

Nanaji Vitthal Patil Vs. Gayaji Walu Palhal

Order below Exh.88

1. Perused application and say. Heard all concern. It is the contention of the plaintiffs that, they have filed present suit for declaration, possession and cancellation of sale-deed. It is further contention of the plaintiffs that defendants were in need of money of Rs. 3,00,000/-. Therefore, plaintiffs in lieu of Rs. 1,50,000/- purchased the land admeasuring 0.20 R of G.No. 1348/2 from plaintiffs vide registered sale-deed dtd. 16/10/2012. It is further contention of plaintiffs that, they have given rest of the amount Rs.1,50,000/- to the defendants and in that lieu, defendants allowed to plaintiffs to cultivate the western side 0.41 R land of G.No. 1348/2 for three years i.e. from 16/10/2012 to 16/10/2015. In this respect, the payment-receipt (उसनवार-पत्र) dtd. 16/10/2012 has been executed between them. It is the contention of plaintiffs that, the said payment-receipt (उसनवार-पत्र) is not executed on sufficient and proper Stamp and it needs to be registered with District Collector (Stamp), Nashik. Therefore the plaintiffs have prayed to impound the said payment-receipt.

2 The defendants have filed their say and contended that the said application is not legal and proper, there is no reason to impound the document. Hence they prayed to reject the application.

3 Heard both the parties at length.

4 After giving thoughtful consideration to the arguments advanced by both the parties, it is matter of record that the plaintiffs have placed on record document of payment-receipt (उसनवार-पत्र). It is required to be impounded as per the provisions of law. Even as per scheduled I along with section 34 of the Bombay Stamp Act 1998 the stamp duty should have to be imposed along with the penalty.

5. The plaintiffs in their plaint contended that, as per said payment-receipt (उसनवार-पत्र), the defendants have given the possession of said western side 0.41 R land of G.No. 1348/2 for the period of three years for its cultivation, to them and the nature of said transaction is of mortgaged transaction. However whether the possession has been delivered by defendants to plaintiffs at the time of execution of payment-receipt (उसनवार-पत्र) or not, this issue cannot be decided at this stage. On the contrary it requires evidence from both the sides to adjudicate the present suit on merit. Therefore, on this count application deserves to be allowed. Further here, it is required to follow the procedure and provision of law to consider present document in evidence. Even, present suit is depending on payment-receipt (उसनवार-पत्र). But at the same time, if the application is allowed certainly, it does not mean that the plaintiffs are taking help of the Court. So also no prejudice or irreparable loss will be caused to either party. Further more, the duty is caste on plaintiffs to prove their document by evidence of preponderance of probability. So also, it is the duty of the Court to get the document impounded. Therefore, to decide the present suit on merit between the parties on all issues, as well as to avoide multiciplity of litigation, the application deserves to be allowed. In the result, I pass the following order.

ORDER

- 1 Application Exh. 88 is allowed.
- 2 The present document i.e. payment-receipt (उसनवार-पत्र) be sent to the District Collector (Stamp), Nashik for impounding as per the provisions of law and penalty be recovered according to law.
- 3 The said document be sent along with covering letter and one bailiff be appointed to made compliance of this letter as per rules, on payment of necessary Bhatta.
- 4 The plaintiff shall make all sthe compliance and provide all the documents, which are required to impound the present document in the court as well to the office of Sub-Registrar Kalwan, Tal.Kalwan, Dist.Nashik.

Date 01/08/2019.

(Swara S.Parkhi)
Civil Judge, J.D.
Kalwan.