

MHBU070006642016



Order Below Application (Exh. 169).

(Passed on 07.05.2024)

1. Perused the application and Say (Exh. 173).
2. Heard both sides.
3. Here, the defendant has raised his objection as Court has marked and exhibited some documents at Exh. 114, 115, 117 to 120, 126 to 132, 139, 163, 165, 167. In the application, the defendants has tried to show as to how error was committed while exhibiting the documents and on such claim it was prayed to de exhibit aforesaid documents. However, the plaintiff has opposed the application by filing its say. In the Say, the plaintiff has narrated as to how aforesaid documents were exhibited and proved as per the provisions of Evidence Act. On such claim, it was prayed to reject the application/ objection.
4. Perused record, It shows that previously, Court has recorded further examination in chief of Deepak Patil (PW 2) and during his examination aforesaid documents were exhibited. In the application, the defendants is claiming that the copy of certificate (Exh. 114) provided to him is not visible and unless the trusty of the Sansthan is examined it cannot be exhibited and treated as proved. However, if the copy is not visible, it was possible for the defendant to raise objection at initial stage and since and said copy was accepted initially, the defendant cannot raise such objection at this stage. Further, Deepak Patil (PW 1) is power of attorney of the plaintiff and therefore it cannot be said

that any error was committed while proving said document (Exh. 114), the scheme of plaintiff trust (Exh. 115) and the letters (Exh. 165 & 167) during his examination.

5. Further, the defendant has raised objection regarding the Kabulayat Patta, agreement of possession and letter dt. 03.05.2012 (Exh. 117 to 119). It was claimed that since these documents were not signed by Deepak Patil (PW 1), these documents cannot be proved during his evidence. However, the claim made by the defendant do not seems to be relevant as Sec. 67 and Sec. 47 of Evidence Act is applicable to it and not Sec. 68 of Evidence Act. Since, these documents were prepared in presence of witness, the witness was having right to prove them through his evidence. Further, same principle is also applicable to the documents (Exh. 125 to 132) and it cannot be said that plaintiff has committed any error while proving and exhibiting the documents during of aforesaid witness. Further, the defendants has also raised objection regarding the power of attorney Exh. 163. However, the objection so raised do not seems to be relevant as by this power of attorney the witness himself was authorized to act on behalf of the plaintiff.

6. Further, in support of application the plaintiff has relied upon **LIC of India -vs- Rampal Sing Bisen** reported in AIR **2010 SC (SUPP)753**. However, with due respect, this case law is not applicable as in above case document in question was produced on record but no evidence was given regarding it. Here, the documents in question were duly referred to the witness Deepak Patil (PW 1) and then they were marked and

exhibited. Further, the defendants has relief upon **Janki Vasudeo Bhojwani and Others -vs- Indusind Bank Ltd and others** reported in **AIR 2005 Supreme Court 439**. However, with due respect, this case law is not applicable to this suit as the witness has not deposed merely in respect of the acts done by his principle but he was also present there at relevant time. Further, the defendant has also relied upon **Ramji Dayawala And sons - vs- Invest Import** reported in **1981 MAHLR 95** and **Madholal Sindhu -vs- Asian Assurance Co.Ltd. and others** reported in **AIR 1954 Bombay 305**. However, with due respect, these case laws are also not applicable at this stage. These case laws are relating to correctness of the content of document and since the witness is not yet cross examined, the correctness of contents of documents cannot be determined. The correctness of the documents can be decided on merit while evaluating the evidence and not at this initial stage. Thus, the case laws relied upon by the defendant cannot support present application in any manner.

7. Hence, considering all above facts, it can be said that the application is devoid of merit and it deserved to be rejected. Hence, I am passing following order.

Order

Application (Exh. 169) is hereby rejected.

Sd/-

(J.R. Ghadge)

Place : Shegaon.

Civil Judge Junior Division

Date : 07.05.2024.

Shegaon, Dist. Buldana.

I, *K.S. Deshmukh*, Stenographer of C.J.J.D. & J.M.F.C.
Court No.1, Shegaon affirm that the contents of this P.D.F. file
order is correct word to word as per the Original Order.