

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13454 OF 2023

Rajashree Suresh Taru and Ors.

.. Petitioners

Versus

Anil Prabhu Jeerenge

.. Respondent

.....

- Mr. Santaram A. Tarale i./by Ms. Geetanjali Shinde, Advocate for Petitioners.
- Mr. Sujeet Bugade, Advocate for Respondent.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 19, 2024

P.C.:

1. Heard Mr. Tarale, learned Advocate for Petitioner and Mr. Bugade, learned Advocate for Respondent.

2. By the impugned judgment and order dated 14.07.2023 passed below Exhibit-117 in Special Civil Suit No.64 of 2015, the learned Trial Court has rejected the application for de-exhibiting two documents namely Exhibit-100 and 102, which were marked by the Trial Court during witness action.

3. It is an admitted position from the record that these two Exhibits find mention in the pleadings of the Plaintiff. Further, the witness of the Plaintiff was extensively cross-examined on these two very documents in the witness action. It is seen that *prima facie*, the witness of the Plaintiff deposed in respect of both these documents before the Trial Court. In that view of the matter, the learned Trial

Court exhibited both these documents as Exhibit-100 and 102.

4. The Petitioner who is Defendant No.3 before the Trial Court thereafter realised that the documents which were exhibited by the Trial Court during cross-examination of the Plaintiff's witness were unstamped documents. Therefore, the Defendant No.3 filed application below Exhibit-117 to de-exhibit the aforesaid documents on that ground.

5. Today when the Writ Petition is argued before me, the Petitioners who are the Defendants would submit that since both the documents below Exhibits-100 and 102 are unstamped documents, they should not have been marked as exhibits in evidence. This is the sole argument of Petitioners – Defendants.

6. The Writ Petition is resisted vehemently by Mr. Bugade, learned Advocate for Respondent who is Plaintiff before the Trial Court. He would submit that on 08.01.2020, Plaintiff filed his affidavit-in-lieu of examination-in-chief which was marked as Exhibit-78 alongwith his compilation of documents. He would submit that on that date itself the documents of the Plaintiff were marked as Exhibits-79 to 108, which included the aforesaid two documents also. He would submit that document below Exhibit-100 is a family arrangement dated 10.06.2015 whereas document below Exhibit-102 is an Agreement for partition, both executed between the parties. He

would submit that the said documents were marked as exhibits before the Trial Court in view of the Plaintiff having proved the same for exhibiting them in evidence. He would submit that if the Defendants had to raise an objection, which is raised in application below Exhibit-117 about both documents being unstamped, it ought to have been raised in the first instance itself. He would submit that Defendants chose not to raise the objection and rather admitted both the documents. He would submit that there is adequate reference to these two documents in the suit plaint. He would submit that after these documents were exhibited by the Court, Defendants have extensively cross-examined the Plaintiff's witness on these very documents. He would therefore submit that once that is the position, Defendants now cannot seek de-exhibiting of the two documents. According to him, if the Defendants have a grievance about the two documents being unstamped there remedy lies elsewhere.

7. After considering the submissions of both the learned Advocates appearing for the respective parties, it is seen that both documents which are exhibited are transactions between the parties, they are original documents admitted by both the parties, they find mention in the pleadings before the Court and hence they have been marked as exhibits in evidence. Not only this, Defendants have conducted extensive cross-examination on these very documents of the Plaintiff's witness. Once that is the position, Defendants cannot seek

de-exhibiting of the two documents.

8. If the Defendants desire to maintain their objection as stated in Exhibit-117, it shall be open to Defendants to file an appropriate application for seeking such appropriate reliefs with regard to the two documents as available to them in law. Keeping that liberty open to the Defendants to file an appropriate application with regard to the two documents, if so available in law, I am inclined to accept the submissions made by Mr. Bugade. Resultantly, the impugned order dated 14.07.2023 passed below Exhibit-117 has been correctly passed by returning cogent reasons and hence it is upheld. The impugned order dated 14.07.2023 does not call for any interference.

9. The ad-interim relief granted vide order dated 02.11.2023 by this Court stands vacated.

10. With the above directions, Writ Petition stands dismissed and is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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