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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6938 OF 2023

Shri.Balaso Bhimgonda Patil

Age : 78 Years, Occupation : Agriculture,
Residing at : Village Beknal,
Taluka : Gadhinglaj, District : Kolhapur,
416 502.

...Petitioner

Versus

1. **The State of Maharashtra**

Through Shri.Malikarjun Mane,
The Joint District Registrar (Stamp)
Class – 1, Having his Office at State
Administrative Central Building,
1st Floor, North Wing, Kolhapur,
416 003, District : Kolhapur,
Kasaba Bavada Road, Kolhapur.

2. **Shri.Tatyasaheb Bhimgonda Patil**

Age : 75 Years, Occupation : Agriculture

3. **Shri.Madhukar Bhimgonda Patil**

Age : 68 Years, Occupation : Agriculture

Through : Power of Attorney:-

Shri.Vishwanath Tatyasaheb Patil

Age : 48 Years, Occupation : Business,
Residing at : Benal, Taluka : Gadhinglaj,
District : Kolhapur.

...Respondents

Mr.D.B.Patil:-	Advocate for Petitioner.
Mr.P.G.Sawant:-	AGP for Respondent No.1 – State of Maharashtra.
Mr.Anand S. Patil:-	Advocate for Respondent Nos.1 & 3.

CORAM : S. M. MODAK, J.

RESERVED ON : 8th OCTOBER 2024PRONOUNCED ON : 25th OCTOBER 2024**JUDGMENT :-**

1. The only issue arisen in this Writ Petition is “whether the trial Court was justified in sending unregistered Partition Deed to the Collector of Stamps for payment of requisite stamp and penalty”.

2. This issue arose during the trial of Regular Civil Suit No.105 of 2014 pending in the Court of Civil Judge Senior Division–Gadhinglaj, Kolhapur. It was a Suit for Partition filed by the present Respondent Nos.2 and 3 along with others. Whereas, present Petitioner is Defendant No.1. It was a Suit for Partition and declaration about sale-deed dated 11th February 2003 being not binding on the Plaintiff. The Suit property is as follows:-

- (a) Two (2) lands described in Para No.1 (A) of the Plaint.
- (b) Five (5) R.C.C., shops and one (1) tin shade constructed on that land.

3. Present Petitioner refuted the averments in the Complaint and he has pleaded about Partition of the Suit land already taken place and recorded in the unregistered document dated 18th January 2013 titled as “Noting of partition by way of family arrangement”. He claims, as per the said arrangement, two Suits lands were allotted to his exclusive ownership. It is pertinent to note that the said agreement is challenged by the Plaintiffs by way of an amendment to the Suit.

Insufficient stamping

4. The issue about insufficient stamping had come when this agreement was posed to Plaintiff during cross-examination conducted on behalf of Petitioner–Defendant No.1. The trial Court after hearing the parties, passed following order on 13th January 2022:-

“O R D E R

1. *Unregistered partition deed dated 18.1.2013 is impounded. It be sent to Collector of Stamp, Kolhapur for registration, payment of requisite stamps and penalty.*
2. *Case is time bound as per directions of Honourable High Court. The Collector of Stamp, Kolhapur is directed to comply and report about the impound the document within 15 days from the date of receipt of this order.*
3. *The authentic copy of unregistered partition deed be kept on record and original be sent for necessary compliance.*
4. *Issue Yadi on P.F.”*

Challenge in Writ Petition

5. This order is challenged in this Writ Petition. Subsequently, the Collector of Stamps has ascertained the amount of stamp and vide his letter dated **12th December 2022** (Page No.49) informed to the Defendant No.1–Balaso Patil–present Petitioner and Defendant No.3–Panditrao Patil (deceased) to pay deficit stamp duty of Rs.2,75,100/- (Rupees Two Lakh Seventy Five Thousand Hundred) and penalty of Rs.6,60,300/- (Rupees Six Lakh Sixty Thousand Three Hundred). **This order is also challenged by way of this Writ Petition.**

