

MHKO050019182009



ORDER BELOW EXH.245 IN
REGULAR CIVIL SUIT NO.18/2010
(Passed on 08. 08. 2024)

Perused the application and reply thereon. Heard learned counsel for both the sides.

02. Learned counsel for the defendants submitted that DW No.1 Vasant has deposed in his examination-in-chief filed at Exh.180 to the effect that sale deed filed at Sr. No.8 along with list of document at Exh.199 was executed in his presence by Mr. Eknath Petkar in favour of defendant no.2 Dattatraya Mahajan. Accordingly, he has identified the signatures of the executant of the said sale deed as well as of the witnesses of the said sale deed. According to him, said sale deed is proved. Moreover, defendants have filed the certified copy of the order passed in Second Appeal no.663/1986 of Hon'ble Bombay High Court. Accordingly, it is prayed to exhibit the sale deed filed at Exh.8 along with list of document at Exh.199 and the certified copy of above-said order filed along with list of document at Exh.249.

03. Application is resisted by the plaintiff on the ground that DW No.1 Vasant is not the signatory of the alleged sale deed. As such, execution of said sale deed cannot be said to proved through the evidence of DW No.1 Vasant. Moreover, defendants can examine the executant or any of the witnesses of the said sale deed to prove the same. Furthermore, as the said sale deed was

not exhibited during the evidence of DW No.1 Vasant, the plaintiff has not cross-examined the DW No.1 Vasant on the said sale deed. As such, exhibition of said sale deed on the basis of present application would cause serious prejudice to the rights of plaintiff. Accordingly, he prayed to reject the application to the extent of prayer of exhibition of above-said sale deed. However, he fairly submitted to exhibit the certified copy of the order of Hon'ble Bombay High Court passed in Second Appeal No.663/1986.

04. In view of Section 45 and 67 of Indian Evidence Act, 1872, the execution of document can be proved through the witness who has seen the execution of the said document. DW No.1 Vasant has deposed in his examination-in-chief at Exh.180 that sale deed at Sr. No.8 filed along with list of document at Exh.199 was executed in his presence and he has identified the signature of the signatories of the said sale deed. As such, it will be just and proper to exhibit the said sale deed. It is significant to note that cross examination of DW No.1 Vasant is already recorded. In these circumstances, it is necessary to grant an opportunity of cross examination of DW No.1 Vasant to the extent of above-said sale deed. Moreover, certified copy of the order passed in Second Appeal No.663/1986 is having presumption of genuineness as per Sec.79 of Indian Evidence Act, 1872. Therefore, there is no legal impediment to exhibit the said document.

05. In view of afore-said facts and circumstances of the case, application deserves to be allowed in part. Hence, I pass the

following order :

ORDER

- 1) Application at Exh.245 is partly allowed.
- 2) Document at Sr. No.8 filed along with list of document at Exhibit No.199 and document at Sr. No.1 filed along with list of document at Exh.249 be marked with appropriate exhibit numbers.
- 3) Permission to cross examine of DW No.1 Vasant to the extent of above-said documents is granted.
- 4) Defendants are directed to produce DW No.1 Vasant before the court for the purpose of his further cross examination on next date, without any fail.
- 5) Costs in cause.

Ichalkaranji
Date :- 08. 08. 2024

(Hitendra Urmila Anilkumar Wani)
Civil Judge, Sr.Dn., Ichalkaranji