

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.1602 OF 2019

Sureshkumar s/o Ramkaran Dhurve
Vs.
Durgabai w/o Vitthal Gaidhane and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. U. K. Bisen, Advocate for petitioner.
Mr. R. K. Borkar, Advocate for respondent nos.1 to 5.

CORAM : AVINASH G. GHAROTE, J.
DATE : 26/07/2022

1. Heard Mr. Bisen, learned counsel for the petitioner and Mr. Borkar, learned counsel for the respondent nos.1 to 5.

2. The petition challenges the order dated 23.1.2019 whereby the learned trial Court has rejected the application at Exh.92 for exhibiting the document dated 12.10.1998 on the ground that it evidences relinquishment of rights in immovable property as the document was not registered, the same could not have been exhibited.

3. Mr. Bisen, learned counsel for the petitioner by placing reliance upon *Yellapu Uma Maheswari and another Vs. Buddha Jagadheeswararao and others, 2015 (16) SCC 787* submits that the course of action, as

enumerated in para 16 thereof is permissible to be adopted as though the document cannot be considered to be deed of relinquishment in absence of registration, however the same can be used for collateral purpose to establish the possession of the petitioner for which purpose, it can be marked as an exhibit to that limited extent. In ***Yellapu Uma Maheswari*** (*supra*), the Hon'ble Apex Court held as under:

“15. It is well settled that the nomenclature given to the document is not decisive factor but the nature and substance of the transaction has to be determined with reference to the terms of the documents and that the admissibility of a document is entirely dependent upon the recitals contained in that document but not on the basis of the pleadings set up by the party who seeks to introduce the document in question. A thorough reading of both Exts. B-21 and B-22 makes it very clear that there is relinquishment of right in respect of immovable property through a document which is compulsorily registrable document and if the same is not registered, becomes an inadmissible document as envisaged under Section 49 of the Registration Act. Hence, Exts. B-21 and B-22 are the documents which squarely fall within the ambit of Section 17 (1)(b) of the Registration Act and hence are compulsorily registrable documents and the same are inadmissible in evidence for the purpose of proving the factum of partition between the parties. We are of the considered opinion that Exts. B-21 and B-22 are not admissible in evidence for the purpose of proving primary purpose of partition.

16. Then the next question that falls for consideration is whether these can be used for any collateral purpose. The larger Bench of the Andhra Pradesh High Court in Chinnappareddigari Peda Mutyala Reddy Vs. Chinnappareddigari Venkata Reddy has held that the whole process of partition contemplates three phases i.e. severancy of status, division of joint property by metes and bounds and nature of possession of various shares. 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 the primary purpose i.e. division of joint properties by metes and bounds. An unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded. Hence, if the appellant-defendant want to mark these documents for collateral purpose it is open for them to pay the stamp duty together with penalty and get the document impounded and the trial court is at liberty to mark Exts. B-21 and B-22 for collateral purpose subject to proof and relevance.”

4. Though, Mr. Borkar, learned counsel for the respondent nos.1 to 5 opposes, however in light of what has been held in ***Yellapu Uma Maheswari*** (supra), considering that the deed of relinquishment dated 12.10.1998 has been stamped under impounding, the same is hereby permitted to be marked as an exhibit, only for the limited collateral purpose of establishing the possession of the petitioner and for no other purpose. It is made clear, that the marking of the document as an

exhibit would not mean, that the same could be used for the purpose of placing an argument that title has been acquired under the said document.

5. The petition is therefore allowed. The impugned order is hereby set aside and the document dated 12.10.1998 is permitted to be marked an exhibit only for the purpose as indicated above. No costs.

JUDGE

Sarkate