

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

WRIT PETITION NO. 990 OF 2020

Rajesh S/o Bajaranglalji Sharma,

Aged 52 Years,

R/o Camp, Amravati, Dist. Amravati

...Petitioner

// VERSUS //

1. The Assistant Charity Commissioner-3,
Amravati, Tq. & Dist. Amravati

2. Mahesh S/o Mukdtinarayan Sharma,
Aged about 60 years, Occ. Business

3. Pannalal S/o Kanaiyalal Sarda
About 60 years, Occ. Business,
Both r/o Dhanraj Lane, Sabanpura,
Amravati, Tq. and Dist. Amravati

... Respondents

Shri A.J.Gilde, Advocate for the petitioner.

Shri K.L.Dharmadhikari, AGP for the respondent no.1/State.

Ms. Gayatri Diwe Advocate for the respondent nos. 2 and 3.

CORAM : ANIL S. KILOR, J.

DATED : 18th JANUARY, 2023.

ORAL JUDGMENT :

Heard. Rule. Rule made returnable forthwith by consent of the parties.

2. In this writ petition, the challenge is raised to the order dated 24th September, 2019 passed by the learned Assistant Charity Commissioner-3, Amravati below Exh.34 in Inquiry No.101 of 2016, thereby denying to exhibit the gift deed dated 16th December, 1988.

3. Shri Gilda, learned counsel for the petitioner submits that it is a settled law that a document sought to be produced in evidence, order to admit or reject the document need not be postponed but it must be decided so as to enable the party in case its application is rejected to resort to lead any other evidence to establish the fact sought to be established by producing the document in question. It is further submitted that no reasons are given by the Assistant Charity Commissioner for not exhibiting the documents. On the contrary, the Assistant Charity Commissioner has observed that no prejudice would be caused to either of the parties if the application is filed and the decision to the same is rendered at the time of final judgment. He, accordingly, submits that not exhibiting the document is erroneous and not sustainable in the eyes of law.

4. On the other hand, learned Assistant Government Pleader for the respondent no.1 supports the impugned order passed by the Assistant Charity Commissioner-3, Amravati Region, Amravati.

5. Ms. Diwe, learned counsel for the respondent nos. 2 and 3 submits that the original copy was not produced before the learned Assistant Charity Commissioner-3 and therefore, learned Assistant Charity Commissioner-3 has rightly refused to exhibit the document i.e. gift deed dated 16th December, 1988.

6. In the backdrop of the rival submissions of both the parties, I have perused the documents filed alongwith the present petition and impugned order.

7. From the documents filed alongwith the petition, it is evident that the application was moved along with gift deed dated 16th December, 1988 with a prayer to exhibit the same. The reasons for not exhibiting the document of the said gift-deed dated 16th December, 1988, are recorded in paragraphs 9 and 10 of the impugned order, which read thus:

9. At this stage, though the matter is pending for order on the instant application. However, the actual stage is that of evidence of the parties. The evidence of reporting trustee has not yet been closed. Needless to say that an opportunity would be granted to the objectors to lead evidence. It is opposite to note here that the instant change report is filed only in respect of registration the property of the trust on record, which is shown in the gift deed. In my considered view, if this authority passes any order commenting upon the gift deed at this juncture the same would lead to a complexity in the proceeding. The parties are at liberty to lead evidence and bring out the truth.

10. I am of the considered view that if this authority passes any order in view of the Section 90 of the Indian Evidence Act, 1897 in regard to the presumption about gift deed, the same would adversely fact either of the contesting parties. Thus, it would be just and proper to consider the issue of presumption of 30 years old gift deed in view of provision of Section 90 of the Indian Evidence Act at the time of final hearing and judgment. Even otherwise, no prejudice would be caused to either of the parties if the application is filed and the decision to the same is rendered at the time of final judgment.

8. The co-ordinate Bench of this Court in a judgment in the case of *Shantabai W/o Jagannath Jaiswal and others Vs. Anandibai Wd/o Satyanarayan Jaiswal*¹ has observed thus:

7. The grievance of the petitioners is that in case the trial Court decides to reject the document by not accepting the same, then after closure of the evidence, the petitioners would not be in a position to lead any further evidence in proving the execution of the "Will Deed" and/or its contents. Therefore, the issue of production of the document in evidence by exhibiting the same will have to be decided at the stage at which it is asked for. The learned Counsel for the petitioners placed reliance on a reported judgment in the case of *R.V.E. Venkatachala Gounder v. Arulmigu Viswesaraswami and V.P. Temple and Anr.*, wherein it was observed by the Apex Court:

“.....On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons : firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties.

The learned Counsel for the petitioners further placed reliance on a reported judgment of this Court in the case of *Sunil Tukaram Bharadkar v. Santosh Gopichand Rane* 2006(3) Mh.L.J. 811, wherein it is observed:

1 748 Mah. L.J. 2006(5)

“...The order to admit or reject the document produced in evidence cannot be postponed to be delivered at the time of final disposal of the suit, as in the case of rejection of document, it must be made known to the party at the time when the document is sought to be produced in evidence. Such information to the concerned party at the relevant time is absolutely necessary to avoid undue hardship to such party.”

8. Considering the factual background of the case, the pleadings of the parties and the evidence which is sought to be led by the plaintiffs, it would be just and proper for the trial Court to decide the application filed by the petitioners seeking to exhibit the document i.e. Will Deed, which is tendered in evidence. The same would facilitate the petitioners, in case their application is rejected, to resort to lead any other evidence necessary to establish the fact which was sought to be established by producing such document. The impugned order of postponement of exhibition of the said document, in the light of the aforementioned discussion and the case law, deserves to be quashed and set aside.”

9. From the reasons recorded by the learned Assistant Charity Commissioner, Amravati for denying to exhibit the gift deed, it is evident that the learned Assistant Charity Commissioner, Amravati has not considered the well settled principle of law as regards the admission or rejection of the document, once it is produced in evidence. Accordingly, I am of the opinion that the matter needs to be remanded back to the learned Assistant Charity Commissioner, Amravati to decide the application Exh.34 afresh by taking into consideration the law laid down in the case of Shantabai Vs. Anandibai (supra) after hearing both the parties. Accordingly, I pass the following order.

i. Writ petition is partly allowed;

ii. Order below Exh.34 dated 24th September, 2019 in Inquiry No.101 of 2016 passed by learned Assistant Charity Commissioner-3, Amravati Region, Amravati is hereby quashed and set aside;

iii. The matter is remanded back to the learned Assistant Charity Commissioner to decide the application Exh.34 in Inquiry No. 101 of 2016, a fresh as per law after hearing both the parties to the proceeding.

[ANIL S. KILOR, J.]

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