

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

WRIT PETITION NO.14356 OF 2017

Ismail s/o Dagdu Pathan = PETITIONER
(Orig.Plaintiff)

VERSUS

1. Usman Babu Shaikh & Ors. = RESPONDENT/S
(Orig.Defendants)

Mr.KM Nagarkar,Advocate h/for Mrs.Smita S.Kulkarni,
Adv. for Petitioner;

Mr.NL Jadhav, Advocate for Respondent Nos. 1 to 6.

CORAM : SMT. BHARATI H.DANGRE,J.

DATE : 25th January, 2022.

PER COURT :-

1. The petitioner is aggrieved by an order passed by Joint Civil Judge, Senior Division, Ahmednagar on Exhibit-39 in Regular Civil Suit No. 629/2014, by which, his application for exhibiting the sale-deed, came to be rejected.

2. The petitioner is a plaintiff, who filed the suit on 22.9.2014 for declaration and injunction against Respondent Nos.1 to 6 and based on the pleading that Respondent No.2 has sold the land in favour of Respondent Nos.5 and 6 the subject sale-deed is not binding upon the

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plaintiff. The pleading in the suit is to the effect that father of the plaintiff purchased the suit land vide two sale-deeds dated 25th November, 1952 and 29th March, 1954 from one Mohanlal Ramlal Mutha and subsequent to his death, the plaintiffs are in peaceful possession of the suit property. During pendency of the suit, the plaintiffs filed an application below Exhibit-39, in which he pleaded that pursuant to the sale-deed executed by his father, mutation entries are effected and what he merely sought by the said application was that the document being 30 years old, by giving benefit of presumption under Section 90 of the Evidence Act, the document shall be exhibited.

3. It is this application which came to be rejected by recording that the presumption under Section 90 of the Evidence Act, in respect of the document, purporting to be 30 years old, is only qua the hand writing of a particular person or in case the document is executed or attested to the effect that it was duly executed and attested by a person by whom it purport to be executed or attested. True it is that Section 90 of the Evidence Act does not give rise to any presumption

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regarding its registration or it being a valid document and merely by exhibiting a document, it does not amount to admitting its contents, and unless and until by properly adducing evidence, its contents are proved. Furthermore, mere exhibiting of the document also does not mean that it is admissible in evidence since during examination of the witnesses, the Court would mark the said document as admissible/inadmissible in evidence and if any law prohibits it from being admissible in evidence, mere exhibiting of the said document would not lead to it being read in evidence acceptable as admissible document. The learned Judge has, therefore, wrongly rejected the said application, which merely sought exhibiting of the document in the form of sale-deeds on the basis of the presumption available under Section 90 of the Indian Evidence Act. The impugned order cannot be sustained as the learned Judge has determined the effect of the said document on the ground of its non-registration. Mere exhibiting the document would not amount to proof of its contents and, therefore, subject to the contentions of the respondents being kept open about execution of the

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document as well as its contents, its exhibition, being a 30 years old document, ought to have been granted. Necessarily, the impugned order is quashed and set aside.

4. With the aforesaid clarification, the writ petition is allowed.

(SMT. BHARATI H.DANGRE,J.)

BDV