

HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

Hon'ble Shri Justice Satish Kumar Sharma.

Misc. Petition No.591 of 2021.

Gangashankar Dubey

Versus

Smt. Sindhu Bai and Others.

Shri Abhishek Singh Bhadoria, learned counsel for the petitioner.
Shri Satyendra Singh Rajput, learned counsel for the respondents.

J U D G M E N T
(15/12/2021)

This petition under Article 227 of the Constitution of India has been filed by the petitioners (plaintiffs) against the order dated 4.10.2018 passed by III Civil Judge Class 2 Ganj Basoda district Vidisha in RCS-A/42/2017 whereby, the prayer of the plaintiffs to exhibit the relinquish deed alleged to have been executed by their son in favour of his mother has been declined.

Brief facts leading to this case are that, the plaintiffs filed a civil suit for declaration of title and injunction against their widow daughter in law and Grandchildren (defendants) wherein, during the course of chief examination, they intended to exhibit the relinquish deed, stated to have been executed by their deceased son in favour of his mother. The learned trial court vide impugned order has declined the prayer on the ground that the document is unregistered whereas, the same is compulsorily registerable and also the same is insufficiently stamped. Being aggrieved by this order, the plaintiffs have preferred the present

petition.

Heard learned counsel for the parties and perused the material available on record.

Learned counsel for the plaintiffs submits that the plaintiffs themselves purchased the suit property in the name of their only son of 19 years of age. After marriage, their son, in the year 2012, executed a document giving up all the rights in the property in favour of his mother. He died in the year 2016 and after his death, defendant No.1 daughter-in-law started claiming rights over the suit property, therefore, the plaintiffs had to bring the present suit for declaration of title and injunction. Though the document in question is unregistered but as per Section 49 of the Registration Act, 1908 (hereinafter would be referred as to 'the Act of 1908') it can be used for collateral purposes. The plaintiffs intend to use the same to establish their possession over the suit land and other rights which may be available to them as per law. It is also trite law that in case of insufficiently stamped document, the court is obliged to impound the same and on payment of deficit stamp duty and penalty, such document should be admitted in evidence. The prayer of the plaintiffs to exhibit the document has been declined in technical and illegal manner, therefore, the impugned order deserves to be set-aside. He has placed reliance upon the judgment passed by Hon'ble Supreme Court in the cases of **Thulasidhara and Others Vs. Narayanappa and Others reported in (2019) 6 SCC 409** and by High Court of M.P. in

M.P.No.3417 of 2018 (Parimal Singh Sikarwar and Another Vs. Satish Singh Sikarwar and Others) passed on 3.9.2019, W.P.no.1399 of 2014 (Rodelal Vs. Laxminarayan) passed on 7.8.2018, W.P.No.3835 of 2015 (Kailash Agrawal Vs. Surendra Singh) passed on 8.5.2017 and W.P.No.1653 of 2014 (Ghastram Vs. Veeralal Lodhi) passed on 20.8.2015.

Learned counsel for the defendants has contended that an unregistered document which is compulsorily registerable, cannot be admitted in evidence in view of Section 17 read with Section 49 of the Act. So also an insufficiently stamped document cannot be admitted in evidence for any purpose whatsoever. The document in question is undisputedly insufficiently stamped as well as unregistered which cannot be admitted in evidence to establish the right, title or interest over the suit property. The learned trial court has rightly declined the prayer of the plaintiffs. The petition has no substance and deserves to be dismissed. He has placed reliance upon the judgment passed by Hon'ble Supreme Court in the case of **Avinash Kumar Chauhan Vs. Vijay Krishna Mishra reported in 2009(3) MPHT 6 (SC)** and by this Court in **Khusiram Awasthy Vs. Sahab Singh and Another, reported in 2012 (3) MPHT 508.**

Heard. Considered.

In this case, the issues that fall for consideration are :

(I). Whether, the trial court was right in holding that the unregistered relinquish deed is not admissible in evidence being

compulsorily registerable document?

(ii). Whether, the relinquish deed in question is admissible in evidence for collateral purposes on payment of deficit stamp duty and penalty as per the provisions of Indian Stamp Act 1899?

In order to resolve the controversy, it is appropriate to extract the relevant provisions of Section 17 (1) (b) and 49 of the Act of 1908 which read as under :

17. Documents of which registration is compulsory.—(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) xxxxxxxx;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) xxxxxxxx;

(d) xxxxxxxx;

[(e) xxxxxxxx;

“49. Effect of non-registration of documents required to be registered.—No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:

[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877),[***] or as evidence of any collateral transaction not required to be effected by registered instrument.]”

