

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10929 OF 2019

Deepak Balaji Kokadwar

...Petitioner
[Ori. Plaintiff]

VERSUS

Manoj Bhavarlalji Rajotiya & Others

...Respondents
[Ori. Defendants]

.....
Mr. Amol Joshi h/f. Mr. Devang Deshmukh, Advocate for
petitioner.

Mr. S.S. Rathi, Advocate for respondent Nos. 1, 2A to 2E.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 5th SEPTEMBER, 2023

PRONOUNCED ON: 27th SEPTEMBER, 2023

ORDER :

1. This petition filed under Article 227 of the Constitution of India takes exception to the order dated 18.01.2019, passed by learned Joint Civil Judge, Junior Division, Jintur, below Exhibit-46 in Regular Civil Suit No. 24/2015.

2. Petitioner/plaintiff filed suit for recovery of possession and mandatory injunction. Respondents/defendants by filing written statement opposed the suit. During the hearing of the suit, plaintiff filed application Exhibit-31 seeking leave to

lead secondary evidence in respect of sale deed and mortgage deed, which was rejected by the Trial Court. Plaintiff thereafter by filing Writ Petition No. 12786/2017 challenged the said order. This Court by order dated 04.06.2018 dismissed the petition and observed thus;

"7. In the above backdrop, the Trial Court has taken care of the interest of this petitioner by observing in paragraph No. 11 of the impugned order that petitioner/plaintiff would be at liberty to produce the original mortgage deed in the proceedings by taking appropriate steps for securing the production of the said document. I do not find that the conclusion of the Trial Court could be faulted as the existence of the original mortgage deed with the concerned Bank being admitted, the petitioner cannot be permitted to lead secondary evidence.

8. Considering the above and in view of the remedy available to the petitioner to have the original mortgage deed produced to support his contention that House No. 772 owned by him was never mortgaged, this petition need not be entertained. The same is, therefore, dismissed."

3. The order passed in Writ Petition No 12786/2017 was unsuccessfully challenged before the Supreme Court. Plaintiff thereafter filed application Exhibit-39, thereby requesting the Trial Court to call upon the defendants to admit mortgage deed and sale deed. By filing say at Exhibit-41, defendants admitted execution of mortgage deed and its contents and gave no

objection to exhibit it. Defendants admitted execution of sale deed, but denied its contents. Since defendants admitted contents of the mortgage deed and gave no objection to exhibit it, the same was ordered to be exhibited. So far as sale deed is concerned, Trial Court granted liberty to the plaintiff to prove it as per Evidence Act.

4. Plaintiff thereafter filed application Exhibit-46 seeking permission to prove sale deed dated 31.05.1984 and its contents of which certified copy was placed before the Trial Court, in accordance with provisions of Evidence Act. Said application is rejected by the Trial Court. Hence, the present petition.

5. Heard the learned advocate for petitioner and learned advocate for respondents. Perused the memo of writ petition, annexures thereto and the impugned order.

6. I have given due consideration to the rival submissions advanced by the parties. It is evident from the record that execution of sale deed is admitted by the defendants, but its contents are disputed. Trial Court has already given plaintiff liberty to prove contents of the sale deed in accordance

with provisions of Evidence Act. In these facts, application filed by the plaintiff seeking permission to prove contents of sale deed on the basis of certified copy of sale deed is misconceived. It is the duty of the plaintiff to prove the sale deed by leading primary evidence. This is necessary as the defendants have specifically denied the contents of sale deed. In the light of these facts, Trial Court is justified in holding that it is necessary for plaintiff to prove the contents of sale deed by adducing primary evidence. Trial Court has rightly held that only admission of execution of document itself is not a ground for adducing secondary evidence of a document to prove its contents.

7. In the light of earlier order passed by this Court and the reasons assigned by the Trial Court while rejecting the application, no case is made out by the petitioner to interfere in extra ordinary writ jurisdiction. Writ petition being devoid of merit is dismissed.

[NITIN B. SURYAWANSHI, J.]