



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12333 OF 2018

The Official Assignee Co Operative Oil Industry

VERSUS

Kiran Baburao Suryawanshi And Others

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Mr. S. R. Deshpande, Advocate for the Petitioner

Mr. M. L. Dharashive, Advocate for Respondent No. 1

Mrs. P. R. Bharaswadkar, AGP for Respondent Nos. 2 to 4

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CORAM : R.M. JOSHI, J

DATE : JUNE 20, 2024

PER COURT :

1. By consent of both sides, heard finally at admission stage.

2. This Petition takes exception to order dated 20.02.2018 passed by the trial Court in RCS No. 900/2012 whereby application Exh. 61 filed by the Plaintiff/Respondent was allowed and documents filed by the Plaintiff are exhibited to be read in evidence.

3. Learned Counsel for the Petitioner submits that Respondent/Plaintiff filed suit for specific performance of contract and in alternative, sought refund of money with injunction. It is his submission that though Plaintiff has claimed that there is

agreement to sale in respect of suit property belonging to Petitioner/Defendant on 01.10.1980, in the written statement there is specific denial of the entering into any such agreement to sale on behalf of Defendant by administrator, namely, Mr. Agarwal. It is his submission that once the document is disputed by the Defendant, the burden is on the Plaintiff to prove the same in accordance with law. It is his submission by relying upon the affidavit in examination-in-chief that the Plaintiff was never confronted with these documents neither he has identified his signature or any other signature on these documents nor proved contents of documents. It is submitted that in absence of any proof of document, it is not open for the trial Court to exhibit the said documents to read in evidence.

4. Learned Counsel for the Respondent/Plaintiff submits that merely because due to the mistake of the Petitioner and out of inadvertence the documents were not exhibited, the Court was not precluded from exhibiting the same at later stage.

5. Since it is sought to be contended by the Petitioner/Defendant that the documents in question

which are directed to be exhibited by the impugned order, this Court has gone through the evidence i.e., Plaintiff. Examination-in-chief does not show that documents in question were confronted to the witness and that he has identified his own or any other signatures and the contents of the documents are proved. Even perusal of the cross-examination does not show any confrontation of these documents to the witness.

6. It is settled law that for the purpose of proving the document, the contents of the documents needs to be proved. For this purpose, the documents needs to be confronted to the witness who should identify his signature or signature of any other person thereon and specifically state about correctness of the contents thereof. This exercise has not been done before the trial Court. In such circumstances, the trial Court was not justified in exhibiting the document to be read in evidence.

7. Even though it was open for the Plaintiff to make an application before the trial Court that out of inadvertence these documents were not confronted to him

and to seek such leave. Unfortunately, the Plaintiff is no more. Hence, no such exercise is possible now.

8. Suffice it to say that learned trial Court has committed serious error in exhibiting the document to be read in evidence without proof thereof. Petitioner, therefore, has made out a case for setting aside the order. In the result, Petition is allowed in terms of prayer clause 'C'. The impugned order is set aside. Since the suit is of year 2012, the same is expedited.

(R. M. JOSHI, J.)

Malani