

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

WRIT PETITION NO. 1977 OF 2022

- 1] Rangnath s/o Marutirao Bhise (died)
through his LRs
- 1-A] Mudrikabai w/o Rangnath Bhise (died)
- 1-B] Sampat s/o Rangnath Bhise
Age : 62 years, Occu. Agriculture,
R/o. Ekurka, Tq. Kallamb,
Dist. Osmanabad.
- 1-C] Deelip s/o Rangnath Bhise,
Age : 60 years, Occu. Agriculture,
R/o. As above.
- 1-D] Prakash s/o Rangnath Bhise,
Age : 56 years, Occu. Agriculture,
R/o. As above.
- 1-E] Prabhakar s/o Rangnath Bhise,
Age : 53 years, Occu. Agriculture,
R/o. As above.
- 1-F] Sow. Pushpabai w/o Babruwan Yadav,
Age : 70 years, Occu. Household,
R/o. As above.
- 1-G] Sow. Kanchan w/o Deelip Dhage,
Age : 65 years, Occu. Household,
R/o. Dhanora (A), Tq. Ambajogai,
Dist. Beed.
- 1-H] Sow. Surekha w/o Satish Shinde,
Age : 48 years, Occu. Household,
R/o. Dhanegaon, Tq. Kaij,
Dist. Beed.

...Petitioners

Versus

- 1] Smt. Tulsabai w/o Sopan Bhore,
Age : 70 years, Occu. Household,
R/o. Ekurka, Tq. Kallamb,
Dist. Osmanabad.

- 2] Suresh s/o Sahebrao Ghogare,
Age : 60 years, Occu. Agriculture,
R/o. Ekurka, Tq. Kallamb,
Dist. Osmanabad. ...Respondents

....
Mr. Sachin S. Bhise – Advocate for the petitioners
Mr. S. V. Natu – Advocate for respondent no. 1

....
AND

WRIT PETITION NO. 7380 OF 2022

Tulsabai Sopan Bhore,
Age : 70 years, Occu. Household,
R/o. Ekurka, Tq. Kallamb,
Dist. Osmanabad.Petitioner

Versus

Rangnath s/o Marutirao Bhise (died),
through his LRs

- 1A] Mudrikabai w/o Rangnath Bhise
died through her LRs
- 1B] Sampat s/o Rangnath Bhise,
Age : 50 years, Occu. Agriculture,
R/o. Ekurka, Tq. Kallam, Dist. Osmanabad.
- 1C] Deelip s/o Rangnath Bhise,
Age : 48 years, Occu. Agriculture,
R/o. Same as above.
- 1D] Prakash s/o Rangnath Bhise,
Age : 45 years, Occu. Agriculture,
R/o. Same as above.
- 1E] Prabhakar s/o Rangnath Bhise,
Age : 43 years, Occu. Agriculture,
R/o. Same as above.
- 1F] Pushpabai w/o Babruwan Yadav,
Age : 40 years, Occu. Household,
R/o. Ekurka, Tq. Kallam, Dist. Osmanabad.

- 1G] Kanchan w/o Deelip Dhage,

sgp

Age : 38 years, Occu. Household,
R/o. Dhanora (A), Tq. Ambajogai,
Dist. Beed.

1H] Surekha w/o Satish Shinde,
Age : 35 years, Occu. Household,
R/o. Dhanegaon, Tq. Kaij, Dist. Beed. ...Respondents

....
Mr. S. V. Natu – Advocate for the petitioner
Mr. S. B. Bhapkar – Advocate for respondent nos. 1-A to 1-H
.....

CORAM : NITIN B. SURYAWANSHI, J.

DATE : MARCH 30, 2023

ORAL JUDGMENT : -

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the parties. Since both these petitions raise similar questions of law and facts and challenge same order, they were heard together and are decided by this common judgment.

