff and has not issued any notice to produce the said document from plaintiff. The said document is not original, therefore, the said document cannot be confronted to the witness.

The second document was purchased from the stamp vendor who is the proposed witness. According to the trial Court, whether such document is scribed by the present witness is the question of fact and as per the provisions of Order 7 Rule 14(4) of the Code of Civil Procedure the said document can be confronted to the witness during his cross examination. By keeping the prayer for exhibition of the documents and its admissibility open, the trial Court has granted permission to confront document No.2 to the witness.

3. The application Exhibit-226 is filed by respondent/defendant No.7 under Section 65 of the Evidence Act to permit him to lead secondary evidence with regard to the alleged agreement to sell dated 28-09-2004, executed by the deceased Jagdeo Dodhu Jadhav (father of respondent Nos. 1 to 5 and husband of respondent No.6). This application is partly allowed by the trial Court and defendant No.7 is permitted to lead secondary evidence of the agreement to sell dated 28-09-2004 in accordance with law.

The suit is filed on the basis of agreement to sell dated 28-09-2004. Notice reply of Shri Jagdeo Dodhu Jadhav dated 30-09-2006 is filed in the suit at Exhibit-154. Before filing application Exhibit-226, defendant No.7 filed application Exhibit-224 seeking directions to the plaintiff to produce the agreement to sell on record. The plaintiff has flatly denied the existence, custody and execution of the said agreement to sell dated 28-09-2004. It is observed by the trial Court in the impugned order passed below Exhibit-226 that the evidence of plaintiff is going on and witness Adv. Namdeo Koli during his cross-examination has stated about existence of agreement to sell dated 28-09-2004. On the other hand, the plaintiff is denying the existence and custody of alleged agreement to sell. In that view of the matter, the trial Court allowed the application Exhibit-226 thereby granting permission to defendant No.7 to lead secondary evidence with regard to the agreement to sell dated 28-09-2004 in accordance with law. While granting such permission the trial Court has kept the question of proof and admissibility of the said document open.

3. In the facts of the present case, the trial Court has rightly granted permission to defendant No.7 to lead secondary evidence. No prejudice is likely to be caused to the petitioners as the question of proof and admissibility of the said document is kept open. The petitioner is

entitled to challenge the said documents and contend before the trial Court that the documents are not proved in accordance with law and they are inadmissible. Both the orders impugned in the present petition are reasoned orders. There is no illegality or perversity in the impugned orders. The trial Court has not committed any error of law or jurisdiction while passing the impugned orders. There is no merit in the present petition. The writ petition is, therefore, dismissed. No costs.

(NITIN B. SURYAWANSHI, J.)