Objection as to maintainability of the Petition

6. Learned Advocate Shri.Anand Patil took an objection about the maintainability of the Petition for the reason, stamp duty ascertained by the Collector cannot be challenged by way of Writ Petition and there is an alternate efficacious remedy available as per the provisions of the Maharashtra Stamp Act, 1958. Even, learned AGP reiterated the said objection. Whereas, according to learned Advocate Shri.D.B.Patil, the primary objection is to the order passed by the Civil Court and the order of Collector is ancillary. **I agree to his submission.** If, the order of Civil Court goes naturally, the order of Collector has to be set aside. **Hence, objection about maintainability is turned down.**

Nature of document

7. According to Mr. Anand Patil, if the agreement is perused, one can find that few of the co-sharers have released their share in favour of other co-sharers and hence, this agreement has to be titled as “*Release Deed*” and not the “*Deed of Recording Partition*” and Article 46 to Schedule-I of the said Act is not applicable.

8. I have read the contents of the noting of Partition. It is true, the executant Rudragonda Patil–deceased Plaintiff No.1, Appaso Patil–deceased Plaintiff No.2, Panditrao Patil–deceased Defendant No.3, Tatyasaheb Patil–Plaintiff No.3, Madhukar Patil–Plaintiff No.4 and Gangubai Patil have either relinquished the right, title, interest or they have been allotted different land. **The Suit land Survey No.584, Hissa Nos.13 and 14 were allotted to the share of Balaso–Defendant No.1 (present Petitioner).** Whereas, the Plaintiff No.3–Tatyasaheb (present Respondent No.2) was also not given any right, title and interest because he was allotted a different land.

9. Ultimately, what is Partition? It is separation of shares. Some may get share or some may relinquish the share. Some may get share in a particular property, other may get share in different properties. The co-sharers decide the property which they may get or they do not want

any share. Release of right, title, interest is always by a person having share in favour of the person already having a share. **So, the document cannot be considered as a “*Release Deed*” but it is the document “*Recording the Arrangement*”.**

Reasoning given by trial Court

10. The agreement is executed on the stamp paper Rs.100/- (Rupees Hundred). The trial Court Judge observed:-

“If document creates substantial rights then, compulsorily registration is required”.

Secondly, trial Court observed:-

“The document needs to be impounded”.

There is only provision of impounding of document with deficit stamp duty under Section 33 of the Maharashtra Stamp Act. Registration and stamping are two different aspects. If a document is compulsorily registrable as per the provisions of the Indian Registration Act, 1908 and if it is not registered, then it is inadmissible in evidence. There is total bar but if the document is insufficiently stamped, subject to payment of stamp duty, it can be admitted in evidence. **The trial Court has mixed both the issues.**

About registration

11. A Division Bench of this Court in case of ***Arvind Yeshwantrao Deshpande V/s. State of Maharashtra and Others***¹ held:-

*“Property received by coparcener in partition of joint Hindu family property is not a transfer and therefore, **registration of transfer deed is not necessary**”.*

The same principle is laid down in case of ***Manikchand Hiralal Nahar & Ors. V/s. State of Maharashtra and Ors***²:-

“The Revenue Authorities cannot insist on a partition deed being registered as a precondition for mutation entries”.

Other Judgments

12. Mr.D.B.Patil relied upon two circulars issued by the Revenue and Forest Department dated 16th July 2014 and 21st April 2018. On the basis of observations in case of ***Arvind Yeshwantrao Deshpande*** (supra), a direction was given. The Deed of Partition of joint family property, the registration is not mandatory. Stamping has to be done as per Article 46 to Schedule-I.

13. It is true, the Division Bench of this Court in case of ***The Barshi Bar Association V/s. The State of Maharashtra and Ors.***³ set aside the circular dated 16th November 2016 issued by the District Registrar,

1 2004(2) Bom.C.R. 331

2 2018(5) Bom.C.R. 125

3 Public Interest Litigation No.88 of 2021 : 9th March 2023 : Bombay High Court

Solapur thereby prohibiting a mutation in the Revenue Record on the basis of unregistered documents. The mutation was asked on the basis of compromise decree passed in respect of agricultural land in Lok-Adalat. It was observed, “*registration is not compulsory and as per Article 46, proviso (c), stamp duty shall not exceed Rs.10/-.*” (Para No.18). The circular was modified accordingly. In nutshell, registration of Partition Deed is not mandatory. The trial Court has unnecessarily considered non registration as one of the reasons for impounding.

