

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

SECOND APPEAL NO.203/2022

Vijay s/o Umaji Pande
...Versus...
Smt. Yashodabai Wasudeorao Wadibhasme

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

S/Shri S.V. Sohoni and S.S. Sohoni, Advocates for appellant
Shri Nitesh Samundre, Advocate for respondent

CORAM : AVINASH G. GHAROTE, J.
DATE : 12/09/2022

1. Heard Shri Sohoni, learned counsel for the appellant. The only contention raised is that the agreement of sale dated 09/05/2003 ought to have been held to have been proved by the Courts below on the testimony of the plaintiff.
2. It is not disputed by the learned counsel for the appellant that the execution of agreement of sale dated 09/05/2003 was disputed by the defendant/respondent. That being the position and there being no admission regarding the execution of the agreement of sale, the only mode by which the same could have been proved, was by examining an attesting witness. However, in the instant case, it is an

admitted position on record that in spite of the very execution of the agreement of sale dated 09/05/2003 being disputed no attesting witnesses were examined. That being the position, in my considered opinion, the Courts below have rightly held that the agreement of sale dated 09/05/2003 was not proved, on the sole testimony of the plaintiff. Merely because the agreement was marked as an exhibit i.e. Exh.38 or that the stamp duty upon it was paid on account of impounding that by itself would not dispense with the proof the document, which could only be done by examination of the attesting witnesses. The mere fact that the plaintiff has not been cross-examined would also not mean that the document had been proved as it is the original burden of the plaintiff, in view of the dispute regarding the existence of the document as raised in the written statement, to have proved the contents of the document. I therefore do not see any substantial question of law being raised in the present appeal. The second appeal is without any merit and is accordingly dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)