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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 8511 OF 2019**

Mr. Shabbir Ahmad S. Khan Prop. Of M/s.Petitioner
Alsiraj Builders and Developers

V/s.

Abdul Hameed Khan Matawan and anotherRespondents

Mr. A. B. Ketkar i/b Mr. Kapil Shetye for the petitioner
Mr. Shah a/w Mr. O. S. Paranjape for respondent no. 1

CORAM : NTIN W. SAMBRE, J.

DATE : OCTOBER 14, 2019.

P.C.

Heard respective counsel.

2 In view of the law laid down by the Apex Court in the Judgment of **Ameer Minhaj V/s. Dierdre Elizabeth (Wright) Issar and others¹** particularly in para 12 which reads thus:

“12. Riverting to the registered General Power of Attorney,

¹ (Civil Appeal No. 18377 of 2017)

the same has been executed by the original defendant No. 1-predecessor in title of respondent Nos. 1 & 2 (defendant Nos. 3 & 4), in favour of respondent No. 3 (defendant No. 2). Being a registered document, in our opinion, the Trial Court was justified in observing that there is a legal, rebuttable presumption that the same has been duly stamped. As observed by the Trial Court, the question as to whether the document is hit by the provisions of the 1882 Act or the 1899 Act can be decided after the parties adduce oral and documentary evidence. The High Court, in our opinion, therefore, should have stopped at that instead of analysing the said instrument by invoking the principle of incorporation by reference to the agreement to sell dated 12th November, 1995. for, the appellant (plaintiff) is not a party to the said document. Indeed, the executor of the document – original defendant No. 1 and the defendant No. 2 in whose favour the same has been executed, are parties to the present suit. The principal document, namely, the agreement to sell dated 12th November, 1995, as rightly noticed by the Courts below, was executed prior to coming into force of Section 17(1A) of the 1908 Act. That provision has been made applicable prospectively. Hence, the same was not required to be compulsorily registered at the time of its execution. Even if it was required to be registered, keeping in view the purport of Section 49 read with Section 17 (1A) of the 1908 Act, the same could be received as evidence for a limited purpose, without having any effect for

the purposes of Section 53A of 1882 Act”.

and the Judgment of the Apex Court in the case of **Avinash Kumar Chauhan Vs. Vijay Krishna Mishra**² particularly paragraph 22 which reads thus:

“22

“7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act”.

The impugned order is not sustainable.

3 The learned Judge committed an error in not permitting the petitioner to produce on record the document which is styled as Agreement to Sell and Power of Attorney dated 23/01/2015. Such documents in view of above observations of the Apex Court can be

² (Civil Appeal No. 7350 of 2008)

considered for collateral purpose.

4 That being so, order impugned is quashed and set aside. The documents i.e. Power of Attorney and Agreement to Sell dated 23/01/2015 are permitted to be exhibited.

5 Needless to clarify that just because documents are exhibited, it be not construed that the contents therein are proved and accepted.

6 Parties are at liberty to take appropriate steps as are permissible and available in law, if required for impounding or such other orders, if required in the facts and circumstances of the case.

7 Petition stands disposed of.

[NITIN W. SAMBRE, J.]