

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13486 OF 2018

BAYADABAI B. GOGAVALA

)...PETITIONER

V/s.

MOHAMMED H. MUJAVAR AND ORS.

)...RESPONDENTS

Shri.Tejas Dande a/w. Shri.Bharat Gadhavi, Shri.Vaibhav Kulkarni and Shri.Vishal Navale i/b. Tejesh Dande & Associates, Advocate for the Petitioner.

Shri.Ganesh Gole, Advocate for Respondent No.1.

CORAM : A. M. BADAR, J.

DATE : 11th NOVEMBER 2019

P.C. :

1 Original defendant no.3 by this petition is challenging the order dated 17th August 2018 passed by the learned Civil Judge, Junior Division, Bhore, Pune, thereby rejecting his application under Section 65 of the Evidence Act for adducing secondary evidence in respect of unregistered Sale Deed dated 9th August 1996.

2 Heard finally.

3 The learned counsel for the petitioner/defendant submitted that proviso clause of Section 49 of the Registration Act, 1908, was not considered by the learned trial court while deciding the application Exhibit 91, and therefore, the impugned order is erroneous. On behalf of respondents/plaintiffs it is argued that unregistered Sale Deed in respect of whole of immovable property cannot be accepted in evidence, and therefore, the impugned order is perfectly correct.

4 I have considered the submissions so advanced and perused the impugned order. The application for adducing secondary evidence came to be rejected only with a reason that the Sale Deed is in respect of an immovable property and the same is unregistered.

5 Section 49 of the Registration Act, 1908, reads thus :

“49 **Effect of non-registration of documents required to be registered** - No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall -

- (a) affect any immovable property comprised therein, or
- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) or as evidence of any collateral transaction not required to be effected by registered instrument.

It is, thus, clear that unregistered Sale Deed affecting immovable property can be used as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction.

6 In this view of the matter, the impugned order cannot be sustained. Therefore, the order :

ORDER

- i) The impugned order is quashed and set aside.

- ii) The learned trial court is directed to decide the application at Exhibit 91 afresh and all contentions of parties are kept open.

- iii) The petition is accordingly disposed off.

(A. M. BADAR, J.)