

MHNS130007942020



R.C.S No.62/2020

Gopinath v/s Naval

ORDER BELOW EXH. 21

Perused the application and say filed at Exh.22. Heard learned advocates for plaintiff and defendant. Considered their submissions. It is contended by the defendant that plaintiff has filed list of documents along with evidence affidavit. The list contains document of agreement dated 16/05/2019. The alleged document is in respect of suit property and is for the duration of 5 years and thus it is in the form of lease as provided U/Sec. 105 of Transfer of Property Act,1882.

2. Ld. Advocate Shri. R.B Gavali appearing for the defendant further submitted that for the above reasons, and duration of alleged agreement being more than 1 year, its registration is mandatory according to Sec.17(1)(d) of Indian Registration Act, 1908. However, alleged document is not registered and also insufficiently stamped. Therefore, it is contended that alleged document is not admissible. Hence, by this application defendant is praying to decide first as to whether the alleged document is admissible, can be allowed and read in the evidence or not?

3. The application is strongly opposed by the plaintiff. He has denied all the contentions of the application. Ld. Advocate Shri. R.T. Chavhan appearing for the plaintiff submitted that alleged document is not in the form of lease agreement as per Sec.105 of Transfer of Property Act,1882. He further submitted that, as the alleged document is not lease agreement, it is not required to be registered mandatorily. He stated that document is sufficiently stamped and admissible in the evidence. Hence, he prayed to reject the application.

4. On perusal of record prima facie, it appears that plaintiff has instituted suit for recovery of money. Plaintiff in para-No.2 of his plaint pleaded that due to his old age, he was unable to do farming, hence he decided to get his land cultivated on the basis of annual compensation/ wages. It was agreed and decided between the plaintiff and the defendant that, defendant would do farming for the period of 5 years in suit land of the plaintiff and for that defendant would pay amount of Rs.3,15,000/- for the first year and amount of Rs.3,50,000/- from second year to the plaintiff. Accordingly, on 16/05/2019 the document of agreement executed and notarized on the stamp of Rs.100. Plaintiff has filed on record original copy of said agreement dated 16/05/2019 alleged to have been executed by plaintiff in favor of the defendant. On perusal of alleged document, it appears that the agreement was for duration of 5 years and thereby possession of the suit property was handed over to the defendant for the purpose of farming as agreed between the parties.

5. I have carefully gone through the pleadings of the plaint and W.S as well. It reveals that plaintiff's suit is for recovery of money agreed and decided as per agreement dated 16/05/2019 between plaintiff and defendant. The defendant has raised the objection for admissibility of that agreement. On perusal of pleading of the plaintiff and alleged document, prima facie it appears that the agreement relates to farming by defendant in the agriculture land of the plaintiff for the period of 5 years and defendant by agreement was to pay amount in return to the plaintiff. Thus, prima facie it appears that transaction is with regard to farming by defendant for 5 years in exchange of amount as agreed and decided between plaintiff and defendant.

6. On the other hand, defendant has denied execution of any such document in his W.S. below Exh.12. It is pertinent to note that neither plaintiff has come up with the case that transaction or document was/is lease, nor defendant has come up with the specific defence that alleged transaction or document was/is lease. Record shows that, issues are framed on 10.02.2023 below Exh.16. Plaintiff has filed evidence affidavit on 12.04.2023 below Exh.17 and present application is moved on 24.01.2024. The matter is pending for further chief examination of the plaintiff since long. On perusal of record, it appears that the plaintiffs want to rely on alleged agreement but has denied its nature as lease. Defendant by this application is questioning nature of the transaction or document in absence of such specific pleadings in his W.S. He is praying to decide first as to whether the alleged document is admissible, can be allowed and read in the evidence or not?

7) Document can be exhibited if its contents are proved. The defendant has nowhere questioned the existence of the document; thus, inference can be drawn that such agreement exists. Now the question is in respect of nature of document, which I found irrelevant at this stage. It is necessary to note that suit is not for recovery of possession or for specific performance filed relying on the alleged document as agreement to lease but the suit is only for recovery of money based on the alleged document. The prayer of plaintiff is nothing but something collateral to the main agreement. If suit is for recovery of money, then how plaintiff is entitled to that relief or what document shows the transaction in respect of alleged recovery is necessary to be looked into. Original copy of alleged document, of which defendant has not denied its existence is on record, on this count can be exhibited and read in the evidence. Considering the nature of present suit, I find deciding nature

of alleged document that whether it is lease or not is not material. Therefore, I am of the opinion that impounding of that document is not necessary. Hence, considering the nature of the suit and agreement, the submissions of both parties, the application is liable to be rejected. Hence, I pass following order:

ORDER

1. The application at Exh.22 is rejected.
2. Cost in main cause.

Sd/-xxx

Dated : 08/04/2026

(V. W. Khendad)
2nd Jt. Civil Judge, Junior Division,
Pimpalgaon(B). Dist.Nashik