

RCS No. 50/2012
Prakash Vs. Subhadrabai
CNR No. MHPA140001642012
Order below Exh. 179

1. This is an application filed by plaintiff under Order 18 Rule 17 and Section 151 of the Civil Procedure Code (hereinafter referred as '*the said Code*'). Perused application, say of defendant thereon and entire record of the case. Heard, the learned counsel for plaintiff and defendants, respectively, at length.

2. The plaintiff averred that, plaintiff has examined himself as PW 1 at Exh. 48 and PW 2 to 4. Thereafter, plaintiff filed one pursis and closed his evidence side. Plaintiff has examined the seller and other witness regarding the sale deed. Plaintiff has filed the certified copy of the sale deed in respect of suit property. However, inadvertently the said sale deed is not executed by the Court. The said sale deed is very important document about the suit property. Therefore, he prayed for recalling plaintiff, purchaser and witnesses of the sale deed for evidence.

3. Per contra, the defendant strongly opposed the present application. They have contended that, the present matter is fixed for final argument. Plaintiff has filed Writ Petition No. 10899/2019 before the Hon'ble High Court of Bombay bench at Aurangabad. The Hon'ble High Court has directed by order dated 08.09.2019 to dispose off RCS 50/2012 and RCS 142/2011 by Judgment on or before 22.10.2019. Sufficient opportunity was already granted to the plaintiff for adducing evidence in support of his case. Plaintiff has filed the present application with intention to prolong the case. They have submitted that, application is liable to be rejected.

4. Having heard both the sides and on perusal of the record, following points arise for my determination. I have recorded my findings against the same for the reasons stated hereinafter.

Sr. No	POINTS	FINDINGS
1.	Whether the witnesses in respect of the sale deed dated 16.11.1995 needs to be recalled for evidence ?	... In the affirmative.
2	What order ?	As per final order.

REASONS

As to point No. 1 and 2 :-

5. Heard both the parties. The learned counsel for the plaintiff submitted that, this suit is instituted for the relief of declaration and perpetual injunction in respect of land survey No. 141/1 area 2 Hecter 5 R land. Plaintiff has examined seller and witness over the said sale deed of the suit property. However, said sale deed of the suit property is not exhibited. Parties should not be suffered and they should not be left without remedy due to the mistake of advocates.

6. The learned counsel for defendant submitted that, the present suit is posted for final argument of the parties. The Hon'ble High Court of Bombay directed to dispose of both the suits on or before 22.10.2019. The sale deed is insufficiently stamped and it is false document. As per Section 35 of the Indian Stamp Act, sale deed is not admissible in the evidence. Plaintiff was minor at the time of execution of the sale deed. Therefore, no title of the suit property is conferred on plaintiff by way of said sale deed. Therefore, witnesses cannot be recalled, as prayed.

7. Before switching over to the discussion, it is necessary to have a bird eye view of the factual position of the suit. The record shows that, plaintiff has examined himself as (PW-1) at Exh. 48, *Sanjay Kakade* as (PW-2) at Exh. 63, *Dr. Nagnath Junjare* as (PW-3) at Exh. 64 and *Devidas Kakade* as (PW-4) at Exh. 76. It *prima facie* appears from the certified copy of sale deed dated 16.11.1995 that the plaintiff *Prakash* is the purchaser and *Dr. Nagnath Junjare* (PW-3) is the seller of the suit property. *Sanjay Kaduba Kakade* (PW-2) is the witness to the said sale deed. The record shows that, plaintiff and *Dr. Nagnath Junjare* (PW-3) deposed about the sale deed dated 16.11.1995. So also *Sanjay* (PW-2) deposed that, he has signed the sale deed as a witness.

8. The learned counsel for plaintiff placed reliance on the unreported Judgment of the Hon'ble Bombay High Court in the case of ***Styrolution ABS (India) Ltd. Vs. National Education & Information Films Ltd.***, Writ Petition No. 6721 of 2016 with Civil Application No. 1682 of 2016 dated 06 February 2018. The learned counsel for defendant submitted that, the said Judgment is not applicable to the case in hand. In this case Her Ladyship of the Hon'ble Bombay High Court observed as under-

"As regards, the objection raised by learned counsel for the Respondent under Order 18 Rule 17 C.P.C., only the Court has power to recall such witness for the purpose of putting any question to him, in this case also it is ultimately the Court which exercises the power. It may be suo-moto or on the application moved by the parties. Ultimately, it is the opinion and finding of the Court which matters to decide whether it is necessary that the witness be recalled for the purpose of proving these two documents. Therefore, herein the case also, it is the Court which is

exercising the power, may be, at the instant of the petitioner. So the objection will not come into play."

9. This suit is instituted for the relief of declaration and perpetual injunction. The plaintiff averred that, by virtue of sale deed dated 16.11.1995, he became the owner and possessor of the suit property. Therefore, the sale deed dated 16.11.1995 is relevant and very important evidence for the plaintiff. The plaintiff wants to examine the proposed witnesses for limited purpose of proving the sale deed. The sale deed dated 16.11.1995 is not exhibited and numbered. Therefore, in my considered opinion, in view of discretionary power vested with this Court under Order 18 Rule 17 of the said Code, the sale deed can be allowed to be proved by re-summoning the witnesses. It goes without saying that, the defendants have every opportunity for cross-examination of the proposed witnesses regarding the genuineness of the sale deed and as to whether the plaintiff was capable of purchasing the suit property, as alleged.

10. In the case of ***K.K.Velusamy ..Vs.. N. Palaanisamy*** reported in **(2011) 11 SCC 275**, Their Lordship of Hon'ble Supreme Court observed that the power of order 18 Rule 17 of the Code is not intended to use routine, merely for the asking. But, where the additional evidence oral or documentary will assist the Court to clarify the evidence on the issues and will assist in rendering justice then court may exercise its discretion to recall the witnesses or permit the fresh evidence.

11. It is the settled principle that, the justice is not only the final outcome of Judgment but it should be observed during the entire judicial process. Consequently, in order to put an end to further

litigations between the parties, a fair opportunity of adducing oral and documentary evidence in support of their case should be given to both parties.

12. Thus, the conspectus of the above discussion that, application at Exh. 179 deserves to be allowed. The defendants to be compensated for delay by way of costs. Hence, I answer point No. 1 in the affirmative and for point No. 2, I proceed to pass following order -

ORDER

1. Application at Exh. 179 is allowed subject to payment of costs of Rs. 2000/- be paid by plaintiff to defendants.
2. Plaintiff is permitted to examine himself, Dr. Nagnath Junjare and Sanjay Kaduba Kakade for limited purpose of proving the sale deed dated 16.11.1995.
3. Issue witness summons to *Dr. Nagnath Junjare* and *Sanjay Kaduba Kakade* on depositing necessary witness *Bhatta* by plaintiff, as per rules. The summons shall be given to the plaintiff for service.
4. In view of directions of the Hon'ble Bombay High Court in Writ Petition No. 10899 of 2019 dated 03.09.2019, the present suit and RCS No. 142/2011 should be disposed off on or before 22.10.2019. Therefore, both the parties are directed to expedite the matter.

Dated : 30.09.2019

(T. H. Shaikh)
Civil Judge Junior Division
Purna