

Reg. Civil Suit No. 17/2011
Smt. Gangubai Sakharkar and others
.... Versus.
Damodar Khobragade and others

Common Order Below Exh. 59 & 60

(Passed on : 21.09.2016)

1] The application filed by the plaintiffs at Exh. 59 is for impounding the under stamped document Under Section 34 of the Bombay Stamp Act, 1958. The application filed by the plaintiffs at Exh. 60 is for rejecting the unregistered document Under Section 49 of the Registration Act, 1908.

2] In an application at Exh. 59 plaintiffs have submitted that the defendants have placed on record under stamped Watnipatra dtd. 20.07.1986 at article 'A' which is not admissible in evidence Under Section 34 of the Bombay Stamp Act, 1958. In the application at Exh. 59 plaintiffs have submitted that on enquiry they came know that even in the year 1986 the said land was not less than Rs. 25,000/- per acre. Therefore, the plaintiffs in an application at Exh. 59 submitted to impound the said Watnipatra Under Section 34 of the Bombay Stamp Act. 1958. In an application at Exh. 60 they have submitted that the said Watnipatra is relating to property which is valued more than Rs. 100/- even on the date of execution. The said document is not admissible in evidence Under Section 49 of the Registration Act, 1908. In application a Exh. 60 the plaintiffs have submitted to reject the application as it is not registered as required under section 17 of the Registration Act,1908.

3] In reply to both the applications at Exh. 59 and at Exh. 60 filed by the defendants on record at Exh. 63 and Exh. 64 respectively, they have submitted that the said Watnipatra is executed by the deceased father Late Shri Mahadeo Jagobaji Khobragade during this lifetime intending to give the suit property to the defendants. The said document is not registered as per the Registration Act 1908. That the ground raised by the plaintiffs for rejecting the Watnipatra as not registered is not legal and proper. As both the applications are without substance and merits and not tenable in the eyes of Law are liable to be rejected with heavy cost.

4] Perused applications at Exh. 59 and 60 and reply to those application's at Exh. 63 and Exh. 64 respectively. Heard Learned Advocates for both the sides at length.

5] In support of their application plaintiffs have relied on following decisions.....

In case of Santosh Anant Raut .. Vs.. Pukharaj Chogmal Rathod and another reported in 2010 (4) Mh.L.J.22 it is held that...

" When a document is sought to be tendered in evidence before the Court, if it is found that the document/instrument is not sufficiently stamped, it is the duty of the Court to impound the said document in accordance with section 33 of the Bombay Stamp Act. No power is conferred on the Court to determine the stamp duty chargeable in respect of any instrument.

The said power is vested in the Collector, Jurisdiction of the Civil Court is confined to recording a finding on the question whether an instrument is duty stamped. The Civil Court cannot determine the stamp duty payable on a particular instrument. After impounding the document, the Court is under an obligation to send a true copy of the said document to the adjudication of the Collector in accordance with sub-section(3) of Section 32-A of the said Act. Only after adjudication is made by the Collector, the party relying upon the document will have to pay deficit stamp duty and penalty. After a certificate issued by the Collector regarding compliance with the requirement of payment of deficit stamp duty and penalty, Civil Court can exercise power under proviso (a) to section 34 of the said Act. Thereafter, the document can be admitted in evidence if the same is proved and if it is otherwise admissible in evidence. There is nothing wrong if a party relying upon a document applies for impounding his won document to enable the Court to exercise power under proviso (a) to section 34. In the present case, though the trial Court was justified in impounding the document, further exercise made by the trial Court of determining of deficit stamp duty and penalty is without jurisdiction and to that extent, impugned order will have to be modified "

In case of Siromani and another ..Vs.. Hemkumar and others reported in AIR 1968 Supreme Court 1299 it is held that...

" Registration Act (1908), Section 17(1) (b)-

Applicability- Document effecting partition of joint family properties and value of more than Rs. 100 by meters and bounds- Registration compulsory- In absence of such registration it is inadmissible to prove title of any of the coparceners to any of the property- Such document is, however, admissible to prove an intention of coparceners to become divided in status "

In case of **A. C. Lakshmiathy and another .. Vs.. A. M. Chakrapani Reddiar and others reported in AIR 2001 MADRAS 135** it is held that...

" Transfer of Property Act (4 of 1882), S. 9- Family arrangement- Reduced to writing for using it as proof of arrangement in future- Requires registration- Unstamped or unregistered arrangement- Cannot be looked into for any purpose in view of S. 35 of Stamp Act."

6] In support of their application defendants have relied on following decisions.....

