

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

WRIT PETITION NO.323 OF 2019

Jugal Khemchand Agrawal,
Aged about 42 years,
Occupation-Agriculturist,
Resident-Gokulpeth,
Nagpur.

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Petitioner
(Ori. Plaintiff)

.. Versus ..

1. Krishnarao Laxmanrao Chafale,
Near Hanuman Mandir,
Beside Ankush Pal's House,
Dabha, Nagpur.
2. Keshavrao Laxmanrao Chafle (since deceased)
through Legal Representatives
 - 2-a) Smt. Pushpabai wd/o Keshavrao Chafle,
Aged Major.
 - 2-b) Shri Vivek s/o Keshavrao Chafle,
Aged Major.
 - 2-c) Shri Dinesh s/o Keshavrao Chafle,
Aged Major.
 - 2-d) Shri Bhalchandra s/o Keshavrao Chafle,
Aged Major.
 - 2-e) Sau. Anita w/o Dhananjay Mahajan,
Aged Major.

Nos. 2(a) to (e) residing in the house of
Plot No.34, Government Press Layout,
Dhaba, Tahsil and District-Nagpur-23.

3. Anandrao Laxmanrao Chafale (since deceased
through legal heirs)

- a) Kusumbai Anandrao Chaple, aged adult,
- b) Hemraj Anandrao Chafle, aged adult,
- c) Prakash Anandrao Chafle, aged adult,
- d) Nilima Pawan Jawder, aged adult,
- e) Pallavi Manoj Kadaskar, aged adult.

All residents of Near Hanuman Mandir,
Beside Ankush Pal's House, Dhaba,
Nagpur.

4. Smt. Godabai Shyamrao Yesankar (since
deceased through Legal Heirs)

- a) Namdevrao Shamraoji Yesankar,
Aged about 56 years, Occ.Labour,
R/o. Bhendala, Post-Waki,
Tahsil-Saoner, District-Nagpur.
- b) Ramesh s/o Shamraoji Yesankar,
Aged about 50 years, Occ. Labour,
R/o. Bhendala, Post-Waki,
Tahsil-Saoner, District-Nagpur.
- c) Sau. Devkabai Kushtaraoji Nagpure,
Aged about 58 years, Occ. Household,
R/o. Botala, Post-Fetri,
Tahsil and District-Nagpur.
- d) Sau. Geetabai Ramraoji Bhivankar,
Aged about 45 years, Occ. Household,
R/o. Hattisarra, Post-Khairi Dhalgaon,
Tahsil-Saoner, District-Nagpur.

5. Smt. Shantabai Umarao Satpute (since deceased
through Legal Representatives)

- 5a. Ishwar s/o Umraoji Satpute, aged 53 years,

5b. Kawdu s/o Umraoji Satpute, aged 50 years,
Both resident of village Waranga, Post-Dongargaon,
Tahsil and District-Nagpur.

6. Smt. Jijabai Mohanrao Murkute,
No.6 residents of Dabha (Lavha),
Tahsil and District-Nagpur.

.. Respondents
(Ori. Defendants)

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Shri Masood Shareef, Advocate for the petitioner,
Shri M.R. Joharapurkar, Advocate for the respondents.
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CORAM : MRS. VRUSHALI V. JOSHI, J.
RESERVED ON : 21.02.2023.
PRONOUNCED ON : 24.02.2023.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. Heard the matter finally
at the stage of admission.

2. By way of the present writ petition, the petitioner herein is invoking the extra-ordinary jurisdiction of this court in challenging the legality and validity of the order dated 27.11.2018 passed by the Civil Judge, Senior Division, Nagpur below Exh.77 in Special Civil Suit No.1188/2010, whereby the learned Trial Court had rejected the application of the petitioner for marking of documents payment vouchers/receipts as exhibit.

