

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

C.A.Z. NO.1/2013 IN L.P.A. ST. NO.18726/2012 IN W.P. NO.1701/2012 (D)
(SADANAND LAXMIKANT JAHAGIRDAR & OTHERS VERSUS SHRIPAD RAMAKANT
JAHAGIRDAR & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri V.R. Mundra, counsel for the applicants/appellants.
Shri M.M. Pathak, counsel for the R-1.
None for the R-2 to 4.

CORAM : B.R. GAVAI AND
MRS. MRIDULA BHATKAR, JJ.

DATE : JANUARY 13, 2015.

For the reasons stated in the application, the
delay in filing the letters patent appeal is condoned.

The civil application is allowed and disposed of.

LETTERS PATENT APPEAL ST. NO.18726/2012.

ADMIT.

2. The letters patent appeal is taken up for
hearing.

3. Heard Shri Mundra, the learned counsel for the
appellants and Shri Pathak, the learned counsel for the
respondent no.1. None appears for the respondent nos.2 to
4, though served.

4. The respondents-plaintiffs had filed a suit for
partition and separate possession. The defendants-
appellants had resisted the suit. It is the contention of the
appellants that they are in possession of the suit property
on account of one relinquishment-deed.

5. The appellant no.2 had filed his evidence in the form of examination-in-chief below Exhibit 73. Along with the said evidence, the appellant no.2 had also filed relinquishment-deed and prayed for giving exhibit to the same. The prayer of the appellant no.2 was resisted by the plaintiffs. However, the learned trial Court, vide order dated 23.02.2009, held that in view of the judgment of the Apex Court in the case of *Gondalsingh Versus Nihalsingh*, reported in **AIR 2003 SC 1905**, the unstamped and unregistered sale-deed even though not admissible in the evidence, can be looked into for the collateral purposes. The learned trial Court further observed that in the present case, the case of the defendant was that he had become the owner of the suit property by adverse possession. It was further further observed that the issue in that regard was also framed. The learned trial Court, therefore, held that the relinquishment-deed, though not admissible in evidence, can be looked into for collateral purposes, i.e. to see the nature of possession of the plaintiff over the suit property.

6. When the evidence of one Ravindra Ambadas Khedkar was led on behalf of the appellants, the learned trial Court, vide order dated 01.12.2009 refused to give exhibit to the said document. The learned trial Court, however held that since the said document can be looked for collateral purposes, the same should be marked as Article-A.

7. An application, Exhibit 120, came to be filed by the plaintiffs for not taking into consideration the evidence of Ravindra Ambadas Khedkar. The learned trial Judge, vide order dated 03.09.2009, held that though the relinquishment-deed was brought on record in the evidence of said Ravindra Ambadas Khedkar, it cannot be exhibited. However, every party has a right to lead evidence in his behalf. It has been also observed that the issue in regard to whether the said evidence is valid or not and whether the same can be taken into consideration or not, can be decided at the time of final hearing of the suit.

8. Again, another application, Exhibit 144, came to be filed by the appellant no.2 for giving exhibit to the said relinquishment-deed. The learned trial Judge held that though the document was impounded and deficit stamp duty was paid by the defendant no.2, since the said document was not registered, the same could not have been read in evidence and could not have been exhibited.

9. Being aggrieved thereby, a writ petition came to be filed before the learned Single Judge of this Court. The same came to be dismissed vide order dated 13.09.2012. Hence, this appeal.

10. Shri Mundra, the learned counsel for the appellants, submits that the view taken by the learned trial Judge by his order dated 19.11.2011 is in conflict with the earlier three orders of this Court. Not only that, the view taken by the learned trial Court, which is confirmed by the learned Single Judge of this Court, is not in consonance with the provisions of Section 49A of the Registration Act,

1908. The learned counsel for the appellants relied on the judgment of the Hon'ble Apex Court in the case of *S.Kaladevi Versus V.R. Somasundaram & Others*, reported in **2010(5) Mh.L.J. 320**.

11. Shri Pathak, the learned counsel for the respondent no.1, submitted that the appeal itself is not tenable in view of the concurrent orders passed by the learned trial Court and the learned Single Judge of this Court. The learned counsel for the respondent no.1 sought for the dismissal of the appeal.

12. For appreciating the rival contentions, it would be necessary to refer to Section 49 of the Registration Act, 1908. A perusal of the same reveals that though the document of which registration is compulsorily to be made shall not be received as evidence, affecting any immovable property comprised therein, or conferring any power to adopt or affecting any immovable property comprised therein, an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received in evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 or as evidence of any collateral transaction not required to be affected by registered instrument.

13. The Apex Court in the case of **S. Kaladevi** (Supra), while constructing the provisions of Section 49 has observed thus-----

“11. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale-deed of an immovable property of the value of Rs.100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to section 49 of 1908 Act.”

14. It can be seen that the document which is required to be registered under the provisions of Section 17 or any other provision is not registered, though cannot be read in evidence for the purpose of Clause (a), (b) and (c) of Section 49, it can be very well read as a evidence for any collateral transaction not required to be effected by registered instrument.

15. In the present case, the defendant no.2, i.e. the appellant no.2 is relying on the said relinquishment-deed for the collateral purposes of proving his adverse possession. The stage as to whether the said evidence has to be accepted or not is yet to be reached. The said issue can only be gone into at the time of final hearing of the suit and the decision thereon.

16. We find that the very application, on which the impugned order has been passed, was itself not warranted. When the learned trial Judge on earlier three occasions had held that the said document can be read in evidence for collateral purposes and was also given Article-A for identification to the same and had also rejected the application filed by the plaintiffs for not reading the evidence of Ravindra Ambadas Khedkar holding that the said issue can be considered and decided at the time of final decision of the suit. There was no occasion to file an application on which impugned order is passed. In any case, when on earlier three occasions, the learned trial Court observed that the said document can be read in evidence for collateral purposes, it was not permissible to now refuse it to be read in evidence.

17. In that view of the matter, we find that the order dated 19.11.2011 passed by the Joint Civil Judge (Junior Division), Mangrulpir below Exhibit 144 and the order passed by the learned Single Judge in Writ Petition No.1701/2012, dated 13.09.2012 are liable to be quashed and set aside.

18. In the result, the letters patent appeal is allowed. The order dated 19.11.2011 passed by the Joint Civil Judge (Junior Division), Mangrulpir below Exhibit 144 and the order passed by the learned Single Judge in Writ Petition No.1701/2012, dated 13.09.2012 are quashed and set aside. The application below Exhibit 144 is partly allowed holding that the relinquishment-deed, which is already marked Article-A can be read in evidence for collateral purposes. We make it clear that we have not observed anything about the evidentiary value of the said document and the learned trial Court shall decide the same at the time of final hearing and decision of the suit. In the facts of the case, there would be no order as to costs.

JUDGE

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