

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14314 OF 2021

1. Prakash s/o. Baliram Khandare,
Age 47 years, Occu. Service, Agri.
and Busienss, R/o. M.I.D.C., Osmanabad,
Taluka and District Osmanabad
 2. Deelip s/o. Baliram Khandare,
Age 45 years, Occu. Agri. and Business,
R/o. M.I.D.C., Osmanabad,
Taluka and District Osmanabad.
- .. Petitioners
(Original Defendants)

Versus

Rahul s/o. Bhaskarrao Rankhamb,
Age 30 years, Occu. Service and Agri.,
R/o. Bank Colony, Osmanabad
Taluka and District Osmanabad.
Through – Power of Attorney
Suresh s/o. Nivruti Rankhamb,
Age 43 years, Occu. Agri.,
R/o. Kumalwadi, Taluka and
District Osmanabad.

.. Respondent
(Original Plaintiff)

...

Mr. N. B. Khandare, Advocate for Petitioners-original defendants
Mr. P. S. Chavan, Advocate for Respondent-original plaintiff

...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21-12-2021

PER COURT :-

Rule. Rule made returnable forthwith. Heard finally with
the consent of the learned Advocates for the parties.

2. This petition is directed against the order dated 29-11-2021 passed by the learned 3rd Civil Judge, Junior Division, Osmanabad, below Exhibit-58 in Regular Civil Suit No. 312 of 2012, thereby rejecting the application filed by the petitioners/original defendants to de-exhibit the document at Exhibit-38.

3. The petitioners are the original defendants and the respondent is the original plaintiff in RCS No. 312 of 2012. The suit is filed by respondent-plaintiff seeking a decree for possession of encroached area admeasuring 1 Hectore 73 R in respect of land Gat No. 313, from the defendants. The suit was resisted by the petitioners-defendants by filing written statement. Issues came to be framed on 28.01.2013.

The plaintiff filed evidence affidavit of his witness (PW-2) Vijaymala w/o. Bhaskarrao Rankhamb on 06.01.2021. Defendants filed application (Exhibit-58) contending that the Exhibit-38 is given to the partition deed, in the chief of PW-2, at that time the defendants were absent. The said partition deed is not a registered document, as per law it needs to be registered. Since the learned advocate representing the defendants was absent at the time of exhibiting the said document, the objection in his behalf could not be taken. It was, therefore, prayed that document (Exhibit-38) be de-exhibited. The said application is

objected by the plaintiff. By the impugned order, the trial Court rejected the application (Exhibit-58).

4. Heard learned Advocate for the petitioners-defendants and learned Advocate for the respondent-plaintiff.

5. By relying on a Full Bench decision of this Court reported in *Hemendra Rasiklal Ghia and others Versus Subodh Mody and others, 2008(6) Mh.L.J. 886*, and the decision of the Honourable Supreme Court in *Korukonda Chalapathi Rao and Another Versus Korukonda Annapurna Sampath Kumar, (Civil Appeal No. 6141 of 2021)*, the learned Advocate for the petitioners-defendants submitted that since partition deed at Exhibit-38 is not a registered document, the same needs to be de-exhibited. He further submitted that the learned Advocate representing the petitioners-defendants was not present when the document was exhibited, however, at the first possible opportunity, the objection is raised and that has not been considered in the proper perspective by the trial Court. According to him, in view of the ratio of the Full Bench, the trial Court ought to have allowed the application filed by the petitioners-defendants.

6. In *Korukonda Chalapathi Rao (supra)*, the Honourable Apex Court has held that the partition deed is inadmissible for want of

registration under Section 49 of the Registration Act. He, therefore, submits that the impugned order cannot sustain and the same is liable to be set-aside and application (Exhibit-58) deserves to be allowed.

7. Per contra, the learned Advocate for the respondent-plaintiff supports the impugned order. He submits that the cross-examination of PW-2 in whose evidence the document is exhibited, is already over and questions were put to PW-2 in respect of document Exhibit-38. He further submits that the trial Court has rightly considered the objection of the petitioners and has given cogent reasons, while rejecting the application. No interference is called for in the impugned order in extra ordinary writ jurisdiction.

8. The application (Exhibit-58) seeks de-exhibition of partition deed (Exhibit-38). There is no provision in law authorizing the trial Court to de-exhibit exhibited document. However, in the peculiar facts of the present case, application (Exhibit-58) can be treated as an objection to the exhibition of (Exhibit-38) partition deed, at the first possible opportunity and the same also can be treated as an objection in respect of admissibility of the partition deed (Exhibit-38).

9. In ***Hemendra Rasiklal Ghia*** (*supra*), the Full Bench of this Court has observed thus ;

“87. However, by way of exception, the objection relating to the admissibility of the document requiring resolution of complex issues, having effect of arresting progress of the matter, or if the admissibility of the evidence is dependent on receipt of further evidence, then, in such cases the trial Court can, in the interest of justice, defer the issue of deciding admissibility of the document. In Ram Ratan Vs. Bajarang Lal (supra), the Supreme Court has also observed that in a given circumstance a document can be exhibited with the endorsement made by the learned trial Judge objected, allowed subject to objection, clearly indicating that the objection has not been judicially determined and the document was tentatively marked. This procedure is to be followed only in exceptional circumstances. Ordinarily, the objection to the admissibility of the document should be decided as and when raised without reserving the question as to admissibility of the document until final judgment in the case. We may make it clear that omission to object to a document, which in itself is inadmissible in evidence, would not constitute such document in evidence. It is also duty of the Court to exclude all irrelevant evidence even if no objection is taken to its admissibility by the parties. The question of relevancy of the document being a question of law can be raised and decided at any stage of the proceeding.”

10. In the light of above ratio, the petitioners are entitled to

raise issue of admissibility and relevancy of partition deed (Exhibit-38) at the time of final arguments. The trial Court shall decide the issue of admissibility and relevancy of partition deed (Exhibit-38) while deciding the suit.

11. For the afore-stated reasons, this Court is of the view that it is not appropriate to interfere in the impugned order at this stage. The writ petition is, therefore, dismissed. Rule is discharged. No costs.

12. It is made clear that, the petitioners are entitled to raise the issue of admissibility and relevancy of partition deed (Exhibit-38) at the time of final arguments.

(NITIN B. SURYAWANSHI)
JUDGE

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