

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

WRIT PETITION NO. 3467 OF 2005
WITH
CIVIL APPLICATION NO.5721/2007
IN WP/3467/2005

Vishwambhar s/o Devrao Biradar,
Age : 62 years, Occupation : Agriculture,
R/o Shelgi, Tq.Nilanga,
District Latur.

...PETITIONER

-VERSUS-

Srirang s/o Keshavarao Biradar.
(Died) through his L.Rs.:-

- i) Shevantabai w/o Shrirang Biradar,
Age : 60 years, Occupation : Household,
R/o Shelgi, Taluka Nilanga,
District Latur.
- ii) Ram s/o Shrirang Biradar,
Age : 40 years, Occupation : Agri,
R/o As above.
- iii) Sukumar w/o Baburao Borole,
Age : 35 years, Occupation : Household,
R/o Pandhri, Post Hulsur,
Tq.Bhalki, District Bidar.
(Karnataka State).

...RESPONDENTS

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Advocate for Petitioner : Mrs.C.S. Deshmukh.

Advocate for Respondents : Shri A.N.Sabnis.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 09th May, 2016

Oral Judgment:

1 This petition was admitted on 23.08.2005 and interim relief in terms of prayer clause (C) was granted. Prayer clause (C) reads as under:-

“(C) *Pending hearing and final disposal of this writ petition, the proceedings pending before the IInd Joint Civil Judge, Junior Division, Nilanga, in Regular Civil Suit No.487/1997 be stayed and suspended.*”

2 The Petitioner is aggrieved by the order dated 22.10.2001 passed by the Trial Court below Exhibit-38 in RCS No.487/1997.

3 I have heard Mrs.Deshmukh, learned Advocate for the Petitioner and Shri Sabnis, learned Advocate for the Respondents, at length.

4 The issue is as regards an unregistered Sale Deed which has been sought to be produced and is confronted to the witness. By the application Exhibit-38, the Petitioner/ Plaintiff sought to examine the attesting witness of the said unregistered Sale Deed. There was an objection raised by the Respondents contending that an unregistered Sale Deed would not be admissible in evidence considering trite law.

5 The contention of the Petitioner is that the unregistered sale deed at issue was being pressed into service only for collateral purpose. Based on the said document, the Petitioner/ Plaintiff was not trying to crystallize his claim set out in the suit. Since the sale deed was sought to be utilized for collateral purpose, the application Exhibit-38 was filed.

6 The grievance is that the Trial Court has considered the document at issue as if the Plaintiff is attempting to build his case on the basis of the said document. Collateral purpose for which it is sought to be pressed into service has been lost sight of by the Trial Court.

7 The Petitioner relies upon the following judgments:-

- (a) Padma Vithoba Chakkayya vs. Mohd. Multani, AIR 1963 SC 70.
- (b) Bhaiya Ramanuj Pratap Deo vs. Lalu Maheshanuj Pratap Deo, AIR 1981 SC 1937.
- (c) Mahadeva vs. Commissioner, Mysore City Corporation, AIR 2003 Karnataka 217.

8 Shri Sabnis, learned Advocate for the Respondents, has strenuously opposed this petition. By placing specific reliance on paragraphs 23 and 29 to 34 of the judgment of the Honourable Supreme

Court in the matter of *K.B.Saha and Sons Private Limited vs. Development Consultant Limited*, **(2008) 8 SCC 564**, it is sought to be contended that Section 49 of the Registration Act, 1908 is squarely attracted. The proviso below Section 49 would be of no assistance to the Petitioner since an unregistered Sale Deed is in fact being pressed into service only to prove that the Petitioner has a right to possession over the suit property.

9 I have considered the submissions of the learned Advocates.

10 There is no dispute that the sale deed is an unregistered document. The Petitioner claims to be in possession not on the basis of the sale deed, but claims to be in possession prior to the signing of the sale deed. It is contended that the said document is, therefore, being utilized to prove collateral transaction and hence, for collateral purpose.

11 The learned Full Bench of this Court in the matter of *Hemendra Rasiklal Ghia vs. Subodh Mody*, **2008(6) Mh.L.J. 886**, while dealing with admissibility of a document and specifically an unregistered document, has concluded that despite the objection to such document, which in itself is inadmissible in evidence, it can be admitted at any stage of the suit reserving the decision on the question until final judgment in the case.

13 In my view, it would be apposite to reproduce the observations of the learned Full Bench in paragraph 92 as under:-

“92. *In view of the above analysis of the statutory provisions and our discussion, we, accordingly, articulate our conclusions as follows:*

Answer to Question-A :

As already noticed, (i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be judicially determined before it is marked as exhibit;

(ii) Objection relating to the proof of document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit;

(iii) Objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case.

The Court trying the suit or proceedings as far as possible is expected to decide the admissibility or proof of document as indicated hereinabove. As we have already added a word caution that while exercising discretion judiciously for the advancement of the cause of justice for the reasons to be recorded, the Court can always work out its own modality depending upon the peculiar facts of each case without causing prejudice to the rights of the parties to meet the ends of justice and not to give the handle to either of the parties to protract litigation. The aim should always be to prevent miscarriage of justice and expedite trial, which is the dire need of the time.

Answer to Question-B :

The objection to the admissibility or relevancy of evidence contained in the affidavit of evidence filed

under Order XVIII Rule 4 of C.P.C. can be admitted at any stage reserving its resolution until final judgment in the case as held in Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd. (supra)."

14 Considering the above, I am of the view that the issue as to whether, an unregistered document could be considered by the Trial Court, can be decided while deciding the suit. It would be virtually prejudging the matter since the Trial Court has come to the conclusion that "the Plaintiff is not using the document for collateral purpose". Such conclusion could not have been arrived at while deciding the application Exhibit-38 wherein, the document is sought to be brought on record. Considering the view of the learned Full Bench, this aspect can be considered by the Trial Court while deciding the suit itself.

15 In the light of the above, this Writ Petition is partly allowed. The impugned judgment dated 22.10.2001 is quashed and set aside. Liberty is granted to the Petitioner to place on record the unregistered document dated 09.03.1977.

16 Needless to state, the Trial Court shall consider, whether, the said document is being utilized for collateral purpose. The Trial Court shall, therefore, decide the said issue strictly within the ambit of Section 49 of the Registration Act, 1908 and in the light of the observations of the

learned Full Bench reproduced above. All the contentions of the litigating sides on this count are kept open. It is made clear that this Court has not expressed any opinion that the said unregistered document can be utilized by the Petitioner.

17 Rule is made partly absolute.

18 The pending Civil Application does not survive and the same is disposed of.

19 Both the litigating sides pray that RCS No.487/1997 be expedited considering its pendency for the last 19 years. In the light of the above, the Trial Court shall endeavour to decide RCS No.487/1997 as expeditiously as possible and preferably within a period of NINE MONTHS from today.