

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

59 WRIT PETITION NO. 6785 OF 2015

Dr. BHARATSINGH DATTUSINGH GAHELOT AND
OTHERS
VERSUS
Dr. KRANTI KUMAR NANDLAL SHARMA

Shri. Amit A. Mukhedkar, Advocate, for petitioners.

Shri. R.A. Deshmukh, Advocate, for respondent.

CORAM: T.V. NALAWADE, J.

DATE : 16th AUGUST 2016

ORDER:

1) The petition is filed to challenge the order made by learned Civil Judge, Senior Division, Nanded on Exhibits 38,52,62,65 and 76 in Regular Civil Suit No.113/2011. The suit is filed by present respondent Krantikumar Sharma for relief of declaration that plaintiff is owner of 1/4th portion of the suit property and for relief of injunction. The defendants, present petitioners, have contended in the suit that the plaintiff and defendants had started partnership business and it was oral agreement of partnership. They have contended that plaintiff had

retired from partnership under agreement dated 1-4-1985 and as the suit property belongs to partnership firm, plaintiff is not entitled to any relief.

2) The plaintiff is denying that there was any such partnership in existence and he is not admitting that document of retirement was executed on 1-4-1985. In view of these contentions and as admittedly immovable property was purchased under sale deed dated 29-3-1982 by the plaintiff and defendants together from the vendor and not by the firm, the plaintiff had prayed for rejection of the so called retirement document dated 1-4-1985.

3) The trial Court has considered relevant circumstances and the aforesaid contentions. The circumstance that the stamp was purchased not by executant, present plaintiff and also the situation which has arisen due to provision of the Bombay Stamp Act (Section 34) are considered and used by the trial Court for rejection of the document of so called retirement.

4) Provision of Order 13 Rule 3 of the Civil Procedure Code shows that the Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible and that can be done by recording the ground of such rejection.

5) There is document of sale deed in favour of the plaintiff in respect of immovable property. The title in respect of share of the plaintiff could have passed only by registered document and by way of transfer permissible under the provisions of the Transfer of Property Act. Even if the best possible case for the defendants is accepted, it is necessary to show that the property purchased in the names of the plaintiff and defendants was transferred to the partnership firm and only after that defendant can use the so called document of retirement. In view of these circumstances, the trial Court has not committed any error in holding that the so called document of retirement is irrelevant. It is clear that only to create complications the defendants are trying to use such record.

6) Learned counsel for the petitioners placed reliance on following reported cases.

(1) 2012(1) Bom.C.R. 426 (Mangilal Jagrupji Jain v. Bharat Shankarlal Dhakad);

(2) 2015(3) Bom. C.R. 653 (Rajiv Laxminarayan Jaju v. Gopal Motilal Baheti;

(3) 2014(6) Bom. C.R. 765 (Indian Oil Corporation Ltd. v. Shriji Enterprises Erandol).

7) The facts of the reported cases were different. In view of the facts of the present matter, this Court has no hesitation to hold that such document is irrelevant document. The trial Court has not committed any error in rejecting the document. So, the petition stands dismissed.

Sd/-
(T.V. NALAWADE, J.)

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