

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

933 WRIT PETITION NO.8919 OF 2022

VIMAL SAMPAT KARALE
VERSUS
SANTOSH SUKHDEO BARASKAR AND OTHERS

Shri. U. U. Wagh, Advocate for the petitioner

**CORAM : M. G. SEWLIKAR, J.
DATED : 8th SEPTEMBER, 2022**

PER COURT :-

1. Heard.
2. Petitioner has filed Special Civil Suit No. 17 of 2013 before the Civil Judge, Senior Division, Ahmednagar for cancellation of sale deed dated 6th April, 2011 and 18th April, 2011 to the extent of 40 *Are* and 79 *Are* respectively and for perpetual injunction against the defendants. Defendant No. 17, who is the grand son of the petitioner/original plaintiff No.1 (since deceased) had played fraud and executed agreement to sell on 17th March, 2011 to the extent of 40 *Are*. This document was unregistered and it was notarized before Notary Public.
3. Plaintiff filed application at Exhibit 39 for seeking direction from the Court for production of original agreement to sell dated 17th March, 2011. Say of the defendant was called.

Defendant stated that the said document is not in his possession. Therefore, the learned Trial Court rejected the application vide order dated 14th January, 2019 observing therein that that the said document is not in custody of the defendant. It was also observed that plaintiff can obtain certified copy of the said document.

4. The petitioner filed review application for reviewing the order dated 14th March, 2019 below Exhibit 39. This application for review was filed at Exhibit 97 in the record of the Trial Court. This application was also rejected by the learned Trial Court. Both the orders are challenged in this writ petition.

5. Learned counsel Shri. Wagh for the petitioner submits that the agreement to sell was executed in favour of the defendant Nos. 1, 4, 6, 12 and 14. But they are falsely claiming that the document is not in their custody. He submits that the defendants be directed to produce the document.

6. Since the defendants have claimed that the document is not in their custody, the question of giving directions for production of it by the defendant Nos. 1, 4, 6, 12 and 14 does not arise. The Court can draw appropriate inference on account

of non production of document.

7. Learned counsel Shri. Wagh submits that the learned Trial Court in his order dated 14th January, 2019 observed that petitioner/plaintiff can obtain a certified copy of this agreement to sell. He submits that the document is unregistered and therefore, there is no question of obtaining the certified copy of it. Learned counsel is right in making this submissions. Since it is not a registered document, and it is not filed any public office, there is no question of obtaining certified copy of it and producing in the Court.

8. Since the defendants are claiming that the documents is not in their custody, the directions to produce the document are unwarranted. In view of this, petition is without any substance, hence it is disposed of.

[M. G. SEWLIKAR, J.]

ssp