

MHLA110001332014



Order below Exh.215 in RCS No.215/2010

Gorakhnath & Ors. Vs. Mohan & Ors.

By this application defendant Nos.1 and 2 have requested to impound the Partition Deed dated 01/06/1988, on the grounds stated in the application. The contents of application in short are:- that as per pleadings of these defendants, partition between plaintiff and defendants took place on 01/06/1988 on the stamp of Rs.3/- and Rs.2/-. However, as per the value of property the requisite stamp duty is not paid. These defendants had moved an application with Collector of Stamps for paying deficit stamp duty but it came to be rejected. The defendants have filed photocopy of Partition Deed dated 01/06/1988 and the application for adducing secondary evidence is also allowed. The defendants are ready to pay deficit stamp duty over Partition Deed dated 01/06/1988. Thus, it is necessary to impound the said document and it be referred to Collector of Stamps, Latur for payment of deficit stamp duty.

2. Plaintiffs have filed their say at **Exh.216**. The contents of their say in short are :- That the application is not maintainable and from the application it seems that defendant No.1 is seeking permission to impound Partition Deed dated 01/06/1988. While considering the said deed if the Court looks into the said document then it appears that the alleged document is not properly signed by the parties, the names of witnesses are not given and not bears their signatures. So also the name of scribe is also not mentioned in it. Under these circumstances it will be abuse of process of law to refer the document for impounding. Hence, requested to reject the application.

3. Perused application and say. Heard learned advocate Shri.C.J.Sabnis for defendant Nos.1 and 2. Plaintiffs failed to argue. Record shows that plaintiffs have filed this suit for partition, separate possession and perpetual injunction. Defendant Nos.1

and 2 have filed their WS at **Exh.31**. The suit is proceeding ex-parte against defendant Nos.2/3, 2/4 and 3 and without WS of other defendants. Defendant Nos. 1 and 2 have filed their counter claim at **Exh.33**, to which the original plaintiff has filed his WS at **Exh.51**. Defendant Nos.1 and 2 have pleaded in their WS that partition between plaintiff and them had taken effect on 01/06/1988 and a deed to that effect was also prepared. Record shows that the photocopy of Partition Deed dated 01/06/1988 is filed by defendant Nos.1 and 2 at list below **Exh.38/15**.

4. Record further shows that the application filed by these defendants at **Exh.209** for granting permission to adduce secondary evidence in respect of Partition Deed dated 01/06/1988 is also allowed by order dated 21/02/2023. Admittedly, the Partition Deed dated 01/06/1988 has been prepared on deficit stamp duty and as per the provisions of Section 35, of the Maharashtra Stamp Act,1958 and all the case laws relied upon by defendants, the said document has to be impounded by the Court so that deficit stamp duty can be recovered from them. However, unfortunately the original Partition Deed dated 01/06/1988 is not in the possession of these defendants, as mentioned in the application at **Exh.209**. In such situation and for the purpose of impounding any document the original is required before the Collector of Stamps for recovery of deficit stamp duty. In the absence of original Partition Deed dated 01/06/1988, I am not inclined to refer its photocopy for the purpose of impounding. Hence, I pass following order:-

ORDER

1. Application is rejected.
2. No order as to costs.

Date :14/02/2024

Sd/-
(Ashish B. Marlecha)
Civil Judge (Sr.Dn.),
Nilanga, Dist. Latur.