



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 7325 of 2023

[Mangesh Bapurao Ghadge ..vs.. Smt. Chandrakala Atmaramji Raibole and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. A. Kadu, Advocate for the petitioner

CORAM : ANIL L. PANSARE J.

DATED : 09-09-2024

The petitioner – plaintiff is aggrieved by order dated 13-9-2023 passed below Exhibit 73 by 9th Joint Civil Judge Senior Division, Amravati rejecting the prayer of the petitioner to exhibit agreement to sale dated 19-8-2016 executed in his favour by the father of respondents.

2. The petitioner has filed the suit for specific performance of contract against the respondents with a plea that their father has on 19-8-2016 agreed to sell the suit property which includes a plot and construction carried thereon.

3. Heard Mr. P. A. Kadu, learned counsel for the petitioner. None appeared for the respondents though served.

4. Having heard learned counsel for the petitioner and having gone through the material placed before me, it appears that the respondents, in their written statement, took a stand that though the agreement was executed by their father, the same was executed as security for repayment of hand-loan. Thus, the respondents have admitted execution of document. The only issue is

whether the document was executed as a security for hand-loan, which of course will be decided in due course.

5. In context with above, if one goes through the affidavit of evidence in lieu of chief-examination, the petitioner has in categorical terms stated that on 19-8-2016, the respondents father, namely, Atmaram Gangaram Raibole has executed agreement to sale of the property under question for total consideration of Rs. 12,50,000/- and on the same day, the petitioner had paid Rs. 2,50,000/-. The balance amount was agreed to be paid on or before 19-11-2016 with a rider that Atmaram Raibole will procure relevant documents. The agreement was executed in the presence of respondent no. 5 as also the petitioner's friend Shri Dilip Jaltare. The agreement bears signature of the petitioner, Atmaram Raibole and the aforesaid witnesses. The petitioner has identified the signatures and has stated that the contents of the agreement are true and correct. Thus, the petitioner has not only proved the execution of document but also the contents thereof.

6. The trial Court has, by referring to judgment of this Court in the case of ***Asudamal s/o Laxmandas Singh Vs. Kisanrao s/o Wamanrao Dharmale and ors. [2003(4) Mh.L.J. 134]***, held that mere evidence of plaintiff is not sufficient to read the document of agreement in evidence as observed in the said judgment. This finding to my mind is contrary to what has been said by this Court. Paragraph no. 11 of the judgment reads thus :

“11. None of the provision of the Indian Contract Act state that in order to prove an agreement it is

necessary to examine the attesting witnesses. Only under the provision of the Indian Succession Act, for proving a Will, examination of attesting witness is essential. Thus, only where there is a specific provision made in the Act requiring that the document is to be attested then in such cases the examination of the attesting witnesses is necessary as laid down in section 68 of the Indian Evidence Act. The finding of the appellate Court that though one of the attesting witness is alive, the original plaintiff was duty bound to examine him to prove the execution of the isarchitthi i.e. agreement of sale is, therefore, not correct.”

7. As could be seen, this Court has held that to prove agreement to sale, attesting witness need not be examined. In view thereof and for the reasons stated above and further because the submissions made by the learned counsel for the petitioner remained uncontroverted, I find substance in the petition. The order impugned is not sustainable in law. The petition is accordingly allowed. Order dated 13-9-2023 passed below Exhibit 73 by 9th Joint Civil Judge Senior Division, Amravati is quashed and set aside. The trial Court shall mark agreement to sale as exhibit and proceed further in accordance with law.

8. The petition is disposed of in above terms.

(Anil L. Pansare, J.)