



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

WRIT PETITION NO. 2072 OF 2023

Kashinath Sadashiv Haral and others .. Petitioners

Versus

Tukaram Sadashiv Haral and others .. Respondents

Mr. Sushant V. Dixit, Advocate for the Petitioners.

Mr. V. P. Latange, Advocate for Respondent Nos. 1 to 9.

CORAM : KISHORE C. SANT, J.

DATED : 08th JANUARY, 2025.

P C. :-

. Heard the parties.

2. The order impugned is passed under Section 33 of the Bombay Stamp Act thereby impounding a document dated 21.07.1991 produced by the plaintiff. The objection is raised by the defendants – present petitioners. On an application filed by the plaintiff, the learned Trial Judge i.e. 4th Joint Civil Judge Senior Division, Ahmednagar impounded the said document. The document is stated as memorandum of partition styled as partition deed. There is a dispute between the parties as to whether the said document to be called as partition deed or only a memorandum of partition. The learned Trial Judge has passed the order impounding the said document.

3. The learned advocate for the petitioners vehemently argued that the learned Trial Court has wrongly passed an order. The concern of the petitioners is more about the last sentence of the order which reads as under :

“No prejudice would be caused to defendants, if the document is impounded as they would have an opportunity to lead evidence in the rebuttal.”

4. The learned advocate for the petitioners submits that, since it caused prejudice to the petitioners as it appears that the Court has taken the said document as proved and it is for the defendants to lead evidence of contents of the document. Signatures are still to be proved. He thus prays for quashing and setting aside the impugned order.

5. The learned advocate Mr. Latange appearing for respondent Nos. 1 to 9 vehemently opposes the petition. He submits that the order is merely an order directing to impound the document. No prejudice is caused to any of the parties. He submits that now document is already produced, proved and exhibited. The learned Trial Judge has rightly observed that the defendants can lead evidence in rebuttal. He submits that now the document is already impounded. Penalty is also paid. He thus submits that no interference is called for.

6. Looking at the portion of the order which is reproduced above gives an impression that the learned Trial Court has accepted the document when it was impounded and it is for the defendants now to rebut the evidence. This Court finds that, sufficient care can be taken of the interest of the present petitioners. It is thus clarified that, it is for the plaintiff first to prove the document and it is only thereafter if the document/contents are proved the defendants need to rebut the same. Needless to say that, the learned Trial Court to proceed independently and bring the evidence by keeping the above clarification. If the documents are already exhibited, the Court to decide all the questions at the stage of deciding of suit.

7. With this, the writ petition stands disposed of. No order as to costs.

(KISHORE C. SANT, J.)

PS.B.