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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1874 OF 2024

Dagadu Alias Sambhaji Haribhau Mali

.. Petitioner

Versus

Yashwant Shankar Mali and Ors.

.. Respondents

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- Mr. Pradeep Gole a/w. Mr. Suraj Shejwal, Advocates for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 26, 2024.

P.C.:

1. Heard Mr. Gole, learned Advocate for Petitioner who is the original Plaintiff.

2. Plaintiff claims to be the purchaser of Plot No.2 ad-measuring 3000 sq. ft out of 129/4 total ad-measuring in Sangli District. Plaintiff has filed the Suit seeking declaration and injunction. The Suit is numbered as Regular Civil Suit No.386 of 2015. In support of the Suit pleadings, Plaintiff filed his Affidavit of evidence on 08.08.2018 and referred to and relied upon 18 documents, one of which is the Agreement for Sale dated 26.05.1999 which was marked as Exhibit "4/1".

3. In his usual fairness, Mr. Gole would submit that this document though concerns Petitioner as purchaser of Plot No.2, it is an unregistered document executed between the parties. He would

submit that the contents of the said document have been acted upon by the parties whereby the Plaintiff / purchaser has received possession of Plot No.2 in exchange and receipt of the consideration as stated therein by Defendants.

4. He would submit that when this document was referred to and relied upon by the Plaintiff in witness action, Defendants confronted the Plaintiff with this very document and conducted a detailed cross-examination thereon. He would submit that therefore the document was exhibited by the Court as Exhibit No.4/1. The evidence of the Plaintiff was completed and it was now the turn of Defendants.

5. At this stage, Mr. Gole would submit that since the document exhibited at Exhibit No.4/1 i.e. Agreement for Sale dated 26.05.1999 was a xerox copy produced by the Plaintiff and original copy thereof though was with the Plaintiff, it was lost. Hence Plaintiff filed Application dated 26.04.2023 for leading secondary evidence on the said document. He would make two fold submissions; firstly the document dated 26.05.1999 forms the basis and fulcrum of the Plaintiff's case in the Suit proceedings. He has drawn my attention to the averments made in the Suit plaint to that effect and would contend that the said document has been acted upon by both the parties in witness action. The second submission of Mr. Gole is that in during

witness action of the Plaintiff, Defendants have extensively cross-examined the Plaintiff on this very document since it forms on the basis of the Plaintiff's case for seeking declaration and injunction, though Mr. Gole would fairly concede as an officer of the Court that he is aware about the repercussion of an unregistered document in respect of immovable property and that also being a photocopy thereof since the original has been lost by Plaintiff.

6. By the impugned order dated 28.07.2023, the learned Trial Court while considering the provisions of Section 63 read with Section 65 of the Indian Evidence Act, 1872 has rejected the Application on the premise that in the Suit plaint, the Plaintiff has not laid the foundational fact that this document, rather the original document dated 26.05.1999 was actually lost from his custody.

7. The learned Trial Court is also not satisfied on the ground of the Plaintiff having obtained the copy of this document through any mechanical device since a photocopy is now being relied upon. The learned Trial Court has expressed its now doubt that therefore a possibility of manipulation of the said document cannot be ruled out and therefore has questioned the accuracy of the said document.

8. In that view of the matter, the learned Trial Court has returned a finding that allowing a photocopy to be marked as Exhibit in evidence in that view of the matter, having not been proved,

permission has been denied to the Plaintiff.

9. At this stage, I do not intend to opine on that finding since Mr. Gole would submit that pursuant to execution of document dated 26.05.1999, the Plaintiff has also filed a statutory Application required under the Maharashtra Gunthewari Developments (Regulation, Upgradation and Control) Act, 2001 (for short “**the said Act**”) seeking regularization of Plot No.2 in his favour on the basis and strength of the said document.

10. Mr. Gole would submit that the entire proceedings undertaken by the Plaintiff under the the said Act are available with the Plaintiff and he undertakes to place the same on Affidavit so as to enable this Court to consider the validity of the impugned order.

11. Needless to state that it shall be open to the Plaintiff to reconsider his position in respect of the subject document dated 26.05.1999 in accordance with law.

12. Mr. Gole seeks time to file additional Affidavit to place on record all such relevant of actions taken pursuant to execution of the said document dated 26.05.1999 to question the legality and the validity of the impugned order dated 28.07.2023. Further since both parties are relying on the said document, as Defendants have extensively cross-examined, the Plaintiff thereon in witness action, I will hear the Defendants on this issue also on the next date.

13. Hence, an arguable case has been made out by Mr. Gole for issuance of notice.

14. The learned Trial Court is requested by this Court not to proceed with the hearing of the Suit proceedings until the Writ Petition is heard and decided by this Court.

15. Issue notice to the Respondents. Humdast permitted.

16. In addition to Court notice, Petitioner is permitted to serve a copy of the Petition and this order on the Respondents and inform them about the next date of hearing by any permissible mode of service and file appropriate Affidavit of service with tangible proof thereof on or before the next date.

17. Respondents are directed to remain present in Court on the next adjourned date either by themselves or through Advocates.

18. Respondents are directed to take cognizance of this order. Respondents are directed to file their Affidavit-in-Reply on or before the next date, if so desired.

19. It is clarified that, this Writ Petition shall be disposed of on the next adjourned date at the stage of admission itself.

20. Stand over to **18th March, 2024**.

[MILIND N. JADHAV, J.]