In case of **Digambar Adhar Patil .. Vs.. Devram Girdhar Patil (died) and another reported in AIR 1995 SUPREME COURT 1728** it is held that...

" Evidence Act (1 of 1872), S. 35- Factum of partition between two brothers- Proof-Entries in records of Rights maintained in official course of business- Is relevant piece of evidence."

" Hindu Law- Partition- Not necessary that partition

should be effected by registered partition deed."

In case of Apoorva Shantialal Shah .. Vs.. Commissioer of Income-tax, Gujarat I, Ahmedabad reported in AIR 1983 SUPREME COURT 409 it is held that...

" Hindu Law- Hindu undivided family governed by Mitakshara school-partial partition of joint family property between father and minor sons- No equal distribution amongst co-sharers-Effect-Partition is not invalid."

7] The instant suit is filed by the sisters against their brothers for partition and separate possession. The defendants have taken a specific defence that their deceased father Mahadeo Jagobaji Khobragade has already executed partition deed of the suit property in their favour in his lifetime. Therefore, the plaintiffs have no any share in the suit property.

8] As the plaintiffs have filed the application at Exh. 59 to impound the said Watnipatra under Section 34 of the Bombay Stamp Act, 1958, it is necessary to see the said provision. The same reads as under ----

Section 34 :

No instrument chargeable with duty shall be admitted in evidence for any purpose by any persons having by law or consent to parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped or if the instrument is

written on sheet of paper with impressed stamp such stamp paper is purchased in the name of one of the parties to the instrument.

provided that,

(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of, --

(i) the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty, and

(ii) a penalty at the rate of 2 per cent of the deficient portion of the stamp duty for every month or part thereof, from the date of execution of such instrument :

Provided that, in no case, the amount of the penalty shall exceed double the deficient portion of the stamp duty.

9] Perusal of the said Watnipatra goes to show that deceased Mahadeo Khobragade transferred the suit property to his sons present defendant No. 1 to 4 equally without giving any share to his daughters i.e. plaintiff No. 1 and 2 and legal heir's of deceased daughter i.e. plaintiff No. 3 to 9. The said Watnipatra does not bear signature of plaintiffs and defendants. Therefore, the said Watnipatra is nothing but a conveyance deed on as stamp paper worth Rs. 15/- by which deceased Mahadeo transferred entire suit property to his sons i.e. present defendant No. 1 to 4. Therefore, by any stretch of imagination it cannot be said as family arrangement as it does not bear signature of plaintiffs and defendants. It is, therefore, humbly submitted that the decisions relied upon by the defendants are not applicable to the case in hand.

10] As the alleged Watnipatra dtd. 20.07.1986 at article 'A' is admittedly unregistered and as it is pertaining to conveyance of immovable property having value of more than Rs. 100/- the same needs to be impounded by sending the same to a Collector of stamps, Nagpur. After impounding of the said document as the said document is unregistered one it can only be used for collateral purposes. So far as decision in case of Santosh Supra relied upon by the plaintiffs on the point of impounding of the documents, it is squarely applicable to the present case.

11] So far as, admissibility of said document is concerned it depends upon the facts and circumstances of the case and quality of the evidence produced on record. Therefore, it would not be proper to reject the said Watnipatra as sought by the plaintiffs in their application at Exh. 60 without giving an opportunity to the defendants to produce their evidence on record in respect of that document. So, it is humbly submitted that the decisions relied upon by the plaintiffs in case of A.C. Laxmipathy and in case of Siromani Supra are not applicable to the case in hand. Under such circumstances as the said Watnipatra needs to be sent to the Collector of Stamps, Nagpur and as it would not be proper to reject the said Watnipatra to decide the application's at Exh. 59 and Exh. 60 final order is passed as follows :-

ORDER

1] The instant application at Exh. 59 is allowed in the interest of justice.

- 2] The Watnipatra dtd. 20.07.1986 be sent to Collector of Stamps, Nagpur to impound the same under section 34 of the Bombay Stamp Act, 1958 and to return the said impounded document to the court alongwith a certificate of deficit stamp duty and penalty at the earliest.
- 3] The instant application at Exh. 60 stands rejected in the interest of justice.

Hingna.

Date: 21.09.2016

Sd/-

(P. P. Deshmukh)

Civil Judge, Jr. Division, Hingna.

CERTIFICATE

I affirm that the contents of this P.D.F. file of Judgment are word to word, as per original judgment.

Mrs. B. A. Jichkar
Stenographer (Lr. Gr.)
attached Judicial Magistrate First Class,
Hingna.