2. Facts, which are not in dispute, are that Regular Civil Suit No. 604 of 2000 filed by the plaintiff - Rangnath Bhise for specific performance of the contract in respect of land Gut No. 19 *ad measuring* 1 Acre out of 4 Acre 7 guntha of village Ekurka, Tal. Kallmb, Dist. Osmanabad, was dismissed by the Trial Court.

3. Regular Civil Appeal No. 276 of 2012 filed by the plaintiffs was allowed by the District Judge-2, Osmanabad, and the judgment and decree passed by the Trial Court in Reg. Civil Suit No.604 of 2000 was set aside and the matter was remanded back
sgp

to the Trial Court. Application [Exhibit – 20] moved by the plaintiffs for impounding agreement of sale dated 07.12.1982 was allowed and the Trial Court was directed to follow further process under the provisions of Maharashtra Stamp Act, 1958. Hearing of the suit was expedited. Thereafter, the parties led evidence before the Trial Court.

4. The plaintiff – Rangnath had filed an application [Exhibit-110] seeking to exhibit the agreement of sale dated 07.12.1982 as per Section 90 of the Indian Evidence Act and to read it in evidence. The said application was opposed by the defendants. The Trial Court partly allowed the said application vide order dated 23.12.2021 and exhibited the agreement of sale dated 07.12.1982, however, the said document was exhibited for administrative purpose only. The plaintiffs are aggrieved by the said order.

5. The plaintiffs/petitioners had also filed an application [Exhibit-116] thereby praying for sending thumb impression of defendant no. 1 and original agreement of sale to the Handwriting Expert for comparing the thumb impression of defendant no. 1 contending that, she has put her thumb impression on the said agreement of sale at the time of execution. The said application is rejected by the Trial Court vide order dated 15.01.2022.

. Being aggrieved, the plaintiffs / petitioners have challenged both the orders passed below Exh. 110 and 116 by way of this petition.

6. Heard learned counsel for the petitioners and the respondents, perused the grounds raised, annexures and the citations relied upon by the advocates appearing on behalf of both the sides.

7. By application [Exhibit-110], two prayers were made by the plaintiffs. First prayer was that, the agreement of sale dated 07.12.1982 be exhibited in view of Section 90 of the Indian Evidence Act and the another was, it be read in evidence. The Trial Court has exhibited the said document only for the administrative purpose, however, rejected the prayer of reading the contents of the document in evidence.

8. It is settled legal position that mere exhibiting of a document does not mean that the said document is admissible, relevant and proved, the other party is always entitled to question admissibility, relevancy and proof of the document. In view of the ratio in **Bipin Shantilal Panchal v. State of Gujarat** reported in (2001) 3 SCC 1, the Trial Court ought to have exhibited the document, however, the question of admissibility, relevancy and
sgp

proof of the said document should have been left open and it was not proper on the part of the Trial Court to reject the prayer of the plaintiffs to read the said document in evidence at that stage.

9. Learned advocate for the plaintiffs has rightly relied on the judgment of the Hon'ble Supreme Court in the case of **Om Prakash (Dead) Through His Legal Representatives Versus Shanti Devi and Others** reported in (2015) 4 SCC 601, to contend that the question as to whether the said document is 30 years old or not should have been kept open by the Trial Court. In this judgment, it is held in paragraph no. 8, which reads thus:

10. The Appellant has, in his effort to succeed before us, variously and discrepantly theorised the thirty-year statutory requirement. As one ground in his Appeal, the Appellant has pleaded for a relaxation of the thirty year period, admitting the tendering in evidence of the Gift Deed on 14.10.99 in his examination-in-chief/statement by which time only 29 years 5 months had elapsed. The plea for relaxation cannot be granted as the antiquity of the document is the very *raison d'etre* for it to be bestowed with the curial presumption that the signature and every other part of such document which purports to be the handwriting of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. The Court could not have relaxed or discounted the short fall of seven months. As another, the Appellant has also pleaded that the period be calculated from 21.07.2000 as the date of testimony of DW5, the Registration Clerk from the Office of the Sub Registrar, Patiala, who had deposed (unsuccessfully, as concluded by the Learned Courts below) as to the execution of the Gift Deed; he produced the copy of the Gift Deed available in the Sub Registrar's Office. On the date of the deposition of DW5, thirty years had indubitably elapsed since the execution and/or the registration of the Gift Deed. Attempting again elsewhere, the Appellant has submitted the proper date of calculation as the date of

