

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

**LETTERS PATENT APPEAL NO. 44 OF 2013
IN
WRIT PETITION NO. 2705 OF 2012
WITH
CIVIL APPLICATION NO.3353 OF 2013**

Ranchhod Dharamdas Mali .. Appellant

Versus

Laxman Dharamdas Mali & Ors. .. Respondents

Mr.J.R. Shah, Advocate for the appellant.

Mr.P.V. Barde h/f. Mr.N.L. Choudhari, Advocate for the respondents.

**CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE, JJ.**

DATED : 08.12.2017

P.C. :-

1. The order of the learned Single Judge dismissing the writ petition is assailed.

2. Mr. Shah, learned Counsel submits that the document in question "Partition-Deed" is unregistered and is also not properly stamped. In view of that the document is inadmissible in evidence. Learned Single Judge has failed to

consider the aspect of the document being insufficiently stamped in its correct perspective. Learned Counsel relied on the provision of section 34 of the Bombay Stamp Act.

3. Mr. Barde, learned advocate submits that present LPA is not maintainable and order is passed under Article 227 of the Constitution of India as learned Single Judge was exercising the jurisdiction under article 227 of the Constitution of India and relied upon judgment of Division Bench of this Court in the case of Mansaram Sampat Patil & Ors. Vs. Sambhu Harchand Chaudhary & Ors., 2004(4) Mh.L.J.1105.

4. Learned Advocate further submits that the document which is in the nature of family settlement and is a memorandum of partition, does not require compulsory registration. Learned Advocate relied on the judgment of Apex Court in the case of Kale and Others Vs. Deputy Director of Consolidation & Ors., AIR 1976 SC 807 and another judgment of the Apex Court in the case of Amteshwar Anand Vs. Virender Mohan singh & Ors., AIR 2006 SC 151.

5. Mr.Shah, learned advocate for the appellant relies on the judgment of Full Bench of this Court in the case of **Advani Oerlikon Ltd. Vs. Machindra Govind akasare & Ors., 2011(2) Mh.L.J.916** to contend that it is open to the Court while dealing with the petition filed under Articles 226 or 227 of the Constitution of India or LPA under clause 15 of the Letters Patent arising from the judgment in such petition to determine whether the facts justify parties in filing the petitioner under Articles 226 and 227 of the Constitution of India.

6. With the assistance of learned counsel for the respective parties, we have gone through the judgment delivered by learned Single Judge of this Court.

7. Learned Single Judge of this Court relied upon observations made in the case of **Kale & others** referred supra, holding that the document is dated 08.01.1985 and the arrangement agreed in the said group has been worked all these years till the date and on such count the learned

Single Judge has observed that the contentions that the said document is not registered or is required to be registered or the defendant is required to pay stamp duty before the same is received in evidence deserves no consideration and further it has been observed that the said document produced on record is allowed to be exhibited only for collateral purpose and as such upheld the order of the Trial Court.

8. The trial Court has directed to exhibit the document styled as "partition deed". The Trial Court observed that the parties can use the said document for collateral purpose. If the document requiring compulsory registration is not registered, then the document can be used for collateral purpose in view of section 49 of the Registration Act. There would be no bar to refer said document for collateral purpose. However, even if the document is used for collateral purpose, the document is required to be stamped properly. Unless and until the document is stamped the document cannot be admitted in evidence. Reference can be made to section 34 of the Bombay Stamp Act. Reading the document, it appears that the document effects partition amongst the parties in front of

panchas. In view of that even if said documents is used for collateral purpose, the document will be required to be stamped. It appears that while deciding the matter, learned Single Judge did not consider section 34 of the Bombay Stamp Act. As relevant provision was not considered by the learned Single judge, we are inclined to exercise our jurisdiction under Letters Patent.

9. The judgment in the case of Kale and others (Supra) relied upon by the learned advocate for the respondent is on the point that family arrangement need not be registered so also the judgment in the case of Amteshwar Anand (Supra) is regarding consent decree and effect of non-registration of consent decree. In the present matter, the document in question appears to be partition deed. The partition is effected under the document "partition-deed". As such same is required to executed on the stamp duty as required under the provisions of the Stamp Act.

10. In the light of above, the impugned judgments of the learned Single Judge and learned Trial Court are quashed and set aside.

11. In case the respondent desires to use said document of collateral purpose, then it may do so after impounding the document on payment of proper stamp duty.

12. The letters patent appeal is allowed. No costs.

13. In view of disposal of the Letters Patent Appeal, Civil Application also stands disposed of.

[S . M . GAVHANE , J .]

[S . V . GANGAPURWALA , J .]