

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

917 WRIT PETITION NO.10696 OF 2022

**NAGNATH RAMCHANDRA MUTTEPAWAR
VERSUS
SADHANA NAGNATH MUTTEPAWAR AND OTHERS**

...
Advocate for Petitioner : Mr. Namit S. Muthiyan

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CORAM : SANDEEP V. MARNE, J.

DATE : 14-10-2022

PER COURT :

. By the present petition, the petitioner has challenged direction given by the trial Court while recording evidence of the petitioner - plaintiff on 06.09.2022 permitting the defendant to confront petitioner – plaintiff with photocopy of lease deed. According to the petitioner, since existence of original of the lease deed is established, the Court could not have permitted the defendant to confront the plaintiffs with photocopy of such a lease deed.

2. Mr. Muthiyan, the learned counsel for the petitioner submits that photo copy of lease deed, being secondary evidence is not admissible in law and therefore the Court could not have permitted the defendant to confront the plaintiff with such secondary evidence. He relies upon the following decisions in support of his

contention.

- (i) The order of Bombay High Court in **Vijay Kumar Gupta vs. Naresh Kumar Gupta and anr**, Testamentary Suit No.72 of 2005 decided on 04.05.2016.
- (ii) The order of Karnataka High Court in **Shri Mahesh vs. Ravindra Shantinath Chougule**, Writ Petition No.67848 of 2012 decided on 06.12.2012.
- (iii) The order of Karnataka High Court in **Shri M.R. Shivarudraiah s/o. Rudrappa and another vs. Sri Rudrappa & Others**, Writ Petition No.14488 of 2020 decided on 28.01.2021.

3. I have heard the learned counsel for the petitioner and have gone through the evidence of the plaintiff recorded on 06.09.2022 in which the decision of the trial Court is recorded. The plaintiff and the defendant are husband and wife. The plaintiff admits that original lease deed was in his custody. It is also an admitted position that the original lease deed has been deposited with the Bank towards security. Under these circumstances, the Court has permitted photo copy of that lease deed for being used for confronting the plaintiff during cross-examination. It has also come on record that the plaintiff was repeatedly asked during the course of his cross-examination to produce the original lease deed in his custody and that the plaintiff failed to produce the same.

4. In such circumstances, I do not find that any error is committed by the trial Court in permitting the use of photo copy of

lease deed for confronting plaintiff during his cross-examination. The decisions relied upon by Mr. Muthiyan are clearly distinguishable. In **Vijay Kumar Gupta** (*supra*) the court has recorded a finding that there was no foundation laid for use of copies. In **Shri Mahesh** (*supra*) the Court was not considering the situation similar to the present case when original document is in custody of the plaintiff, who refused to produce the same on record which led to use a photo copy for his confrontation in the cross-examination. In **M.R. Shivarudraiah** (*supra*) there was a dispute about the original of the document being seized by Income Tax department and there were no pleadings about such seizure. As against this, in the present case the factum of the original document earlier being in possession of the plaintiff and the same being mortgaged with the bank is not in dispute. All the three decisions, in my opinion, are clearly distinguishable.

5. Consequently, I do not find any merit in the petition. Writ petition is dismissed.

(SANDEEP V. MARNE, J.)