

MHBU13000751-2016



Order below Exh. 45 in R.C.S.No. 50/2016
Ahemadkha & others vs. Shaikh Razzak

Present application has been filed by plaintiffs under Order XIII Rule 8 of the C.P.C., 1908 thereby praying for impounding document i.e. original unregistered sale deed dated 14/3/1980 which is insufficiently stamped.

02) Perused application, say of defendant and documents on record. Also heard learned Advocate for plaintiffs. However, learned Advocate for defendant has not argued despite giving sufficient time and therefore, application is kept for order.

03) Learned Advocate for plaintiffs has submitted that plaintiffs have filed instant suit for declaration and perpetual injunction against the defendant. Plaintiffs have specifically contended that defendant has executed sale deed dated 14/3/1980 in respect of suit property in favour of husband of plaintiff No.2 i.e. deceased Musakha Abbaskha Pathan and deceased plaintiff No.1 Ahemadkha on stamp paper of Rs.10/-. Now, plaintiffs have placed their reliance upon said sale deed and they want to use the same as a piece of evidence in order to prove their case.

04) It is further submitted that in order to make the said sale deed as an admissible evidence, same needs to be sufficiently stamped and therefore, it is necessary to impound the said sale deed before admitting the same in evidence of plaintiffs. Plaintiffs are ready and willing to remit the deficit stamp duty and the penalty charges as per the provision of the Bombay Stamp Act, 1958. No prejudice would be caused to the defendant if

present application is allowed. Hence, learned Advocate for plaintiffs has prayed for grant of this application.

05) On the contrary, learned Advocate for defendant has strongly opposed to this application by giving say on the ground that said sale deed is unregistered document which is not admissible in evidence. No purpose would be served by impounding the same. Hence, learned Advocate for defendant has prayed for rejection of this application.

06) I have perused record of the matter and also considered the submission of learned Advocate for plaintiffs and the say given by learned Advocate for defendant. It is pertinent to note here that learned Advocate for defendant has strongly objected this application only on the ground that the said document i.e. sale deed is unregistered document which is not admissible in evidence and therefore it can not be impounded.

07) It is further pertinent to note here that plaintiffs have filed original copy of said sale deed dated 14/3/1980 along with list of document at Exh.52. Plaintiffs have also sought relief of declaration that their long standing and peaceful possession over suit property be declared as legal. It is well settled in law that even an unregistered document can be admitted as an evidence as the same can be looked into for collateral purpose i.e. to see the nature or character of possession. In the case of *Navinraj vs. Gnanasekar and others (C.R.P. (M.D.) No. 1084 of 2012, Decided on 11/8/2015)* the Hon'ble Madras High Court has observed in para No.35 of judgment that the petitioner can show to the trial court that under the said unregistered sale deed dated 31/3/2001, his possession, his character of possession is legal,

whether he has been in legal possession. To see his character of possession i.e. for this collateral purpose the court can refer to the unregistered document. That question can not be ruled out, now itself. Thus, the court can not refuse to permit him to pay stamp duty as per rules and can not now itself decide as to its admissibility on account of it being not registered under the registration Act.

08) Learned Advocate for defendant has stated in his say that said sale deed is not registered document and being inadmissible, it can not be impounded under the provision of Maharashtra Stamp Act, 1958. However, I do not find any substance in the submission of learned Advocate for defendant in view of observation of the Hon'ble Madras High Court in above mentioned case. Said sale deed being insufficiently stamped document is certainly an instrument under the provisions of the Maharashtra Stamp Act, 1958 and can be impounded. No prejudice will cause to the defendant if application is allowed as defendant will get an opportunity of cross examining the plaintiffs in respect of said sale deed. Hence, I think it just and proper to pass following order.

ORDER

- 1) Application is allowed.
- 2) Document i.e. original unregistered sale deed dated 14/3/1980 is impounded under Section 33 of the Maharashtra Stamp Act, 1958.
- 3) Original sale deed dated 14/3/1980 be sent to competent authority i.e. Collector of Stamps, Buldana for adjudication of required stamp duty and for collecting stamp duty and penalty charges.

4) No order as to costs.

Date :- 17/12/2021.

Place :- Chikhli

(S.W. Thombre)

Civil Judge, Jr. Dn, Chikhli.

Certificate

I B.B.Theng, Stenographer (L.G.) affirm that the contents of this PDF file Judgment/ Order are same words, as per original Judgment/Order.