

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

WRIT PETITION NO. 12688 OF 2016

PRATAP KISANRAO PAWAR AND OTHERS
VERSUS
SARDAR MOHAMMAD PATHAN

...

Advocate for Petitioners : Shri Barde Parag Vijay.

...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 05th January, 2017

Per Court:

1 The Petitioners are aggrieved by the order dated 27.10.2016 by which the Trial Court has rejected the application Exhibit-34 filed by the Petitioners/ Defendants thereby, negating their objection that the concerned documents being not registered and not duly stamped ought not to be exhibited.

2 Shri Barde, learned Advocate for the Petitioners, has strenuously criticized the impugned order. He has drawn my attention to the Order 13 Rule 4 of the Code of Civil Procedure to contend that once the document is exhibited, it would be used in evidence against the interest of the Petitioners and the eventualities enumerated under Order 13 Rule 4 would, therefore, follow.

3 It is trite law that merely because the document has been exhibited, does not mean that the document stands proved. If the document at issue is proved by the Plaintiff through his oral and documentary evidence, the said document could surely be considered by the Trial Court to the extent of its probative value. Since the concerned document was a mere agreement of sale and there was no contingency of handing over the possession inasmuch as the possession is not handed over by virtue of the said document, in my view, the Trial Court has rightly concluded that the said document need not be registered. It is in this backdrop that the application Exhibit-34 has been rejected and the agreement to sale dated 18.01.2011 has been exhibited.

4 There can be no dispute that the Trial Court would consider the probative value of Exhibit-45 in the light of the provisions of the Code of Civil Procedure as well as the Evidence Act. In that view of the matter, this Writ Petition does not deserve to be entertained and is, therefore, dismissed.