

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10578 OF 2023

Sarayya Kishtayya Bura & Anr.

.. Petitioners

Versus

Shrinivas Kistayya Bura

.. Respondent

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- Mr. Ashok B. Tajane, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 02, 2024

P.C.:

- 1.** Mentioned. Not on Board. Taken on Board.
- 2.** Heard Mr. Tajane, learned Advocate for Petitioners.
- 3.** Perused the praecipe dated 02.01.2024 and the Writ Petition.
- 4.** This Writ Petition takes exception to the order passed below Exhibit-98 in Regular Civil Suit No.507 of 2013.
- 5.** Briefly stated Exhibit-98 was filed by the Plaintiff for seeking exhibition of 11 documents filed below Exhibit-4 for the purpose of marking the said documents as Exhibits in evidence. Some of these documents were originals, and some were certified copies. Application and Affidavit is filed by Plaintiff on 03.03.2023 wherein it is contended that below Exhibit-4 there were 11 documents which were filed by him. Perusal of the Affidavit at Exhibit-E, page No.69 of

the Writ Petition shows that when Exhibit-4 was initially filed at that time the Defendants did not raise any objection which I find at page Nos.70 and 71 of the Application. It is further stated in the Application that evidence in the Suit was recorded and Defendants have cross-examined the Plaintiff on the said documents but inadvertently and by mistake the said documents remained to be exhibited by the Court. On page No.71, it is stated that two specific Applications were made to the concerned Judge but due to the retirement of said Judge the Applications could not be heard and decided and that is how the said Application came to be subsequently decided by learned Civil Judge. In paragraph No.4 specific submissions are made that the said documents were infact considered by the Court and the entire file containing the documents was deposited in the Court alongwith Application below Exhibit-4 and the said documents were also proved in accordance with law but by mistake and inadvertently the Exhibit numbers remained to be marked on the said documents. It is finally stated that at the time of final hearing when the complete file was seen and studied by learned Advocate for the Petitioner for preparation of the case, at that time he realised that the aforementioned documents were not marked as exhibits and hence Application dated 03.03.2023 was made.

6. Mr. Tajane, learned Advocate appearing for the contesting

Defendants who are Writ Petitioners before me would submit that under Order XIII Rule 4 of Civil Procedure Code, 1908 once marking of documents is completed, thereafter no endorsement can be made for purpose of marking the documents.

7. He has drawn my attention to the Affidavit-in-Reply and notes of arguments which are at Exhibit-F, page No.75 and Exhibit-H, page No.79 of the Writ Petition filed by the Defendants and would contend that the Plaintiff is taking undue advantage of the fact that said documents were not given Exhibit numbers. However on reading the said Affidavit-in-Reply it is clearly ascertainable that when Exhibit-4 was filed, the 11 documents were indeed filed alongwith the said Affidavit.

8. All that Mr. Tajane would contend is that since the said documents were not exhibited in evidence they do not stand duly proved in evidence and at stage of final hearing no Exhibit numbers can now be given or ascribed to the said documents. The learned Judge considered the said submissions of parties and has returned cogent findings in paragraph Nos.5 and 6 of the impugned order. The learned Civil Judge has held that perusal of the evidence filed by Plaintiff and more specifically as per paragraph No.11 of Exhibit-16, it is clear that documents were filed alongwith Application below Exhibit-4. It is also held that the Defendants have cross-examined the

Plaintiff's witness on the said documents despite that the said documents at Exhibit-4 remaining to be exhibited and the matter has proceeded further till the stage of final arguments. On reading paragraph No.6 of the impugned order it is seen that some of the documents namely the original documents, *inter alia*, pertaining to Sale Deeds were indeed infact already admitted by the Defendant No.1. It is so held in the paragraph under reference. Further in the replies which have been filed by Defendants, the Defendants have not denied the existence of the two concerned Sale Deeds dated 25.05.2010 and 05.09.2011. However not to leave anything to choice and also for the balance of convenience the learned Judge has marked the documents but has also reserved liberty to cross-examine the witnesses on the 8 concerned documents out of the 11 documents which have been exhibited.

9. Mr. Tajane would further submit that there is no procedure known to law to mark the documents after closure of evidence of the parties. However I beg to defer from this submission made by Mr. Tajane, considering the fact that admittedly in the present case the documents were already filed on record. Not only that, Petitioners before me i.e. the original Defendants have not denied the existence of the said documents and those are the very documents between the same parties considered by the Court but inadvertently left to be

exhibited in evidence. I find that cogent reasons are given in the impugned order which do not require any interference. Plaintiff is permitted and hence directed to cross-examine the witness on the exhibited documents within a period of six weeks from today which the learned Trial Court will allow. Needless to state that all contentions of both the parties are expressly kept open. It is clarified that this Court has not expressed any opinion on merits in respect of the said documents which have been exhibited and it should not be so considered by the Trial Court and it should proceed strictly in accordance with the merits of the case and strictly in accordance with law and the law of evidence.

10. With the above directions, Writ Petition is disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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