



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 14069 OF 2023**

Subhadra Eknath Gayake

.. Petitioner

Versus

Kamlesh Laxmanrao Kadam Deceased  
Through L.Rs. Rajani Kamlesh  
@ Kamlakar Kadam and others

.. Respondents

Mr. Ameya N. Sabnis, Advocate a/w Mr. Pranav Dhakne, Advocate for  
the Petitioner.

Mr. Manoj Shinde, Advocate for Respondent Nos. 1 to 4.

**CORAM : KISHORE C. SANT, J.**

**DATED : 05<sup>th</sup> FEBRUARY, 2025.**

**P. C. :-**

. A challenge in this petition is very limited to the extent of exhibiting of document Exh. 215. It is the apprehension of the petitioner that, by exhibiting the document the learned Trial Court has accepted the said document as proof and has accepted its admissibility.

2. The learned advocate for the petitioner submits that, in fact, the document is produced in the evidence of a witness who is not a signatory of the document and who has not prepared the said document. The witness is handwriting experts.

3. The learned advocate for the petitioner relies upon the judgment

in the case of Malay Kumar Ganguly Vs. Dr. Sukumar Mukherjee and others<sup>1</sup>, more particularly, on paragraph No. 37 which reads as under :

“37. It is true that ordinary if a party to an action does not object to a document being taken on record and the same is marked as an exhibit, he is estopped and precluded from questioning the admissibility thereof at a later stage. It is, however, trite that a document becomes inadmissible in evidence unless the author thereof is examined; the contents thereof cannot be held to have been proved unless he is examined and subjected to cross-examination in a court of law. The document which is otherwise inadmissible cannot be taken in evidence only because no objection to the admissibility thereof was taken.”

4. The learned advocate for the petitioner thus objects the very exhibition of the document.

5. The learned advocate for respondent Nos. 1 to 4 strenuously argued that, the learned Trial Judge has rightly exhibited the document. No fault can be found. Ultimately, it is for the learned Trial Court as to how to accept and to deal with the said document while appreciating the evidence. As on today, the trial is only at the stage of evidence. He gave the witness in whose evidence the document is exhibited. His cross-examination is also yet to complete. He thus

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<sup>1</sup> (2009) 9 SCC 221.

submits that, the petition is premature and prays for rejection of the writ petition.

6. Having considered the arguments and the fact that, the suit is only at the stage of evidence, it is yet to be concluded. This Court finds some substance in the argument of learned advocate for the petitioner in view of judgment in the case of Malay Kumar Ganguly (*Supra*). This Court therefore finds that, it would be for the learned Trial Court to deal with the document Exh. 215 while deciding the suit.

7. The questions of the admissibility, proof etc. in respect of the said document are kept open. Since the suit is pending since 1996, this Court find it necessary to direct the learned Trial Court to conclude the trial as early as possible and in any case prior to 31.07.2025. The parties to co-operate in speedy disposal of the trial. If the learned Trial Court finds that, any of the parties is seeking unnecessary adjournments, the Court may pass appropriate order imposing heavy cost upon the parties seeking unnecessary adjournments.

8. With this, the writ petition stands disposed of.

( KISHORE C. SANT, J. )

PS.B.