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

WRIT PETITION NO. 4855 OF 2021

Laxman s/o Ganpat Khaire,
Age : 66 years, Occu. Labour,
R/o. Shankyangar, Ambedkar Chowk,
Bhoiwada, Mill Corner, Aurangabad. ...**Petitioner**
[Orig. Def.]

Versus

1] Prayagbai w/o Pandharinath Gore,
Age : 70 years, Occu. Household,
R/o. Both R/o. H. No. 4-18-53, CTS No. 2871,
Bhoiwada, Mill Corner, Aurangabad.

2] Gayabai w/o Laxmanrao Chabukswar (deceased)
L.R's. not brought on record. ...**Respondents**
[Orig. Plaintiffs]

.....

Mr. Prashant S. Shinde, Advocate for the petitioner
Ms. Shweta D. Kulkarni h/f Mr. D. K. Kulkarni, Advocate for respondent no. 1

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CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : MARCH 29TH, 2022
PRONOUNCED ON : APRIL 07TH, 2022

ORDER : -

1. Challenge in this petition is to an order dated 06.02.2020 passed by Joint Civil Judge Junior Division, Aurangabad, below Exh.111, by which sale deeds dated 10.06.2013, 06.08.2013 and 03.10.2013 are not exhibited and admitted in evidence.

2. Shorn of unnecessary details, few facts necessary for disposal of this petition can be summarized thus :

3. Petitioner is the original defendant. A suit was filed by the respondent/plaintiffs for declaration of ownership over M. H. No. 4-18-53, CTS No. 2871, *ad-measuring* 21.6 sq.mtrs., situated at Bhoiwada, Mill Corner, Aurangabad. Respondent's mother Rukhminibai had executed notarized sale deeds of suit property in favour of the petitioner. The petitioner appeared in the suit. A written statement was filed.

4. The petitioner thereafter filed an application for impounding the notarized sale deeds for payment of appropriate stamp duty as per Section 33 of the Maharashtra Stamp Act. Upon hearing the respective sides, the learned Civil Judge Junior Division, Aurangabad allowed the application by impounding the notarized sale deeds which were sent to the Collector of Stamps for levying deficit stamp duty and penalty as per law.

5. The petitioner paid the stamp duty as well as penalty towards the three sale deeds.

6. The respondents had raised an objection for admission and exhibition of unregistered sale deeds. Upon hearing the objection, learned Civil Judge by the impugned order refused to admit the unregistered sale deeds in evidence. As such, the petitioner has approached this Court under it's supervisory jurisdiction.

7. Heard Mr. Prashant Shinde, learned counsel for the petitioner and Ms. Shweta Kulkarni, learned counsel for the respondent, at length.

8. At the outset, Mr. Shinde would argue that since the documents in question have been already impounded and the Collector of Stamps has levied stamp duty as well as penalty and, therefore, the documents can be used in evidence for collateral purpose. Advocate Shinde has placed reliance on some case laws, which shall be discussed hereinafter.

9. Per contra, Ms. Kulkarni invited my attention to Section 17 and 49 of the Registration Act, 1908, which contemplates effect of non-registration of documents required to be registered. Section 17 of the Registration Act provides that the documents which shall be compulsorily registered, which essentially includes a non-

testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property. Clause 'c' provides, non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest. The sale deeds in question are necessarily documents of which registration is compulsory. Section 49 of the Registration Act, 1908, reads thus :

> 49. **Effect of non-registration of documents required to be registered.** - No document required by section 17 [1][or by any provision of the Transfer of Property Act, 1882,] to be registered shall -
>
> (a) affect any immovable property comprised therein, or
>
> (b) confer any power to adopt, or
>
> **(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:**
>
> [1][Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 [2], [3][***] or as evidence of any collateral transaction not required to be effected by registered instrument].

10. Advocate Shinde placed reliance upon a judgment in the case of **Sita Ram Bhama Vs. Ramvatar Bhama** reported in **2018(6) ALL MR 488 (S.C.)** to canvass his point that unregistered document can be used for collateral purpose.

11. It is pertinent to note that the petitioner as well as respondent placed reliance upon a well known judgment in the case of **Avinash Kumar Chauhan Versus Vijay Krishna Mishra** reported in **(2009) 2 SCC 532**. It is held that when a compulsorily registrable document is not registered, it's use for collateral purpose is not permissible under Section 49 of the Registration Act as well as Section 35 of Stamp Act.