Hon'ble Supreme Court in the case of **K.R.Saha and Sons Pvt. Ltd. Vs. Development Consultant, reported in 2008 (8) SCC 564**, with regard to admissibility of unregistered document, has held as under :

1. A document required to be registered, if unregistered, is not admissible into evidence under [Section 49](#) of the Registration Act.
2. Such unregistered document can be used as an evidence of collateral purpose as provided in the Proviso to [Section 49](#) of the Registration Act.
3. A collateral transaction must be independent of, or divisible from, the transaction to effect which, the law required registration.
4. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, any right, title or interest in immovable property of value of one hundred rupees and upwards.
5. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

Further, the Hon'ble Supreme Court in the case of **Avinash Kumar Chauhan (Supra)** has held that an unstamped or insufficiently stamped document cannot be admitted in evidence for any purpose including for collateral purposes. However, such document can be received in evidence on payment of deficit duty and penalty in terms of Section 35 of the Indian Stamp Act 1899.

In order to deal with different propositions, it may be safely concluded in the light of the above legal position as under :

(I). The admissibility of a particular document in evidence is to be adjudged in light of the relevant provisions of the Act of 1908 as well as of the Indian Stamp Act 1899.

(ii). As per the provisions of Section 17 and 49 of the Act of 1908, an unregistered document which is compulsorily registerable cannot be admitted in evidence except in a suit for

specific performance of contract or as evidence of any collateral transaction, not required to be effected by registered instrument.

(iii). The collateral purpose for which, unregistered document is intended to be tendered in evidence, must be 'independent of' or 'divisible from' the very object and purpose of such document for which, it is executed.

(iv). No unregistered document which is compulsorily registerable can be admitted in evidence in the name of collateral purpose which would essentially tend to affect the right, title and interest of the parties for which, such document is executed;

(v). An unstamped or insufficiently stamped document which is required to be stamped cannot be admitted in evidence for any purpose including collateral purpose. However, such document can be tendered in evidence after payment of deficit stamp duty and penalty as adjudicated by Collector (Stamps) under the provisions of The Indian Stamp Act 1899 subject to its admissibility under the provisions of the Act of 1908;

(vi). If an unregistered document which is compulsorily registerable is found to be inadmissible in evidence under Section 49 of the Act of 1908, the same cannot be admitted in evidence even if, it is duly stamped as per the Indian Stamp Act, 1899.

In the present case, the suit has been filed for declaration of title over the suit property on the basis of the deed alleged to have been executed by the son of plaintiffs giving up his rights over the property in favour of his mother. Thus, the document in question is certainly a relinquish deed which is compulsorily registerable under Section 17 (B) of the Act of 1908, therefore, as per Section 49 of the Act of 1908, the same cannot be admitted in evidence to establish the right, title and interest of the plaintiffs over the suit property.

The plaintiffs intend to use this relinquish deed for the purpose to establish their possession over the property in the name of collateral purpose, but such purpose cannot be termed as 'independent of' or 'divisible from' the very purpose of this document in any manner. If in the garb of such collateral purpose, this relinquish deed is admitted in evidence, the very object of the provisions of Section 17 and 49 of the Act of 1908 would be redundant and frustrated. Thus, the document in question cannot be admitted in evidence, for the said collateral purpose.

It cannot be disputed that an unstamped or insufficiently stamped document can be admitted in evidence on taking deficit stamp duty and penalty as adjudicated under the provisions of The Indian Stamp Act 1899, but the pre-condition is that such document should be admissible in evidence as per proviso to Section 49 of the Act of 1908.

As mentioned above, the relinquish deed in question is not admissible in evidence for the said collateral purpose even if it would have been duly stamped, therefore, no fruitful purpose would be served by impounding the same for levy of deficit stamp duty and penalty under the Indian Stamp Act.

In the judgments cited by the learned counsel for the plaintiffs, the documents in question were allowed to be used in evidence for collateral purposes, in the peculiar facts and circumstances of each case and accordingly the document (s) were impounded and directions were issued to use the same in evidence

after payment of deficit stamp duty and penalty as per the provisions of The Indian Stamp Act 1899. But, in none of these cases, unregistered relinquish deed was allowed to be taken in evidence for the collateral purpose to establish the possession over the suit property as claimed in this case. Thus, all these judgments are quite distinguishable and accordingly, are not applicable to this case. Rather as discussed above, in the light of legal position expounded in above cited cases, the relinquish deed in question cannot be admitted in evidence even if it was duly stamped.

In view of the above discussion and for the reasons stated, this court is of the firm opinion that learned trial court has not committed any illegality in passing of the impugned order. The present petition has no merit and accordingly the same is dismissed. No order as to the costs.

(Satish Kumar Sharma)
Judge
15/12/2021.