

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

WRIT PETITION NO. 2714 OF 2019

Prashant S/o Madhavrao Naik and others

..VS..

Punjaji S/o Parasram Bawane and others

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

Court's or Judge's orders

Mr. C.A. Joshi, Advocate for petitioners.

Mr. K.S. Narwade, Advocate for respondent No.1.

CORAM : MRS. VRUSHALI V. JOSHI, J.

DATED : FEBRUARY 22, 2023

The petitioners have filed this petition challenging the observations made by the learned Trial Court while recording the evidence. The petitioners who are the original plaintiffs in Regular Civil Suit No. 26 of 2012 have examined the scribe of the agreement of sale. The scribe has attested the thumb impression of the defendant. He has stated on affidavit that he himself has typed the document and after typing it, it was read over and the contents in it as stated by the attesting witness, are correct. Thereafter, the thumb impression of said person was obtained on the said document and he has attested the said thumb impression. According to the plaintiff, as the witness was examined and he has stated that the thumb impression was obtained in his presence and contents are correct, on that basis the document is required to be exhibited. The counsel for the petitioner has stated that he

is the witness of said document, but after verifying said document the learned Trial Court, he has stated that he is not the witness and his name is not mentioned in the said document as person who has attested the thumb impression or as a witness. Therefore, the said document was not exhibited and Article "A" was given to the said document.

2. Being aggrieved by the said observations, the petitioner has filed this petition.

3. Learned counsel for the petitioner has stated that as per Section 61 and 62 of the Indian Evidence Act, 1872, as the petitioner has produced the document and contents in it are proved, the evidentiary value of said document would be considered at the time of the judgment, at this stage only for identification said document be exhibited.

4. Learned counsel for the respondent has stated that though the witness has stated on oath that he himself has typed said document and contents in it are correct, in cross-examination he has stated that he do not know the typing, he used to write the document therefore, the witness is not reliable and as the name of this witness is not mentioned on the said document, it cannot be exhibited. The Trial Court has rightly marked Article "A" for identification to the said document.

5. Heard learned counsel for the petitioner and learned counsel for the respondent.

6. The learned counsel for the petitioner pointed out that in the affidavit, the scribe/witness has stated that said document was got typed and thereafter it was read over. In his affidavit, he has not stated that he himself has typed the said document. It is not disputed that the evidentiary value cannot be considered at this stage. However, in his oral evidence the witness has stated that said document was typed by him and at the same time he has stated that he do not know the typing. The name of said person is not mentioned on the document, only because he has stated on affidavit the contents in said document cannot be said to be proved. Only for identification the document cannot be exhibited as the Trial Court has already marked it as Article "A" which serves the purpose of identification. Hence, there is no need to exhibit the document. There is no substance in the petition hence stands dismissed. No cost.

(MRS. VRUSHALI V. JOSHI, J.)

Kirtak