3. The petitioner moved an application Exh.77 dated 14.08.2018 for seeking directions for marking Exhibit to the money receipt/payment vouchers filed on record. The respondents opposed the said application by filing their reply. The Trial Court, after hearing the parties, has passed the order. The said order of the Trial Court is impugned herein.

4. The plaintiff has filed the application for exhibiting the receipts of payment of amount from 20.12.2004 to 17.05.2005 total amount of Rs.5,05,000/- given to the defendant. After filing the evidence on affidavit, the plaintiff has filed various receipts issued by the defendants with respect to payment made by the plaintiff. The plaintiff identified the signature of the defendants on said receipts and has stated that the contents in it are duly proved and hence requested to exhibit the said receipts.

5. The defendants objected for exhibiting said documents as the defendants have admitted the payment of Rs.1,50,000/- which was made by cheque. The defendants denied the signature on the said receipts. As the receipts were not proved as per the provisions of Section 61 of the Indian Evidence Act and the contents can be proved only by executant, the plaintiff can prove the said receipts as per the provisions of law. After considering the arguments of both the parties, the Trial Court had

rejected the application.

6. The plaintiff has filed the suit for specific performance of contract. The defendants have denied the payment made by the plaintiff by cash. The plaintiff tried to prove the payment through receipts and had stated that he knows the signature of the witnesses who signed it in his presence and, therefore, the documents be exhibited.

7. The learned counsel for the petitioner had stated that exhibiting of a document is an administrative act. A document which is produced in court is ordinarily exhibited only after its proof. But, exhibiting a document does not mean that the document is proved and non-exhibiting a document does not mean that the document is not proved. A document is required to be proved in accordance with the provisions of the Evidence Act. Exhibiting a document has nothing to do with the proof, as a matter of convenience, only the proved documents are exhibited.

8. Learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of **Bama Kathari Patil .vs Rohidas Arjun Madhavi and another, 2004 (2) Mh.L.J. 752**. The observations in the said matter were related to the rejection of application for recalling of

plaintiff as the document was proved during cross-examination, which is not the situation in the case in hand. The document which was in custody of the petitioner is produced by him, as the defendant has denied the said document and the signature on it. Mere production of said document cannot entitle the petitioner to exhibit it.

9. This court has observed in the case of **Abdul Rahim @ Guddu s/o Abdul Majid .vs. Sheikh Qayyum s/o Sheikh Rashid and others, 2010 (1) Mh.L.J. 343** that exhibition of document is just marking it for identification and mere exhibition of the document would not prove the contents of the documents as true. It is the observation in respect of the document which is 30 years old and was referred during cross-examination.

10. As some of the receipts are attested by the witnesses, the observation is made by the Trial Court that the receipts can be proved or exhibited as per the provisions of law. In that context, the learned counsel for the petitioner has placed reliance on the judgment of this Court in the case of **Asudamal s/o Laxmandas Sindhi .vs. Kisanrao s/o Wamanrao Dharmale and others, 2003 (4) Mh.L.J. 134** wherein it is stated that only where there is a specific provision made in the Act requiring that the document is to be attested then in such cases the

examination of the attesting witnesses is necessary as laid down in section 68 of the Evidence Act. The finding of the appellate Court that though one of the attesting witness is alive, the original plaintiff was duty bound to examine him to prove the execution of isarchitti i.e. agreement of sale, was not correct.

11. In the present case, the question of registration of any document is not there. If the petitioner wants to prove the document, he has remedy or solution to prove it through said witnesses. Therefore, these citations are not helpful to the petitioner. The petitioner has emphasized while arguing the matter that for mere identification it should be exhibited, then it can be marked as 'Article' for identification. In case of exhibiting document during the cross-examination one can say that the contents are not said to be proved only because the document is exhibited. Therefore, considering the view taken by the learned Trial Court, the interference at the hands of this court is not required. Hence, the petition stands **dismissed**.

[MRS. VRUSHALI V. JOSHI, J.]