

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1068 OF 2021**

Madhu Kachharam Achhra ...Petitioner
Versus
Joint Sub Registrar of Assurance Ulhasnagar &
Ors ...Respondents

Ms Pooja R Singh, with NR Bubna, i/b NR Bubna, for the Petitioner.
Mr SS Panchpor, AGP, for the Respondents-State.

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 17th November 2021

PC:-

1. Rule. Respondents waive service. By consent, Rule is made returnable forthwith and the matter is taken up for hearing and final disposal.

2. The three Petitioners in this Writ Petition under Article 226 of the Constitution of India seek directions against the Joint Sub-Registrar of Assurances, Ulhasnagar to trace an original Sale Deed dated 30th September 1983 registered under Sr. No. 2874 of 1983 in the office of the Sub-Registrar of Assurances, Ulhasnagar-I. This was a document in respect of Plot No. 18 of DD Scheme of Ambarnath area admeasuring about 4018 sq. yards on City Survey

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Nos. 3281 and 3282 within the municipal limits of the Ambarnath Municipal Council.

3. Very shortly stated, when the Petitioners asked for an original true copy of the Sale Deed Dated 30th September 1983, the Respondents replied first saying that it was not traceable and that a search was underway.

4. By a communication of 17th February 2011, the Joint Sub-Registrar informed the Petitioners that the document in question of 1983 could not be found but that the search was going on. However, there was a separate register available indicating the factum of registration with the thumb prints or impressions of the registrants in respect of the document under Sr. No. 2874 of 1983. From this, it is evident that that document of 1983 was indisputably registered.

5. Then the Petitioners were told that the original could not be traced. It may have been destroyed or there may have been other reasons.

6. Until 20th November 2018, the document was still not traced. On 14th February 2019, the Petitioners wrote to the Sub-Registrar-2 applying for re-registration of Confirmation Deed in the registered Deed of Sale of 1983. The response on 18th March 2019 was that this application could not be accepted.

7. A copy of the original Sale Deed has been added by amendment as Exhibit-I at pages 51O and 51Y. From this, it appears

to us to be apparent that the original Sale Deed was in fact registered.

8. The question that now remains is what is to be done if the original registered document cannot be traced. This is an original document of title and it simply cannot be that a party who has rights to the immovable property in question is unable to transact or deal with that property merely for want of a true copy of the original registered document.

9. There is, however, an Affidavit in Reply dated 23rd August 2021 filed by the Joint Sub-Registrar, Class-2. In paragraph 9, the Deponent has said that the Respondent Authority will take a fair and transparent stand “if all the concerned parties to the Sale Deed No. 2874 of 1983 make compliance of the Maharashtra Stamp Act and the Maharashtra Registration Act and all they remain present before the Sub-Registrar for admission of such document” then the office will register the document in accordance with the law. This may sound reasonable, but it is not. The Registry cannot expect all executants to the original document to be alive after nearly 30 or 40 years. There is also no question of any further compliance with the Maharashtra Stamp Act. The document was fully stamped, failing which it would not have proceeded to registration in the first place. Indeed, there can be no dispute because the Petitioners had obtained Income Tax clearance for this transaction.

10. The three Petitioners agree and undertake that all three will be present before the Sub-Registrar of Assurances and will sign the

necessary document or deed of confirmation submitted by the Petitioners and that they will do so within a period of two weeks from today. The Sub-Registrar is ordered and directed to immediately register on presentation the deed of confirmation without insisting on payment of any additional stamp duty. This is not a fresh transaction but is only a confirmation of a previously stamped and registered document.

11. Rule is made absolute in these terms. In the facts and circumstances of the case, there will be no order as to costs.

12. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)