

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.2843 OF 2017

Kondiba Devba Thoke

.... Petitioner

Versus

Shravan Devba Thoke

.... Respondent

.....

Mr. S.S. Jangada, Advocate h/f Mr. Sachin S. Deshmukh,
Advocate for the Petitioner

Mr. S.V. Suryawanshi, Advocate for the Respondent

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 28th APRIL, 2023

ORDER :

1. The petitioner is aggrieved by the order passed by learned Civil Judge, Senior Division, Hingoli, below Exhibit-74 in Regular Civil Suit No.81 of 2023, thereby rejecting the application filed by the petitioner under Section 79 of the Evidence Act, to treat the certified copy of the sale deed dated 08/06/1995 as secondary evidence and to exhibit it.

2. Heard the learned advocate for the petitioner and learned advocate for the respondent. Perused the memo of Writ Petition, annexures thereto and the impugned order.

3. In the light of decision of the Apex Court in *Deccan Paper Mills Co. Ltd. vs Regency Mahavir Properties and others; (2021) 4 SCC 786*, the legal position is clear that even if certified copy of a conveyance is produced, the same is a private document. In that view of the matter, the order impugned in the present petition is rightly passed by the Trial Court by giving cogent reasons. The Trial Court has adopted same line of reasoning that a sale deed or any other deed of conveyance when presented for registration, the original registered document is not kept as a public document, and hence, a deed of sale or other registered document will not fall under either of the two classes of documents described in Section 74, as 'public documents'. Any document, which is not a public document is a private document, and therefore, the Trial Court held that the certified copy cannot be accepted without leading as a secondary evidence.

4. There is no illegality or perversity in the order impugned in the present petition.

5. The writ petition being devoid of merit is dismissed.

6. It is made clear that the petitioner is at liberty to file application for seeking permission to lead secondary evidence before the Trial Court.

7. Considering the fact that the suit is of the year 2013, and as per the submission of learned advocate for the respondent, the suit is kept for final arguments, the Trial Court is directed to expedite the suit and decide it, in any case, within a period of three months from the date of receipt of writ of this order.

[NITIN B. SURYAWANSHI]
JUDGE

S.P Rane