

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6967 OF 2022

Sulawati Kerba Kapse

VERSUS

Angad Appasaheb Musale

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Advocate for the Petitioner : Mr. Tungar Hrishikesh V.

Advocate for Respondent : Mr. Nagargoje Ankush N.

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CORAM : SIDDHESHWAR S. THOMBRE, J.

DATED : DECEMBER 08, 2025

PER COURT :

1. Heard learned counsel for respective parties.
2. The present petition is directed against the order dated 01.04.2022 passed below-52 by the learned 7th Civil Judge, Junior Division, Beed in R.C.S. No.302 of 2016, whereby the original plaintiff's/respondent's application for exhibiting the certified copy of sale deed No.59 of 1992 dated 09.09.1992 was allowed.
3. While considering the application, the learned Trial Court has recorded a finding that certified copy is a public document and therefore, it is not necessary to prove its contents.
4. Mr. Tungar, learned counsel for the petitioner relied upon the law laid down by the Hon'ble Supreme Court in the matter of *Deccan Paper Mills Company Ltd Vs. Regency Mahavir Properties* reported in *AIR 2020 SC 4047*, particularly on para 17 which reads thus :

“17 Let us see whether section 31(2) makes any difference to this position in law. According to the judgment in Aliens Developers (supra), the moment a registered instrument is cancelled, the effect being to remove it from a public register, the adjudicatory effect of the Court would make it a judgment in rem. Further, only a competent court is empowered to send the cancellation decree to the officer concerned, to effect such cancellation and "note on the copy of the instrument contained in his books the fact of its cancellation." Both reasons are incorrect. An action that is started under section 31(1) cannot be said to be in personam when an unregistered instrument is cancelled and in rem when a registered instrument is cancelled. The suit that is filed for cancellation cannot be in personam only for unregistered instruments by virtue of the fact that the decree for cancellation does not involve its being sent to the registration office- a ministerial action which is subsequent to the decree being passed. in fact, in Gopal Des Vs. Sri Thakurji, AIR 1943 PC 83, a certified copy of a registered instrument, being a receipt dated 29.03.1881 signed by the owner, was held not to be a public record of a private document under section 74(2) of the Indian Evidence Act, 1872 for the reason that the original has to be returned to the party under section 61(2) of the Registration Act, 1908 (see p. 87). This judgment has been followed in Rekha vs. Ratnashree, (2006) 1 MP LJ 103 by a Division Bench of the Madhya Pradesh High Court, in which it was held :

"8. A deed of sale is a conveyance. A deed of conveyance or other document executed by any person is not an act nor record of an act of any sovereign authority or of any official body or tribunal, or of any public officer, legislative, judicial and executive. Nor is it a public record kept in a State of any private documents. A sale-deed (or any other deed of conveyance) when presented for registration under the Registration Act, is

not retained or kept in any public office of a State after registration, but is returned to the person who presented such document for registration, on completion of the process of registration. An original registered document is not therefore a public record kept by a State of a private document. Consequently, a deed of sale of other registered document will not fall under either of the two classes of documents described in section 74, as 'public documents'. Any document which is not a public document is a private document. We therefore have no hesitation in holding that a registered sale-deed (for any other registered document) is not a public document but a private document.

9. *This position is made abundantly clear in Gopal Das vs. Shri Thakurji, AIR 1943 Privy Council 83, wherein the Privy Council considering the question whether a registered receipt is a public document observed thus:*

"It was contended by Sir Thomas Strangman for the respondents that the receipt comes within para 2 of section 74, Evidence Act, and was a "public document"; hence under section 65(e) no such foundation is required as in cases coming within clauses (a), (b) and (c) of that section. Their Lordships cannot accept this argument since the original receipt of 1881 is not "a public record of a private document". The original has to be returned to the party. A similar argument would appear at one time to have had some acceptance in India but it involves a misconstruction of the Evidence Act and Registration Act and later decisions have abandoned it." (emphasis supplied)

We may also refer to the following passage from Ratanlal's Law of Evidence (19th Edition-Page 237):

"Public document [Clause (e)] - This clause is intended to protect the originals of public records from the danger to which they would be exposed by constant production in evidence. Secondary evidence is admissible in the case of public

documents mentioned in section 74. What section 74 provides is that public records kept in any state of private documents are public documents, but private documents of which public records are kept are not in themselves public documents. A registered document, therefore, does not fall under either clause (e) or (f). The entry in the register book is a public document, but original is a private document." (emphasis in original)."

5. Mr. Tungar would further submit that it is for the party to prove the contents of documents by leading evidence and then only the document can be exhibited. Therefore, on that ground, he submits that the order passed by the learned Trial Court is liable to be quashed and set aside.

6. Per contra, Mr. Nagargoje, learned counsel for the respondent submits that certified copy is a public document and therefore, that document can be exhibited. Only because the document is exhibited, does not mean it has been proved. Therefore, he submits that the Trial Court has not committed any error while considering the application.

7. I have gone through the order passed by the learned Trial Court below Exhibit-52. There is no dispute about the legal point that certified copy can be exhibited but the contents cannot be proved automatically and the concerned party has to lead evidence to that effect. Therefore, I am inclined to discard the observations of the learned Trial Court that certified copy can be exhibited without leading evidence as the same is a public document. Such observations

are not correct preposition of law. As far as certified copy is concerned, it can be exhibited but the party has to lead evidence.

8. Therefore, the order of learned Trial Court to the extent of exhibiting the said document is maintained but the observations that the said document is proved automatically being a public document, are liable to be set aside.

9. In view thereof, the petition is partly allowed. The order passed by the learned Trial Court is modified to the extent of modifying the finding that document is not proved automatically being a public document.

10. As Mr. Nagargoje, learned counsel for the respondent submits that respondent has already filed evidence closure pursis. But in view of the order passed by this Court, liberty is granted to the petitioner to file an application to call the witness and lead the evidence to prove the contents of said certified copy of sale deed.

(SIDDHESHWAR S. THOMBRE, J.)