IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.872 OF 2026

Pushpabai Nilkanth Patil and Ors. ... Petitioners
versus
Shyamsunder Radheshyam Agrawal and Ors. … Respondents

Mr. Simil Purohit, Sr. Advocate with Ms. Janhavee Joshi, Mr. Maulik P. Vora i/by Pramodkukar and Co., for Petitioners.
Mr. Vineet Naik, Sr. Advocate with Mr. Amogh Singh, Mr. Pavan Patil, Mr. Prithviraj Gole with Mr. Chintan Shah, Mr. Shubham Saraf, Mr. Tanmay A. Deshmukh, Mr. Siddhesh Pednekar, for Respondent Nos.1 to 7.

CORAM: N.J.JAMADAR, J.

DATE : 28 JANUARY 2026

ORDER :

1. Heard the learned Counsel for the parties.

2. This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 5 January 2026 passed by the learned Civil Judge, Thane, whereby the learned Civil Judge admitted the unregistered Agreements for Sale cum Development dated 20 July 1994, 12 October 1994, 27 April 2006 and 19 September 2004 and marked them as exhibits.

ARUN RAMCHANDRA SANKPAL
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3. By an earlier order dated 26 October 2016, those documents were impounded under the provisions of Section 33 of the Maharashtra Stamp Act, 1958. Upon adjudication by the Collector of Stamps, the Plaintiffs paid the requisite stamp duty and penalty on the aforesaid instruments. Thus, the

Plaintiffs filed an application (Exh.234) for admitting those instruments in evidence.

4. The Petitioners – Defendants resisted the application on the ground that the instruments were not admissible in evidence as they were unregistered and the bar under Section 49(c) of the Registration Act, 1908 comes into play. Since the Plaintiffs had not instituted suits for specific performance of the contract purportedly evidenced by the said instruments, the proviso to Section 49 had no application.

5. By the impugned order, the learned Civil Judge was persuaded to admit those documents in evidence, keeping open the issue of evidentiary value of those documents.

6. Being aggrieved, the Defendants have invoked the writ jurisdiction.

7. Mr. Simil Purohit, learned Senior Advocate for the Petitioners, would submit that the suit is for declaration of title to the suit properties and a negative declaration that Defendant Nos.1 to 33 have no right, title and interest, and Defendant Nos.45 and 46 cannot claim any right, title and interest in the suit properties on the strength of the deed of conveyance dated 7 February 2008 executed by Defendant Nos.1 to 33 in favour of Defendant Nos.45 and 46, and the consequential reliefs. Conspicuous by its absence is the prayer for specific performance of the contract contained in the aforesaid agreements. Thus, those documents cannot be admitted in evidence by

invoking the proviso to Section 49 even for a collateral purpose.

8. Mr. Purohit would urge that, the Plaintiffs were asserting possession over the suit properties under the said documents and not independent thereof. Collateral purpose ought to be independent of the main transaction. To buttress this submission, Mr. Purohit placed reliance on a judgment of the Supreme Court in the case of **K.B.Saha and Sons Pvt. Ltd. V/s. Development Consultant Limited**[1].

9. In contrast, Mr. Naik, learned Senior Advocate for the Respondents – Plaintiffs would support the impugned order. Taking the Court through the averments in the plaint, Mr. Naik would submit that the claim of title of the Plaintiffs over the suit property is based on a registered deed of conveyance dated 18 February 2008 and not on the aforesaid agreements.

10. The core controversy between the parties revolves around the question of acquisition of lawful title over the suit properties on the strength of the deed of conveyance dated 18 February 2008, propounded by the Plaintiffs, and the deed of conveyance dated 7 February 2008, propounded by Defendant Nos.45 and 46. Thus, the latter part of the proviso to Section 49 which permits admission of an unregistered document as evidence of collateral transaction, squarely governs the case. To this end, Mr. Naik placed reliance on a judgment of the Supreme Court in the case of **S. Kaladevi V/s.**

1 (2008) 8 SCC 564

V.R.Somasundaram and Ors.[2].

11. Since the Plaintiffs claim of title stems from registered deed of conveyance dated 18 February 2008 and the declaratory reliefs as to title predominantly flow from the said deed of conveyance, the objection on behalf of the Defendants that, since the suit is not for specific performance of the contract contained in the subject agreements, they cannot be received in evidence under first part of the proviso appears inapposite.

12. On the aspect of admissibility of a document which is not registered, as evidence of a collateral transaction, which is not required to be effected by a registered instrument, the legal position is absolutely clear. The decision of the Supreme Court in the case of **K.B.Saha and sons Pvt. Ltd. (supra),** on which reliance was placed by Mr. Purohit, culls out the principles, as under :

> "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

2 (2010) 5 SCC 401

> 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."

13. In the case of **S. Kaladevi (supra)**, the Supreme Court extracted the aforesaid principles and added one more principle, 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.

14. The proviso to Section 49, as is evident, carves out two exceptions. In the case at hand, the applicability of the latter limb of the proviso, namely, use of an unregistered instrument as evidence of collateral transaction, deserves to be examined. Collateral transaction should not be a transaction affecting immovable property, but a transaction which may be incidentally connected with the main transaction. Such collateral transaction must not be a transaction which is itself required to be effected by a registered instrument.

15. In the case of **Korukonda Chalapathi Rao and Anr. V/s. Korukonda Annapurna Sampath Kumar**[3], the Supreme Court while dealing with the second limb of the proviso to Section 49, examined the question as to what would constitute a collateral transaction. The Supreme Court held, if it were

3 (2022) 15 SCC 475

collateral transaction, then an unregistered document can indeed be used as evidence to prove the same. The Supreme Court posed questions, would possession being enjoyed or the nature of the possession on the basis of the unregistered document be a transaction and further would it be a collateral transaction ?

16. With reference to the previous pronouncements, the Supreme Court found the answer in the affirmative. A reference was made to a decision in the case of **Varatha Pillai V/s. Jeevarathnammal**[4], wherein the Privy Council took a view that, though unregistered, the document can be used to explain the nature of the possession of a person.

17. In the case of **Roshan Singh and Ors. V/s. Zile Singh and Ors.**[5], the Supreme Court enunciated that, even otherwise, the document which purportedly effected the partition can be looked into under the proviso to section 49, which allows document which would otherwise be excluded to be used as evidence of ‘any collateral transaction not required to be effected by a registered instrument’. In the said case as well, the Supreme Court referred to the decision of the Privy Council in the case of **Varatha Pillai V/s. Jeevarathnammal (supra),** wherein the Privy Council had allowed the unregistered deed of gift which required registration to be used not to prove the gift ‘because no legal title passed’ but to prove that the donee thereafter

4 1981 SCC Online PC 50
5 (2018) 14 SCC 814

held in her own right. The Supreme Court held, why the same rule could not be made applicable to the said case before the Supreme Court.

18. The upshot of aforesaid consideration is that, an unregistered instrument cannot be looked into if it affects the immovable property by circumventing the mandate contained in Section 49 of the Registration Act, 1908. However, where the collateral purpose, like factum, nature and character of possession and the chain of transactions culminating in the transaction evidenced by a registered instrument, become relevant, an unregistered instrument which throws light on such collateral purpose, can be admitted in evidence.

19. No infirmity can be found in the impugned order.

20. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)