

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3509 of 2023

Budan Fakir (Sayyad) (deceased) & Anr ...Petitioners

vs

Dadabhai Abbas Sayyad & Anr ...Respondents

Mr. Ishan Kapse a/w. Tejas Patil, Advocate for the petitioners.

Mr. Tejas Deshmukh, (Through V/C.) Advocate for the
Respondents.

CORAM : S. G. CHAPALGAONKAR, J.

DATED : DECEMBER 2, 2025

P.C.:

1. Heard learned Advocates for respective parties.
2. Petitioners/original plaintiffs impugns order dated 15th September 2022 passed below Exhibit-104 in Regular Civil Suit No. 59 of 2019.
3. Petitioners/Plaintiffs filed a suit seeking a decree of perpetual injunction against respondent nos. 1 and 2, asserting their title and possession over suit property. Respondents/defendants filed their written statement claiming that they are in possession of property at the behest of their mother. They relied upon a document dated 28th October 1974.

Since document dated 28th October 1974 is unregistered and executed merely on a stamp paper of Rs.6, plaintiffs objected to its admission. They filed separate application seeking direction for impounding of document. The Trial Court rejected application vide impugned order dated 15th September 2022, observing that on a *prima facie* consideration, the document is in nature of *hiba*/gift under Mohammedan Law and does not require to be impounded.

4. Mr. Kapse, learned Advocate appearing for the petitioner, would submit that document is titled as Agreement/Karar. Therefore, from contents of document it cannot be treated as “*hiba*” within meaning of Mohammedan Law. Since defendants are asserting delivery of possession on basis of said agreement, it needs to be impounded.

5. Learned Advocate appearing for respondent however supports impugned order.

6. Perusal of impugned order would show that Trial Court has, *prima facie*, observed that document dated 28th October 1974 is in nature of a Gift/Hiba and not an agreement, as contended by plaintiffs. The Trial Court opined that since document in nature of *hiba*, does not require registration or payment of stamp duty

contemplated under law.

7. Apparently observations of Trial Court are *prima facie* in nature and cannot be treated as a finding as to actual nature of document. Parties are at liberty to lead evidence before Court and agitate their respective contentions regarding the nature of document, which can be decided by Trial Court along with other issues.

8. In that view of matter, this Court finds no reason to cause interference under Article 227 of Constitution of India with impugned order. Hence, Writ Petition stands rejected with above observations.

(S. G. CHAPALGAONKAR, J.)