



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

MISC. CIVIL APPLICATION NO. 770 OF 2025

(Subhadrabai Bhauraoji Thakre V/s Sharad Gopal Bhoyar & Ors.)

WITH

MISC. CIVIL APPLICATION (ST) NO. 25679 OF 2025

(Sharad Gopal Bhoyar & Ors. V/s Subhadrabai Bhauraoji Thakre)

Office Notes, Office Memoranda of Coram,
Appearances, court's orders or directions and
Registrar's orders

Court's or Judge's orders

Mr. O. A. Ghare, Advocate for Applicant in MCA No.770/2025 and for Respondent in MCAST No.25679/2025.

Mr. A. S. Kulkarni, Advocate for Respondents in MCA No.770/2025 and for Applicants in MCAST No.25679/2025.

CORAM : PRAVIN S. PATIL, J.
DATE : NOVEMBER 17, 2025.

. In the present matter, both the parties are seeking review of the Judgment dated 7/10/2025 passed by this Court in Appeal against Order No.46/2022. It pointed out that this Court in paragraph No.32 of the Judgment has recorded the finding as under :

“32. In respect of the judgment in the case of Mahendra Deshbratar, the appellant is justified in stating that once insufficiently stamped document is tendered in evidence and marked as exhibit without any objection in the trial court so as to invite judicial determination to decide its admissibility, the court is prohibited from re-opening the matter after the document gets admitted in evidence. Therefore, this issue at the most which was directed to be framed is unwarranted in the matter.”

2. In view of this finding, it is the submission of the learned Counsel for Applicant in MCA No.770/2025 that in operative order this Court should not have recorded that '*Appeal is dismissed*' as a whole. According to him, this Court should have recorded that '*Appeal is partly allowed*' and for the issue in respect of unregistered Agreement of Sale, which was not properly stamped, the matter was not required to be remanded back to the trial court.

3. *Per contra*, the learned Counsel for original Respondents in Appeal Against Order No. 46/2022 have also filed the Review Application bearing MCAST No. 25679/2025. They have relied upon the Judgment of this Court in the case of ***Hemendra Rasiklal Ghia V/s Subodh Mody, 2008(6) Mh.L.J 886*** to state that the document, which is not duly stamped, cannot be allowed to refer or consider in the proceeding. Accordingly, it is stated that finding recorded in paragraph No.32 be quashed and set aside. To support his contention, he has strongly relied upon the paragraph Nos. 71 and 72 of the Judgment, which reads thus :

“71. The admissibility of the document in evidence may be broadly classified into three classes – (i) that objection to the document which is sought to be proved is itself insufficiently stamped and the objection relates to deficiency of stamp duty of the document; (ii) where the objection does not dispute admissibility of document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient; and (iii) the objection that the document which is sought to be proved is ab initio inadmissible in evidence.

72. In the first case, the Court, before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case as held by the Constitution Bench in Zaver Chand vs. Pukhraj Surana (supra). Once a document has been marked as an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses, section 36 comes into operation. Once a document has been admitted in evidence, as aforesaid, it is not open either to the trial Court itself or to a Court of Appeal or Revision to go behind that order. Such an order is not once of those juridical orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction. Similar view is expressed by the Supreme Court in the case of Bipin Shantilal Panchal (supra), wherein it is made clear that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the objection before proceeding further.”

4. It is the settled position of law that in a Review proceeding this Court has to only consider the error apparent on the face of record. While exercising the review jurisdiction, this Court is not expected to re-appreciate the entire evidence or the factual position involved in the matter. After taking into consideration this legal position, I am of the opinion that review petitioner in MCA No.770/2025 seems to be correct, because there is an error apparent on the face of record that in paragraph No.32 this Court has recorded that the document was referred in evidence and the same was exhibited without any objection by the

trial court. Therefore, the said issue cannot be permitted to re-open without this fact was not depicted in the operative part of the order.

The submission of Applicant in MCA(ST) No. 25679/22, according to me, is contrary to the Judgment of Full Bench relied in the matter. The abovesaid para clearly states that once the document has been used by the parties in examination-in-chief and cross-examination, it is not open either to Trial Court or to a Court of Appeal to go behind that order, in view of Section 36 of Maharashtra Stamp Act, 1958.

5. Hence, in my view, Misc. Civil Application No.770/2025 deserves to be allowed. Whereas, Misc. Civil Application (St) No. 25679/2025 deserves to be rejected. In the result, I proceed to pass following order.

ORDER

1. The operative part of the Judgment dated 7/10/2025 is hereby modified as under :

- (i) Appeal against Order is partly allowed.
- (ii) The impugned Judgment and order dated 2/9/2022 passed by the District Judge, Nagpur in Regular Civil Appeal No. 260/2017 is modified to the extent that remand on the issue to the Agreement to Sale and inadequate stamp duty is quashed and set aside.

(iii) The order passed by the District Judge, Nagpur is hereby confirmed to the extent of remanding back the matter to the trial court to re-consider and decide the issue as to whether the Plaintiff is an agriculturist or not.

(iv) Rest of the order is confirmed.

2. Necessary corrections be made in the operative part of the Judgment dated 7/10/2025 passed by this Court in Appeal Against Order No. 46/2022 and the same be uploaded on the website immediately.

[PRAVIN S. PATIL, J.]

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