12. A coordinate Bench of this Court in case of **Mr. Shabbir Ahmad S. Khan Vs Abdul Hameed Khan Matawan & Anr.** reported in **2022(1) ALL M.R. 90**, held that insufficiently stamped document, which is also not registered, of which registration is mandatory, cannot be received in evidence even for collateral purpose. Relevant paras of the said judgment are extracted as under, -

> "11. Insufficiently stamped document which is also not registered of which registration is mandatory cannot be received in evidence as is apparent from the provisions of Section 34 of the Bombay Stamp Act and Section 49 of

the Registration Act. As far as the contention of Shri Gangakhedkar that in view of Judgment of the Apex Court in the matter of **M/s Z.Engineers Construction Pvt. Ltd. (2020 ALL SCR 681) and Ameer Minhaj (2018(5) ALL MR 449 (S.C.)** that the documents should have been accepted subject to an objection, as statutory presumption in favour of the petitioner that the document is duly stamped and the acceptability of the document in evidence for inappropriate stamping can be gone into at the stage of final hearing is concerned, same is liable to be rejected for the reasons that by virtue of the document titled as Kharedikhat, possession is claimed to have been transferred as reflected in the recitals therein.

12. In the aforesaid background, it is apparent that the petitioner is a party to the said document. Case of the petitioner is for specific performance is founded on the said document only to which petitioner and respondent are parties. In such an eventuality, claim of the petitioner that it should have been accepted in evidence subject to objection, cannot be permitted particularly when the fact remains that document is neither registered nor properly stamped.

13. As far as the contention that the said issue can be gone into at the stage of final hearing of the suit is concerned, this court is required to be sensitive to the fact that in the matter of **Bipin Shantilal Panchal Vs. State of Gujarat and Another [(AIR 2001 SC 1158) :(2001 ALL MR (Cri) 452(S.C.)],** wherein the Apex Court has clarified that if the objection relates to the deficiency of the stamp duty of a document, court is duty bound to decide the objection before proceeding further and for all other objections procedure suggested as is relied on by Shri Gangakhedkar can be accepted or relied upon.

14. This Court while dealing with the claim in an earlier Writ Petition as is refereed above has taken note of the observations made by the apex court in the matter of **Avinash Kumar Chauhan Vs. Vijay Krishna Mishra (Civil Appeal No. 7350 of 2009]: [2009 ALL SCR 249]** that there is no prohibition under Section 49 of the Registration Act to receive an unregistered document in evidence for collateral purpose. However the document needs to be duly stamped or should comply with the requirement of Section 35 of the Stamp Act. It is also

> provided for the consequences that if the document is not duly stamped or is not in compliance with Section 35 of the Stamp Act, same cannot be received in evidence even for collateral purpose unless it is duly stamped or duty or penalty are paid."

13. In the case of **Sita Ram Bhama** (supra), a suit for partition was filed. There was a memorandum of settlement. The issue arose as to whether document which is unregisterd and inadmissible in evidence could be used for collateral purpose. It is observed that in a suit for partition, an unregistered document can be relied upon for collateral purpose i.e. severancy of title, nature of possession of various shares but not for primary purpose i.e. division of joint properties by metes and bounds. It has also been held that an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded, therefore, the said unregistered document can be used for collateral purpose by appellant only if said document is impounded bearing proper stamp duty.

14. I am afraid, this ratio would not be of any assistance to the learned counsel for the petitioner for the simple reason that in the aforesaid case, it has been succinctly observed that an unregistered and inadmissible document in the form of memorandum of

settlement in a suit for partition can be relied upon for collateral purpose. A rider is placed that it cannot be relied upon for collateral purpose where there is a division of joint properties by metes and bounds. Here is the case wherein there is a transfer of rights on the basis of the stamped sale deeds and, therefore, the ratio can be distinguished and would not be of any assistance to the petitioner.

15. The law, therefore, is no more *res integra* on this important issue.

16. For the reasons stated herein above, I do not find any merit in the present petition. It, therefore, stands dismissed.

[PRITHVIRAJ K. CHAVAN]
JUDGE

SG Punde