

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.63 OF 2019

Deepak Baliram Belorkar
Ghatanji, Tah. Ghatanji,
Dist. Yavatmal

... Appellant

-vs-

Nilkanth s/o Baliram Belorkar,
Laxminagar, Nagpur
And ors.

... Respondents.

Shri Y. D. Shukla, Advocate for appellant.
Shri A. S. Dhore, Advocate for respondent No.1.
Shri J. B. Kasat, Advocate for respondent Nos.8 to 12.

CORAM : A.S.CHANDURKAR, J.
DATE : March 27, 2019

P.C.

By this writ petition filed under Article 227 of the Constitution of India the petitioner who is the defendant No.1 in the suit filed for partition and separate possession has challenged the order dated 06/02/2018 passed below Exhibit-103 as well as the order dated 01/08/2018 passed below Exhibit-119. By the order passed below Exhibit-103 the trial Court has refused to mark the relinquishment deed dated 10/08/1998 as an exhibit. By the order passed below Exhibit-119 application for impounding that document for being registered has been rejected.

2. According to the respondent No.1-plaintiff various properties were owned by his father Baliram. After the death of his father the said

respondent No.1 along with brothers and sisters succeeded to his property. The suit was therefore filed for partition and separate possession. In that suit the petitioner-defendant no.1 raised a plea that initially there was a partition between the family members on 29/06/1959. Subsequently on 10/08/1998 the plaintiff along with other sisters relinquished their shares in favour of defendant No.1. This was done by executing a relinquishment deed. During the course of deposition of the defendant No.1 he sought to rely upon the deed of relinquishment dated 10/08/1998. On behalf of his counsel it was submitted that since the said deed was an original document it was liable to be marked as exhibit. The trial Court on 06/02/2018 held that since the relinquishment deed was not registered it could not be marked as an exhibit. The defendant No.1 then filed an application below Exhibit-119 praying that said document be impounded. The trial Court rejected that application on the ground that the same could not be impounded for the purposes of sending it for registration. Being aggrieved the defendant No.1 has challenged the aforesaid order.

3. Shri Y. D. Shukla, learned counsel for the petitioner submitted that the deed of relinquishment was not a document of title nor did it transfer any rights in the property in favour of the defendant No.1. It was in the nature of a family arrangement between the members of the family and it did not require any registration. Its contents were in the nature of a family

settlement and by placing reliance on the decisions in *Arvind s/o Yeshwatrao Deshpande vs. State of Maharashtra and ors.* 2003(3) *Mh.L.J.* 1039, *Kale and ors. vs. Deputy Director of Consolidation and ors.* AIR 1976 SC 807 and *Bapuram Bora and ors. vs. Anil Bora and ors.* 2012 AIR (Gauhati) 104 it was submitted that said document did not require registration.

4. On the other hand Shri A. S. Dhore, learned counsel for the respondent No.1-plaintiff and Shri J. B. Kasat, learned counsel for the other defendants supported the impugned order. According to them on a plain reading of the relinquishment deed dated 10/08/1998 it was clear that the signatories therein had given up their shares in the property described therein in favour of the petitioner. Such a document was compulsorily registrable and in absence of such registration it could not be relied. Reliance was placed on the decisions in *Gangaram Sakharam Dhuri since deceased Thr. L.R. Vishnu and ors. vs. Gangubai Raghunath Ayare and ors.* 2007(5) *Mh.L.J.* 136 and *Santosh w/o Motiram Solanke and ors. vs. Arjun s/o Asaram Solanke and ors.* 2014(3) *Mh.L.J.* 43.

5. After hearing the learned counsel for the parties and after perusing the documents on record it can be seen that by virtue of the document dated 10/08/1998 the party No.1 which included the plaintiff and

his sisters are shown to have given up their respective shares in favour of the defendant No.1. In that document it is also stated that the properties were initially owned by the father Baliram and that after his death all these legal heirs had a right to the same. Considering the contents of the said document coupled with the specific stand taken by the petitioner herein of claiming entitlement to the said properties on the basis of that relinquishment deed, it is found that the trial Court was justified in observing that since the plaintiff and defendant Nos.2 to 9 had given up their respective shares by relinquishing the same in favour of the defendant No.1, the said document was compulsorily registrable. The ratio of the decisions in *Gangaram Sakharam Dhuri* and *Santosh Solanke and ors.* (supra) support the aforesaid conclusion. Prima facie it is not seen that the said document dated 10/08/1998 is in the nature of any family settlement. The clear recitals therein indicate that there was an intention on the part of the signatories to relinquish their share in favour of the defendant No.1.

6. In that view of the matter, I do not find any reason to interfere with the orders passed by the trial Court. By clarifying that the trial Court shall decide the suit on its merits in the light of the evidence on record without being influenced in any manner by the observations herein, the writ petition stands dismissed with no order as to costs.