IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 38617 OF 2025

IN

WRIT PETITION NO.17405 OF 2025

Ankush Arjun Pote Since Deceased Through His L.Hs. ..Applicants

Versus

Gopinath Harishchandra Ghag …Respondent

Dr. D. S. Hatle, with Deepak Jamsandekar, for the Petitioner.
Mr. Sandeep Mishra, with Madhura Mulay, for the Respondent.

CORAM: N. J. JAMADAR, J.
DATE : 23rd DECEMBER 2025

ORAL ORDER:

1. Heard the learned Counsel for the parties.

2. The challenge in this Petition is to an order dated 11th July 2025 passed by the learned Civil Judge, Thane, whereby the objection raised on behalf of the Plaintiff-Respondent to the admissibility of the documents tendered on behalf of the Defendant on two counts, i.e., insufficiency of stamp duty thereon and want of registration, was upheld by the learned Civil Judge.

3. By the said order three documents, i.e., first, a document titled as a Sale Deed purportedly executed on 13th June 1984, another document executed on 21st October 1997 and the third document dated 8th March 2000, which appeared to be insufficiently stamped and unregistered as well, were impounded and sent to the Collector of Stamps, Thane, for adjudication of the deficit stamp duty and penalty, if any.

4. The leaned Counsel for the Petitioner submitted that the documents have been sent to the Collector of Stamps and await adjudication of the stamp duty and penalty, if any. The Petitioner-Defendant would pay the requisite stamp duty and penalty as may be assessed by the Collector of Stamp, Thane. However, in the intervening period, the trial Court has directed the parties to proceed with the Suit. It was further submitted that, despite the payment of the stamp duty and penalty, in the view of the trial Court, the said documents which purport to be Sale Deeds cannot be admitted in evidence being unregistered documents.

5. The learned Counsel submitted that unregistered documents can be looked into for the collateral purpose, as envisaged by the proviso to Section 49 of the Registration Act. Reliance was placed on a judgment of a learned Single Judge of this Court in the case of **Gulam Murtuza Khan Gulam Ahmed Khan Vs Ramdas Banaji Llame.**[1]

6. In opposition to this, the learned Counsel for the Respondent-Plaintiff would submit that though an order of impounding has been passed, yet, the Collector of Stamps, Thane, has not adjudicated the

1 2015 (O) AIJEL-MH 172919.

stamp duty and penalty, and, in the event, such stamp duty and penalty is adjudicated and the Defendants pay the same, the question of the admissibility of the documents can be decided by the trial Court at an appropriate stage.

7. The legal position is expounded by the Supreme Court in the case of **S. Kaladevi Vs V. R. Somasundaram and Ors.**[2] The Supreme Court was confronted with the question of admissibility of an unregistered Sale Deed in a Suit for specific performance of the contract. After adverting to the previous pronouncement in the case of **K.B. Saha and Sons Private Limited Vs Development Consultant Limited**[3], the Supreme Court enunciated the law that an unregistered Sale Deed can be received in evidence making an endorsement that it is only received as evidence of an oral Agreement of Sale under proviso to Section 49 of the Registration Act. The observations of the Supreme Court in paras 11 and 12 are material and hence extracted below.

> "11. The main provision in Section 49 provides that any document which is required to be registered, if not registered, shall not affect any immovable property comprised therein nor such document shall be received as evidence of any transaction affecting such property. <u>Proviso, however, would show that an unregistered document affecting immovable property and required by 1908 Act or the Transfer of Property Act, 1882 to be registered may be received as an evidence to the contract</u>

2 (2010) 5 SCC 401.

3 (2008) 8 SCC 564.

in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument. By virtue of proviso, therefore, an unregistered sale deed of an immovable property of the value of Rs. 100/- and more could be admitted in evidence as evidence of a contract in a suit for specific performance of the contract. Such an unregistered sale deed can also be admitted in evidence as an evidence of any collateral transaction not required to be effected by registered document. When an unregistered sale deed is tendered in evidence, not as evidence of a completed sale, but as proof of an oral agreement of sale, the deed can be received in evidence making an endorsement that it is received only as evidence of an oral agreement of sale under the proviso to Section 49 of 1908 Act.

12. Recently in the case of K. B. Saha and Sons Private Limited v Development Consultant Limited, this Court noticed the following statement of Mulla in his Indian Registration Act, 7th Edition, at page 189:-

"......The High Courts of Calcutta, Bombay, Allahabad, Madras, Patna, Lahore, Assam, Nagpur, Pepsu, Rajasthan, Orissa, Rangoon and Jammu & Kashmir; the former Chief Court of Oudh; the Judicial Commissioner's Court at Peshawar, Ajmer and Himachal Pradesh and the Supreme Court have held that a document which requires registration under Section 17 and which is not admissible for want of registration to prove a gift or mortgage or sale or lease is nevertheless admissible to prove the character of the possession of the person who holds under it..."

This Court then culled out the following principles:-

> "1. A document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act.
>
> 2. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act.
>
> 3. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration.
>
> 4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest in immovable property of the value of one hundred rupees and upwards.
>
> 5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose."
>
> <u>To the aforesaid principles, one more principle may be added, namely, that a document required to be registered, if unregistered, can be admitted in evidence as evidence of a contract in a suit for specific performance.</u>"
>
> (emphasis supplied)

8. In view of the aforesaid position in law, once the documents are impounded and the deficit stamp duty and penalty, if any, is paid thereon, in view of the provisions contained in Section 34 of the Maharashtra Stamp Act, 1958, the documents which were insufficiently stamped can be admitted in evidence. At that stage, the Court would be required to determine the question of admissibility of the documents for the want of registration, specially with regard to the collateral purpose to ascertain the nature of possession etc.

9. The aforesaid being the position in law, the Petition stands disposed with the following directions:

(i) The Collector of Stamps, Thane, shall adjudicate the deficit stamp duty and penalty, if any, on the documents which have been impounded and sent to the Collector of Stamps, under the impugned order, within a period of one month from the date of communication of this order.

(ii) The Petitioner-Defendant shall pay the deficit stamp duty and penalty, if any, within a period of two weeks from the date of communication of the order of adjudication of such stamp duty and penalty.

(iii) Upon the return of the documents to the trial Court, the learned Judge is requested to pass an order on the admissibility of the unregistered documents as an evidence of collateral purpose, after providing an opportunity of hearing to the parties.

[N. J. JAMADAR, J.]