

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3336 OF 2022

**SANJAY SUDHAKAR DEBADWAR AND ANOTHER
VERSUS
PRADIP JANARDHAN BIRADAR**

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Advocate for Petitioners : Mr. V. D. Gunale
Advocate for Respondent No.1 : Mr. Krisna P. Rodge

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 19th SEPTEMBER, 2022

PER COURT :

1. Being aggrieved by order dated 15/01/2022, passed by learned Joint Civil Judge, Senior Division, Udgir, below Exhibit-45 in Special Civil Suit No.30/2019, petitioners/original defendants have approached this Court.

2. The suit is filed by respondent/plaintiff for specific performance of agreement to sale executed by petitioners in favour of respondent. Exhibit-5 application filed by plaintiff was partly allowed by directing defendant No.1 not to create third party interest in suit property.

3. Thereafter, plaintiff led his evidence and evidence of his witnesses. In evidence, agreement to sale on the basis of which suit is filed, is exhibited. Defendants, thereafter, filed application Exhibit-45 claiming that agreement to sale on stamp paper of

Rs.100/- is insufficiently stamped and unregistered and, therefore, it is liable to be discarded from evidence. It is further prayed that the said agreement be de-exhibited and impounded as per Sections 33 and 34 of the Maharashtra Stamp Act, 1958. The application was opposed by respondent/plaintiff by filing written say.

4. Trial Court has rejected the application holding that by agreement to sale at Exhibit-27, possession is not handed over and in view of explanation under Section 53-A of the Transfer of Property Act, 1882, the said document was not required to be registered. It is further held that, since plaintiff has not taken possession or he was not already in possession of suit property and it is not continued as part performance of contract as per agreement of sale at Exhibit-27, the same is not required to be registered as it is mere agreement of sale.

5. I have given due consideration to the rival submissions made by learned advocates for the respective parties. Perused the writ petition memo and citations relied upon by the parties.

6. Perusal of agreement to sale at Exhibit-27 shows that there is no recital about handing over of possession. As per pleadings in the plaint, it is the case of plaintiff that he is in possession of suit property as a tenant. It is, therefore, clear that possession of suit property of the plaintiff is not towards part

performance of agreement at Exhibit-27. In that view of the matter and in view of Section 53-A of the Transfer of Property Act, 1882, it is not necessary to impound said document. It is settled legal position that, if possession is not handed over by the agreement, the same need not be registered. Trial Court has rightly interpreted the provisions and, in the facts of the present case, was justified in passing the impugned order.

7. It is also settled legal position that document once accepted cannot be de-exhibited. In that view of the matter, prayer made in that behalf by petitioners could not have been granted by trial Court. So far as the contention of petitioners that said document cannot be read into evidence, this can be argued before the trial Court at the time of final argument and it will be adjudicated on merits by trial Court at the time of delivering judgment.

8. There is no illegality or perversity in the order impugned in present petition. Writ petition being devoid of merits is dismissed.

9. Issue of admissibility and relevance of that document and rival contentions of the parties in that behalf are kept open.

(NITIN B. SURYAWANSHI, J.)