

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

WRIT PETITION NO.4730 OF 2014

Ramdas Fakira Bhavsar,
deceased through his heir
Ashok Ramdas Bhavsar,
Age 63 years, Occu.Agri.,
R/o Azad Nagar, Nagardevla,
Taluka Pachora, Dist.Jalgaon

..Petitioner
(Orig.Defendant No.1)

Versus

Tulshiram Fakira Bhavsar,
Age 76 years, Occu.Agril.,
R/o Bhavsar Galli, Nagardevla,
Taluka Pachora, Dist.Jalgaon

..Respondent
(Orig.Plaintiff)

Mr S.P.Brahme, Advocate for petitioner
Mr S.V.Suryawanshi, Advocate for respondent
Respondents 2 to 14 deleted

CORAM : N.W. SAMBRE, J.

DATE : 27th January 2015

PER COURT

1. The order dated 3rd May 2014 passed by learned trial Court rejecting the application Exh.212 in Regular Civil Suit No.61/2002 for partition, is impugned in the present petition.

2. By the said application, the petitioner - defendant sought to place on record the 30 years old document dated 17th January 1979 scribed on a stamp paper of Rs.5 which is termed as memorandum of partition.

3. Mr Brahme, learned Counsel for the petitioner submits that the cause cited for rejection is, document Exh.161 which is replica of the

present document was executed on 17th June 1978 on a stamp paper of Rs.2. According to him, even if the document Exh.161 is on record, in view of presumption provided under Section 90 of the Evidence Act, the document dated 17th January 1979, a memorandum of partition should have been executed. According to him, the order is contrary to the provisions of Section 90 of the Evidence Act.

4. learned Counsel for the respondent – plaintiff submits that no fruitful purpose will be served by allowing the application as the document Exh.161 is already placed on record and contents thereof can be read in evidence by both the parties. He has further submitted that it has hardly any bearing that the document is executed on stamp paper of Rs.5 or Rs.2. It is further submitted by him that the present petitioner – defendant has filed the said application in order to prolong the hearing of the proceedings.

5. Having considered the rival contentions of the parties, it is noticed that the document that is sought to be produced dated 17.1.1979 is scribed on a stamp paper of Rs.5 whereas the partition deed Exh.161 is scribed on stamp paper of Rs.2. The Exh.161 though contains the same wordings, however, the object and the purpose of document dated 17th January 1979 which is canvassed before this Court and which is sought to be brought on record by the defendant, appears to be in support of his defence.

6. In my opinion, the said document has a presumptive value under Section 90 of the Evidence Act and should have been granted, as the said document can be interpreted by the parties to the interest and detriment of each other.

7. In view of above, it will be appropriate to grant Exh.212.

8. As such, the order dated 3rd May 2014 passed below Exh.212 in Regular Civil Suit No.61 of 2002 by the Civil Judge, Junior Division, Pachora is set aside. The application Exh.212 stands granted for the reasons herein above.

9. Mr Brahme, learned Counsel for the petitioner submits that the petitioner - defendant is not intending to lead any evidence as regards the document which is ordered to be exhibited by this order and is on a stamp paper on 17th June 1978. As such, it is open for the Court to proceed with the final hearing of the suit.

9. Writ Petition stands allowed in above terms.

(N.W. SAMBRE, J.)

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