14. Mr.Anand Patil also relied upon the following judgments:-

(i) ***Bidyut Sarkar & Anr. V/s. Kanchilal Pal (Dead) Through LRs. & Anr.***⁴

There was an agreement to sell. There was an objection on account of deficit stamp duty. The Collector was asked to assess stamp duty and penalty. The Collector has not sent any reply. The provisions of the Indian Stamp Act were involved. **The Collector failed to ascertain the stamp duty and in that sense, the document remains inadmissible in evidence.** (Para No.26). The Suit was dismissed, however, the High Court treat the document as admissible. These findings are set aside by the Hon’ble Supreme Court.

The contention of Mr.Patil is, the stamp duty is properly assessed.

(ii) He also relied upon the observations in case of ***Shyam***

⁴ Civil Appeal Nos.10509-10510 of 2013 : 28th August 2024: Supreme Court of India

***Narayan Prasad V/s. Krishna Prasad and Others*⁵.**

The issue was registration of deed of exchange of property. (Para No.4). On facts, it was held:-

“It was not only an exchange of business but also property.”
 (Para No.17). *“If it is exchange of immovable property of value more than Rs.100, the provisions of Section 54 of the Transfer of Property Act are applicable and **hence, registration is must.**”* (Para No.18).

15. By no stretch of interpretation, it can be said that the transaction mentioned in the partition noting is an exchange. That observation is not applicable. The ratio of both the judgments is not applicable. Because, nature of documents involved are different.

Non-agricultural use

16. According to Mr.Anand Patil, there are R.C.C., structures on those two lands as it is described in the Plaint. That is a matter of averment. **But, the issue is, what was the use of the land when the document was executed on 18th January 2013?. The document nowhere reflects the shops were constructed at that time. Subsequent use of land for the purpose of erection of shops cannot be a factor for determining the stamp duty leviable on a document executed earlier. I**

⁵ (2018) 7 Supreme Court Cases 646

am not accepting the contention of Mr.Patil. As per Article 46, stamp duty on partition of agricultural land is Rs.100/-.

17. Learned AGP tried his best to justify the calculation by the Collector by relying upon the provisions of **Article 55**. The title is “*Settlement*”. But, if we read the type of document described therein, it does not include any partition to joint Hindu property. **Reliance on that Article is ill-founded.**

Conclusion

18. In view of the above discussion, **the findings by the trial Court that it requires registration and impounding cannot be sustained in the eyes of law. In the impugned order, learned trial Judge has nowhere discussed the document falls under which Article of Bombay Stamp Act.** It is true, the Court has to give that finding and then only, there can be impounding. Further process of ascertaining stamp duty cannot be done by the Civil Court but it can be done by the Collector of Stamps only. The order of Civil Court cannot be sustained. **If it goes, the calculation of stamps by the Collector also needs to be set aside.**

19. Hence, order:-

ORDER

- (i) The **Writ Petition is allowed.**
 - (ii) The **order dated 13th January 2022** (Exhibit-1) passed by the Court of Joint Civil Judge Junior Division – Gadhinglaj in Regular Civil Suit No.105 of 2014 is **set aside.**
 - (iii) The trial Court is directed to consider that document in evidence subject to its proof in an ordinary course.
 - (iv) The communication vide letter dated 12th December 2022 by the Collector of Stamps – Kolhapur is set aside.
 - (v) If, any stamp duty and penalty is paid as per the said communication, the amount **be refunded** to Defendant No.1 – Petitioner.
20. In view of that, **Writ Petition is disposed of.**
21. Parties to bear their own costs.

[S. M. MODAK, J.]