judgment of the Trial Court. As far as DW5 was concerned, he could only have, and which he did, prove the date on which the Gift Deed was presented for registration, i.e. 18.5.1970, thereby proving to that extent the antiquity of that Deed. If it crossed the thirty year period the Defendant may have succeeded in claiming the advantage of the presumption contained in Section 90 of the Evidence Act unless the relevant date would be the date of the recording of his statement. If the first attempt of the Defendant/Appellant before us, to prove the Gift Deed occurred on 21.7.2000, then we think that to be the proper and appropriate date from whence the thirty year period ought to be counted backwards. It also appears to us to be facially plain that the Clerk from the Office of the Sub-Registrar could only testify as to whether the document sought to be proved is in actuality was the one which was, in fact, duly registered, by producing the original records or if permissible by Rules by tendering a certified copy thereof. This witness could not possibly have said anything more. In the event, it would have been sagacious for the Defendant to have delayed the recording of his own statement beyond 18.5.2000 so as to inter any contention that the Gift Deed had been tendered in evidence after its attaining a thirty year vintage. Most often where the Courts countenance document which has been in existence for thirty years or more, the likelihood of either of the attestators thereof being alive is rather remote. Once it is satisfactorily proved that the document is thirty years or more in age, Section 90 thereupon dispenses with the formalities of producing the executant and or the attestators thereto.

10. In view of aforesaid ratio and taking into consideration the date of agreement of sale dated 07.12.1982 and for the first time it was tendered in evidence by the plaintiffs on 05.08.2008, 30 years will have to be counted backwards from the date on which the said document was tendered in evidence.

11. The finding recorded by the Trial Court in the impugned order that the said document is 30 years old and, therefore, it is required to be exhibited, cannot be sustained.

12. The application [Exhibit – 116] filed by the plaintiffs for forwarding the specimen thumb impression of the defendant no. 1 along with the original agreement of sale to the Handwriting Expert, is rejected. In the peculiar facts of the present case, admittedly, all the executants and witnesses, so also stamp vendor, who were party to the said agreement of sale dated 07.12.1982, are no more. Only defendant no. 1 is alive. In that view of the matter, in order to prove the said document the only course open to the plaintiffs is to send the said document along with specimen thumb impression of the defendant no. 1 to the Handwriting Expert. By rejecting the said application, the Trial Court has denied reasonable and fair opportunity to the plaintiffs to prove their case. In that view of the matter, the impugned order cannot be sustained. In the result, I pass the following order.

ORDER

[1] The impugned order dated 23.12.2021 passed below Exh. 110 by the 2nd Joint Civil Judge Junior Division, Kallam, is modified as follows:

Clause 3 of the order is quashed and set aside. Rest of the order remains intact. All the contentions of the respective parties including relevancy, admissibility and proof of agreement of sale dated 07.12.1982 and whether the said agreement of sale is 30 years old or not, are kept open.

[2] The impugned order passed below Exhibit – 116 dated 15.01.2022 by the 2nd Joint Civil Judge Junior Division, Kallamb is hereby quashed and set aside. Application [Exhibit-116] is allowed.

[3] Considering the fact that the suit is of the year 2000, the Trial Court is directed to decide the same within six months from the date of receipt of writ of this order.

13. Rule is made absolute in the aforesaid terms with no order as to costs.

[NITIN B. SURYAWANSHI]
JUDGE