

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4835 OF 2023

Laxmibai Ramchandra Kadam & Ors.

.. Petitioners

Versus

Pritam Ramesh Kadam & Ors.

.. Respondents

.....

- Mr. Ashutosh Kulkarni a/w Mr. Siddharth Shitole for Petitioners
- Mr. Kishor Patil a/w Mr. R.M. Haridas i/by Pratik Rahade for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 13, 2024

P. C.:

1. Heard Mr. Kulkarni, learned Advocate for Petitioners and Mr. Patil, learned Advocate for Respondents.

2. This Writ Petition takes exception to the twin orders dated 07.06.2022 and 27.09.2022 collectively exhibited as Exh. E, page No. 106-112 of the Writ Petition. First order dated 07.06.2022 has been passed in respect of the registered agreement dated 30.04.2015 executed between the parties at the stage of examination of the stamp vendor from whom the stamp paper of the said original document has been bought.

3. Mr. Kulkarni has drawn my attention to the order dated 07.06.2022. He would submit that Suit is filed for specific performance of the twin agreements both dated 30.04.2015; one

registered and one unregistered and both agreements showing different denomination / consideration totalling to Rs. 35 Lacs. He would submit that according to Plaintiffs, consideration has been paid in three tranches of Rs. 5 Lacs, Rs. 15 Lacs and Rs. 18 Lacs totalling to Rs. 38 Lacs. Suit property is agricultural land ad-measuring 45.5 Ares.

4. In order to prove the Plaintiffs' case, Plaintiffs examined witnesses. Witness action of PW 3 is at Exh. E, page Nos. 106-108 during which the learned Trial Court while exhibiting the agreement dated 30.04.2015 has passed the impugned order. Similar is the order dated 27.09.2022 in respect of the second unregistered agreement dated 30.04.2015.

5. Mr. Kulkarni and Mr. Patil both are *ad idem* that both these documents are original documents which were presented before the Trial Court executed between the parties. The documents and signatures on these documents are original and they are not copies of the originals.

6. In that view of the matter under the provisions of Section 62 r/w 64 of the Indian Evidence Act, once the original document is placed in evidence, it is a primary document and it needs to be exhibited in evidence i.e. marked as exhibit. Despite the fact that the original documents were placed in evidence before the Trial Court by

PW-3 and they being admittedly part of the pleadings and averments in the suit plaint, learned Trial Court while taking these documents on record has passed orders which I find at page No. 107 and 110 of the Petition. By virtue of these orders, learned Trial Court has held that in view of the decision in the case of **Prakash Cotton Mills Pvt. Ltd. Vs. Municipal Commissioner for Greater Bombay**¹ the original document dated 30.04.2015 produced by PW-3 cannot be marked in evidence as an exhibit unless and until the said document stands proved by the executor of the said document. The decision in the case of Prakash Cotton Mills (supra) has subsequently been the subject matter of various Supreme Court judgments rather this is a case where reliance on any judgment of the Supreme Court would not be required to be placed in view of the clear and unambiguous provisions of the Indian Evidence Act. Once the original document is placed on record, it is the duty of the Trial Court to mark the document since it is an original i.e. the original document executed by the Plaintiffs. Undoubtedly mere marking and exhibiting of the document in evidence will not prove the contents of the document and its contents will have to be proved by the party referring to and relying upon the same by cogent evidence. However, learned Trial Court has completely misguided itself while passing the order on both these documents. It infact holds that the Defendants have not denied execution of these two documents. In that

1 1982(1) Bom.C.R. 819

view of the matter, Trial Court cannot conclude that the vendor of the document will have to be examined to prove these documents by examining himself.

7. Mr. Patil in his usual fairness would submit that in so far as the issue of proving the contents of the said documents are concerned, the witness action has already been underway. Mr. Kulkarni would submit that two witnesses have already been examined by Plaintiff with respect to the contents of the document. The evidentiary value on the basis of which these witnesses have been examined will be considered by the learned Trial Court while determining the trial and the evidence between the parties. Learned Trial Court cannot hold and say that both these documents are not proved or they can be marked merely for identification. If that be the so, then no purpose would be served by placing the original documents on record of the Court and Section 62 and 64 would be rendered otiose. In that view of the order, orders dated 07.06.2022 and 27.09.2022 deserve to be interfered with to the limited extent that that these documents which have been taken on record being original documents be given exhibit numbers in accordance with law subject to the Plaintiffs proving the contents of the said documents. It is clarified that the initial onus would lie on the Plaintiffs to prove the contents of both the documents considering that the Suit is for specific performance and the Defendants shall be

entitled to lead appropriate evidence in rebuttal thereafter. Only to the aforesaid limited extent, both these orders dated 07.06.2022 and 27.09.2022 stand modified. Rest of the orders remain as they are without being disturbed.

8. Considering that the Suit is filed in the year 2017 and re-numbered in 2020, learned Trial Court is requested by this Court to dispose of the Suit as expeditiously as possible and in any event within a period of one year from today strictly in accordance with law.

9. In so far as the unregistered document is concerned, it is clarified that since the same stands on different footing than the registered agreement, the learned Trial Court shall consider the same strictly in accordance with the provisions of the Indian Registration Act as also any other law governing the same considering that the transaction between the parties is with respect to immovable property having value of more than Rs. 100/- for its evidentiary value.

10. All contention of the parties are expressly kept open.

11. With the above directions, Writ Petition is partly allowed and disposed.

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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