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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 8360 OF 2021

ARUNA VIRPAKSH GADAVE

....PETITIONER

V/s.

VAISHALI JAYANT DONGARE AND ANR

.....RESPONDENTS

Mr. Nagesh Y. Chavan Advocate for the Petitioner

Mr. Pradeep S. Gole Advocate for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 4, 2022.

P.C.:

- 1) Heard.
- 2) Relying on the provisions of Section 63 and 65 of the Indian Evidence Act, Petitioner objected prayer of Respondent for permission to lead secondary evidence to prove the document viz. Agreement dated 18/01/2016 which is allowed vide impugned order passed below Exh. 43. As such, this petition.
- 3) Relying on the Judgments of this Court in the matters of **Nilkanth s/o. Shridhar Thorbole & Anr Vs. Hanumant s/o Baburao**

Magar & Ors.¹ and Parashram s/o Kashiram Sakhare V/s. Vatsalabai w/o. Harshay Sharma and Anr² submissions of learned counsel for the Petitioner are, once it is demonstrated that Agreement of Sale is not a registered, same needs to be first impounded. After valuation of the same for the purpose of stamp duty, appropriate procedure can be taken recourse to. According to him, document since is relied on in the Suit and claim to be notarized document (unregistered), cannot be read in evidence for want of aforesaid compliance.

4) Counsel for the Respondent has supported the order impugned.

5) Suit is for cancellation of the Sale Deed dated 24/02/2016. Even if there is no reference to the Agreement dated 18/01/2016 in the said sale deed in relation to which relief is claimed in the Plaint, fact remains that pursuant to trail of the events post aforesaid Agreement disclose that the aforesaid sale deed was executed. As far as the sale deed dated 24/02/2016 is concerned, same is a registered document.

6) In the aforesaid background, once the Agreement is taken colour of Sale Deed, the Court below was justified in recording a

¹ 2021(5) ALL MR 138

² 2004(1) ALL MR 755

finding that Respondent needs to be granted permission to lead secondary evidence. Apart from above, perusal of pleadings depicts that already foundation was laid about existence of Agreement of Sale so also Sale Deed dated 24/02/2016. Notice to produce document given to the Petitioner was not responded to, as a consequence of which, considering the burden of proof, prayer of Respondent is rightly so allowed by the Trial Court.

7) Support drawn from the Judgments in the case of **Nilkanth s/o. Shridhar Thorbole & Anr** and **Parashram s/o Kashiram Sakhare** [cited supra] will be of hardly any assistance as in both aforesaid cases, what was challenged was Sale Deed which was an unregistered document. However, in both aforesaid cases, there was no unregistered Agreement of Sale and Sale Deed.

8) In the aforesaid background, no case for interference is made out. Petition as such fails, stands dismissed.

[NITIN W. SAMBRE, J.]