

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6233 OF 2019

Madhukar Manohar Taware

...Petitioner

Versus

Maruti Pandurang Kirkat Decd.

Through Lhr. & Ors.

...Respondents

...

Mr. Surel Sunil Shah a/w. Ms. Shivani S. Shinde for the Petitioner.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 14 JULY 2023.

P.C.:

By this petition, Petitioner-Plaintiff challenges order dated February 15, 2018 passed by the Jt. Civil Judge, Junior Division, Indapur thereby rejecting his application for marking the photocopy of the agreement to sale dated January 5, 1998 as Exhibit, for being read in the evidence.

2. The Petitioner-Plaintiff has instituted Regular Civil Suit No.183 of 1998 for specific performance of the agreement to sale dated January 5, 1998. It appears that since the agreement to sale is not properly stamped and was not registered, the original agreement to sale was sent to Collector for impounding and for payment of the deficit

stamp duty. It appears that the original agreement to sale was misplaced in the office of Collector, Pune. Therefore, the Petitioner-Plaintiff moved application at Exh.69 for seeking permission to lead secondary evidence by producing photocopy of agreement to sale. By order dated July 29, 2015, the Trial Court allowed the application at Exh.69 and granted permission to lead secondary evidence in support of agreement to sale dated January 5, 1998 under the provisions of Section 65A of the Indian Evidence Act, 1872.

3. Petitioner-Plaintiff moved another application at Exh.100 for enabling him to pay the deficit stamp duty on the photocopy of the agreement to sale dated January 5, 1998. By order dated November 21, 2017, the Trial Court was pleased to allow the application at Exh.100 and directed the Collector, Pune to accept the deficit stamp duty as well as to impound the agreement to sale dated January 5, 1998. Petitioner-Plaintiff accordingly paid the deficit stamp duty as well as the penalty amount on the photocopy of the agreement to sale dated January 5, 1998.

4. Petitioner-Plaintiff thereafter moved an application at Exh.111 for marking the photocopy of agreement to sale dated January 5, 1998 as an Exhibit for being read in the evidence. By order dated November 15, 2018, the Trial Court proceeded to reject the application.

5. Notices to the respondents in the present petition were issued on November 4, 2020. The office record indicates that Respondent No.1(a) had died on March 5, 2010 and that Respondent Nos. 1(b), 1(c),

1(d), 1(e) and 2 are served with court notices. Mr. Shah, the learned counsel appearing for Petitioner-Plaintiff would submit that Respondent No.1(a) is the mother of Respondent No.1(b) to 1(e). Since legal heirs of Respondent No. 1(a) are already on record, the Petition need not be kept pending any further.

6. Thus, despite being served, none has appeared on behalf of the Respondent No.1(b) to 1(e) and Respondent No.2. I have heard Mr. Shah, the learned counsel appearing for Petitioner.

7. The admitted position is that the original agreement to sale dated January 5, 1998 has been misplaced upon being sent in the office of Collector, Pune for impounding. The Trial Court accordingly permitted Petitioner-Plaintiff to lead secondary evidence in support of agreement to sale by order dated July 29, 2016. The Trial Court further allowed the application filed by Petitioner-Plaintiff for payment of deficit stamp duty directing the Collector, Pune to impound the photocopy of agreement to sale dated January 5, 1998. In pursuance of the order dated November 15, 2018, Petitioner-Plaintiff has apparently paid the deficit stamp duty with penalty.

8. I therefore do not any difficulty why the Trial Court could have rejected Petitioner-Plaintiff's application at Exh.111 for marking as Exhibit the photocopy of the agreement to sale dated January 5, 1998 for being read in the evidence. Since the original document is already misplaced and Petitioner-Plaintiff was permitted to lead secondary

evidence coupled with the fact that the deficit stamp duty and penalty has been paid on photocopy of the document, there would be no difficulty in marking photocopy of the agreement to sale as an Exhibit for read in evidence.

8. Writ Petition accordingly succeeds. The order dated February 15, 2018 passed by the Jt. Civil Judge, Junior Division, Indapur is set aside and Petitioner-Plaintiff's application at Exh.111 is allowed in terms of the prayer made therein. Writ Petition is allowed. There shall be no orders as to costs.

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VISHNU
KAMBLE

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SANDEEP V. MARNE, J.