



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

WRIT PETITION NO. 13862 OF 2023

Mohammad Abdul Subur Abdul Hadi
and others .. Petitioners

Versus

Abdul Ahad Abdul Basit and others .. Respondents

Shri Sanket Kulkarni, Advocate h/f Shri Vishal S. Kadam,
Advocate for the Petitioners.
Shri Chaitanya Deshpande, Advocate for the Respondent Nos. 1
to 6.

CORAM : SHAILESH P. BRAHME, J.
DATE : 30TH NOVEMBER, 2023.

FINAL ORDER :

. Mr. C. V. Dharurkar, learned counsel informs the Court that he has already tendered his no objection certificate to the petitioners. The office is directed to withdraw his appearance, who is replaced by another advocate.

2. Mr. Deshpande, the learned counsel appears for all the respondents.

3. Heard learned counsel for both the sides finally.

4. An order dated 21st August, 2023 passed below Exhibit 45 in R.C.S. No. 35 of 2018 along with the application submitted by

the respondents/plaintiffs for exhibiting the document is under challenge in this petition. The petitioners are the defendants and the respondents are the original plaintiffs.

5. The document in question is styled as agreement of partition dated 29.06.1986, which is unregistered and which is on stamp paper of Rs. 05/-. Whether to accept the said document or not is rival claim of the parties. The respondents have filed suit for injunction against the petitioners bearing R.C.S. No. 35 of 2018. The respondents filed application Exhibit 45 to exhibit the agreement in question which is allowed.

6. The learned counsel for the petitioners submits that the impugned order is passed without extending an opportunity of hearing. When on earlier occasion the matter was in the High Court in Writ Petition No. 12075 of 2022, by order dated 05.12.2022, it was specifically directed to decide the self same application by extending opportunity of hearing to both parties. Despite that there is non compliance.

7. The learned counsel submits that the document is unregistered and virtually it is a partition deed. Without examining the fact whether the document is for the collateral purposes or not, the same has been exhibited. He would submit that the document is inadmissible in evidence and prejudice would be caused to the petitioners. It is impermissible just because the document is more than 30 years old to invoke the

provisions of Section 90 of the Evidence Act to mark the document.

8. The learned counsel for the respondents supports the impugned order. According to him on 21.08.2023 the lawyers were present and they were heard. He strongly opposes the grievance of the petitioners that without hearing the order is passed below Exhibit 45.

9. Initially application Exhibit 45 was rejected by order dated 02.09.2022. Against that Writ Petition No. 12075 of 2022 was filed and disposed of on 05.12.2022. The application is directed to be decided afresh after hearing both the parties. The impugned order does not reflect that petitioners are heard. Their submissions have not been recorded. Only a reference is given to the orders passed in Writ Petition No. 12075 of 2022 and the learned Judge has proceeded to decide the application Exhibit 45. There appears to be substance in the contention of the petitioners.

10. However, I am not inclined to again direct the Trial Court to reconsider the application Exhibit 45 and decide it after extending opportunity to the parties. The alleged agreement of partition has been exhibited by the impugned order. Under peculiar facts and circumstances, I hold that the exhibition of the document in question is just for the purpose of identification and for no other purpose. The probative value and the admissibility

of the document are kept open. The petitioners are at liberty to agitate the objections during the course of trial. It is made clear that the petitioners are entitled to raise objection to the admissibility of document and all counts available like registration, collateral purposes, insufficiency of stamp, etc. The probative value is to be decided on its own merits. With these observations the writ petition is disposed of. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

bsb/Nov. 23