

2. The submissions of learned counsel for the Petitioner are, the suit is for simplicitor perpetual injunction and declaration as the

Petitioner is claiming title based on the aforesaid document, as the Petitioner's case is on the title of aforesaid document.

3. The Petitioner claims that so as to claim injunction and declaration, restraining the defendants from disturbing his possession, the aforesaid document can definitely be taken into account by the trial Court for the purpose of inferring possession.

4. So as to substantiate his contention, he has drawn support from the judgment of Apex Court in the matter of P. M. Anand Babu and Ors. Vs. Mir Akbar Ali Khan and Another, reported in AIR 2004 Andhra Pradesh 243, particularly paragraphs 9 and 10, which reads thus :

“9. It is explicit from the pleadings of the parties therein that there is no dispute with regard to the possession of the property by the plaintiff. The dispute is whether the plaintiff is in possession of the property as a mortgagee or as a purchaser. Coming to the facts of the case on hand, the suit filed by the petitioner/plaintiff is one for injunction simplicitor. The petitioners/ plaintiffs relied on the unregistered sale deeds to prove the fact of their possession. Therefore, the facts in the

cited case and the case on hand are distinctive and the proposition of law laid down in the cited case has no application to the facts of the case on hand. The Supreme Court in [Bondar Singh v. Nihal Singh](#), (2003) 4 SCC 161 : (AIR 2003 SC 1905), held as follows:

"Under the law a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, legal position is clear that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes. In the present case the collateral purpose to be seen is the nature of possession of the plaintiffs over the suit land."

The facts in the above case are that the plaintiffs claim title to the land in suit on the basis of the plea that they had become its owners by adverse possession. The land was owned by one Fakir Chand, predecessor-in-interest of the appellants therein (defendants in the suit). Fakir Chand sold the land to Tola Singh, predecessor-in-interest of the plaintiffs by an unstamped and unregistered sale deed dated 9-5-1931. The plaintiffs claim to have entered into possession of the land on the

basis of the said sale deed and they claim to be continuously in possession since then. The defendants tried to dispossess the plaintiffs, which led to the suit being filed by them on 15-4-1972. In the written statement filed by the defendants, they denied the sale of land by their father Fakir Chand to Tola Singh. They denied possession of the plaintiffs of the suit land. They also took the plea that the alleged sale deed was false, fictitious and without consideration. According to the defendants, their father was in possession of the lands till his death. After the death of their father, their mother had given possession of the land to Tola Singh for the purpose of cultivation in order to earn some money for supporting her family. According to the defendants, they had taken back possession of the land from Tola Singh in the year 1957-58. They also pleaded that after the death of Fakir Chand, the land had been mutated in their names in the revenue records to the knowledge of the plaintiffs. The plea of adverse possession was denied by stating that actually the defendants were in possession of the land and there was no question of adverse possession of the land by the plaintiffs qua the suit land. The only defence set

up by the defendants against the unregistered sale deed dated 9-5-1931 is that it is unstamped, unregistered and therefore it cannot convey title to the land in favour of the plaintiff. On the basis of the facts stated above, it has been held by the Supreme Court that the sale deed dated 9-5-1931, even though not admissible in evidence can be looked into for collateral purposes.

10. Since the suit filed by the petitioners/plaintiffs is for injunction simplicitor and the unregistered sale deeds sought to be relied on is only to prove their possession over the property, they can be admitted into evidence under the third proviso to [Section 49](#) of Registration Act.”

5. Learned counsel for the Respondents/Defendants would urge that the very document cannot be termed as conveyance within the meaning of Maharashtra Stamp Act, particularly when the registration of the same is mandatory under Section 17 of the Registration Act. According to him, non registration of a consequential/ compulsory registered documents is an incurable defect

and the consequence thereof is that such documents cannot be accepted in evidence.

6. He would further urge that the only exception to Section 17 is the proviso, wherein it is permitted that such document can be considered for collateral purpose. As such, according to him, order impugned does not call for any interference.

7. I have considered the rival submissions and also the observations of the Apex Court, as referred supra.

8. The fact that the suit preferred by the Petitioner is for declaration, injunction. By virtue of the document, Exhibit 59, he has prayed before the trial Court to exhibit said document.

9. The rejection of prayer for exhibiting the document is based on the fact that the document is not sought to be used for collateral purpose, as his case is based on the said document, whereby the Petitioner is claiming his lawful possession.

10. However, this Court is required to be sensitive to the observations of the Apex Court in the matter of P. M. Anand Babu and Ors. (supra).

11. As the said document, which is sought to be exhibited can be relied on by the Petitioner for collateral purpose, such as for establishing his possession over the suit property, said can be marked as exhibit to that extent. Ofcourse, exhibiting the document does not mean that the said document is considered to be proved, unless the Petitioner who is one of the signatory to the said document prove the contents.

12. As such, the order impugned passed below Exhibit 59 on 17th December 2018 by 4th Joint Civil Judge, Senior Division, Thane is hereby quashed and set aside.

13. The said application Exhibit 59 stands allowed to the extent of aforesaid order and observations.

14. The Writ Petition stands disposed of in above terms.

(NITIN W. SAMBRE, J.)