

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

947 WRIT PETITION NO.5139 OF 2022

SANTRAM SHIVRAM JADHAV
VERSUS
ANNA SADASHIV ITKAR

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Advocate for Petitioner : Mr. More Abhijit S.
Advocate for Respondents : Mr. Ghute Patil Kishor J.

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CORAM : SANDEEP V. MARNE, J.
Dated: November 25, 2022

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PER COURT :-

1. By this petition, petitioner assails the order dated 10.1.2022 passed by the Jt. Civil Judge Jr. Division, Paranda, rejecting his application for impounding the consent deed, which is both unregistered as well as inadequately stamped.

2. Defendant no.1 sought willingness to pay deficit stamp duty upon impounding of the document. The trial court has, however, rejected the application observing that, even if the deficit stamp duty is paid, the defect of registration cannot still be wiped out.

3. Learned counsel for petitioner has relied upon the judgments of this Court in **Shabbir Ahmad S Khan Vs.**

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Abdul Hameed Khan Matawan and Another reported in 2021 (2) LAR Bom 637 and the judgment of Supreme Court in **M/s SMS Tea Estates Pvt Ltd., Vs. M/s Chandmari Tea Co. Pvt Ltd.**, reported in 2011 AIR (SCW) 4484. However, both the decisions relate to issue of inadequate stamp duty being paid. Learned counsel for petitioner has also placed reliance on a judgment of the Apex Court in **K.B. Saha and Private Limited Vs. Development Consultant Limited** reported in (2008) 8 Supreme Court Cases 564. In paragraph no.34 of which reads thus :-

“34. From the principles laid down in the various decisions of this Court and the High Courts, as referred to hereinabove, it is evident that :-

1. A document required to be registered is not admissible into evidence under [Section 49](#) of the Registration Act.
2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the Proviso to [Section 49](#) of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immoveable property of the value of one hundred rupees and upwards.
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of

proving an important clause would not be using it as a collateral purpose.

4. Thus, it is clear from the principles enunciated in **K.B. Saha** (supra) that an unregistered document can be used as an evidence of collateral purpose which does not require registration.

5. In the present case, by unregistered consent deed, possession of the land in question was obtained. Admittedly, for transfer of such possession, the document needs registration. There is no other collateral transaction effected by the consent deed. The trial court has thus not committed any error while rejecting the application. Petition is devoid of any merits. Hence, petition stands dismissed. The trial Court shall not be influenced by the observations made in this order while deciding the suit finally.

(**SANDEEP V. MARNE, J.**)

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