

ORDER PASSED BELOW EXH. 535

This application is filed with prayer to recall defendant No. 4 for his re-examination.

02. It is the say of the applicant/defendant No. 4 that, he is the purchaser of the property in Gat No. 819 and 545. He has purchased the same through Court auction. He has received the certificate from the Court after purchase under auction. His evidence is going on. He has filed his affidavit of evidence and his cross-examination was conducted on 05.02.2022. On that day, his advocate was absent and he has applied for adjournment. This Court has rejected the same and cross-examination has been conducted. It is must on him to show the certificate of purchase auction issued from Court in his chief examination to prove the same. Said certificate has been exhibited as per his application. The exhibition cannot be said as proof of the document. Hence, it is must to recall him for the examination for showing said auction purchase certificate. If the application is allowed then the other side will not have any prejudice. They will get further opportunity for cross-examination. Hence, if the application is allowed, the matter may be decided on merits. Hence, prayed to allow the application.

03. Plaintiff has filed say at **Exh. 537**. It is their say that, the matter is age old. Hence, this Court has directed the parties to the suit to conduct the matter. It is their further say that, the document under application is not proved. Said document was not referred by the plaintiff in cross-examination of defendant No. 4. Hence, as the Court has exhibited the document by specific order that, point of

admissibility of the said document is kept open. Hence, application be rejected.

04. Heard Learned Advocate Shri. A. P. Patil for the applicant and Shri. Bugade for the plaintiff at length.

05. Gone through the proceeding of this case. This matter is originally of 1986. The issues have been framed in 1989. Said issues have been re-casted in 2013 and 2020. For the various reasons as noted on proceeding sheet from 1986 till date, the matter could not be disposed off.

06. The present applicant is defendant No. 4. A issue for defendant No. 4 is added on 03.03.2020. Said issue is “Do defendant No. 4 and 8 prove that, they are bona fide purchaser of suit property in Gat No. 819 ?” Thereafter, he has filed his evidence on 18.12.2021 i.e. about 18 months of the issue casted on him. I have perused the affidavit at **Exh. 529** minutely. In para 4 of his affidavit, he has specifically referred the proposed document for which he has filed this application. The application is only for the purpose of showing said document to him. While as noted supra, it has been already referred in his affidavit para No. 4.

07. Furthermore, though the plaintiff has taken a stand in his say at **Exh. 537** that, he has not referred said document in cross-examination and accordingly, it is not proved. But on perusal of cross-examination running into five pages, it appears that, a thorough and deep cross-examination conducted on this document only to show that, the auction procedure adopted by the Court was false. Documents prepared were also false.

08. As per Section 137 of Indian Evidence Act, the re-examination can be adopted only after completion of cross-examination. Further, as per Section 138 of Indian Evidence Act, the re-examination shall be directed to explain the matters referred in cross-examination only if new matter has been brought by adverse party. There is no such case in this matter.

09. I am unable to understand when the document has been specifically mentioned in the para No. 4 of the affidavit of evidence of the applicant then why such application has been filed. As noted supra, the matter is of 1986. In 2002 Code of Civil Procedure amended vide amended Act 22 of 2002 which came into effect from 01.07.2002. According to Rule 4 of Order XVIII for expediting a recording of evidence the provision is made that, in every case the examination-in-chief of a witness shall be on affidavit. Accordingly, in every case after said amendment the parties started filing affidavits of examination-in-chief. In this case also as noted supra, the applicant has filed his affidavit of examination-in-chief in which he has specifically mentioned a proposed document in para 4 of his affidavit. Hence, when said document has been exhibited on the application of the defendant No. 4 then it is up to the learned advocates to show that, how said document is admissible or non admissible ? Without prejudice to anyone I may note that, the proposed document is received through this applicant through Court which is an act by a public servant and discharge of his official duty. Hence, it is relevant as per section 35 of Indian Evidence Act. Therefore, it is up to the plaintiff to show or establish that, how the Court procedure was false ? and false certificate was prepared as suggested to the applicant /

defendant Nod. 4 in his cross-examination. Hence, this application is nothing but for me is filed out of imagination which is delaying this age old matter of 36 years. I may note that, the original plaint is in a condition that, the papers cant bear even touch. Hence, this Court under obligations of the Honourable Supreme Court and parent High Court, Bombay can only request the parties to let this Court to decide the matter on merits as early as possible. Everyone is in knowledge that, this is the first and Trial Court in which about 36 years have been elapsed. The original plaintiff and some of the defendants are no more. Hence, considering all said observations, this application deserves to be rejected. Hence, the order :-

ORDER

Application is rejected.

Date : 09.03.2022

(Tejwant Singh A. Sandhu)
Civil Judge, Senior Division, Barshi.

CERTIFICATE

I affirm that the contents of this PDF file Order / Judgment are same word to word, as per the original Order / Judgment.

Name of the Stenographer	: S. N. Chilka
Court	: Civil Court Senior Division, Barshi.
Judgment / Order signed by the P. O. on	: 09.03.2022
Judgment / Order uploaded on	: 09.03.2022