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MP-5594-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

MISC. PETITION No. 5594 of 2024*MANGILAL DECEASED THROUGH LRS RADHA BAI AND OTHERS**Versus**PAWAN SINGH*

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Appearance:

*Shri Arjun Agarwal, counsel for the petitioner.**Shri Shubham Yadav with Shri Prafull Sharma, counsel for the respondent.*
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Heard On: 15.07.2025

Delivered On: 22.07.2025

ORDER

1. This miscellaneous petition is filed under Article 227 of the Constitution of India being crestfallen by the order dated 04.09.2024 passed by the learned Xth District Judge, District Indore in COS No. 22-B/2014 wherein learned Judge has rejected the application of plaintiff/petitioner filed under Order XVIII Rule 17 read with Section 151 of C.P.C. for re-examination with regard to a document which has already been stamped properly.

2. Learned counsel for the petitioner submitted that the trial Court has not considered each and every aspect of the case. The learned trial Court has wrongly treated the loan agreement dated 29.06.2011 as mortgage deed and ignored the fact that the loan agreement is primarily executed against loan taken by the respondents/defendants for acknowledging the loan transaction and to ensure its re-payment. Therefore, the document in question is not



required to be registered. It is further contended that even assuming the document as mortgage deed, the document can be exhibited under Section 49 of Registration Act for collateral purpose of recovery of money covered under the unregistered document without touching upon right regarding the property. It is also contended that the learned trial Court itself ordered that the said document should be stamped and in light of said order, the document has been properly stamped by the Collector of Stamps. It is also contended that if the said document is not allowed to be exhibited, the plaintiff case would be prejudiced. Under these circumstances, learned counsel requested to set aside the order to that extent and allow the application filed under Order XVIII Rule 17 read with Section 151 of C.P.C. for plaintiff's evidence to the extent of exhibiting documents.

3. Learned counsel for the respondent vehemently contended that since the said document is a mortgage deed, related to immovable property, it is required to be registered under Order XVIII Rule 17 read with Section 151 of C.P.C. and without registration, it possesses no value. Therefore, the same can not be exhibited.

4. Heard counsel for the parties and perused the record available.

5. At the outset, the said provision of Section 49 of Registration Act is required to be produced here as under:-

49. Effect of non-registration of documents

required to be mentioned as under :-

- No document required by section 17 [or by any provision of the Transfer of Property Act, 1882 (4 of



1882),] [Added by Act 21 of 1929, Section 10.] 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] [Added by Act 21 of 1929, Section 10.], [* * *] [The words "or as evidence of part performance of a contract for the purposes of section 53-A of the Transfer of Property Act, 1882 (4 of 1882)" omitted by Act 48 of 2001, Section 6 (w.e.f. 24.9.2001).] or as evidence of any collateral transaction not required to be effected by registered instrument.]

6. In view of the aforesaid law, the said document namely as "आपसी कर्ज का इकरारनामा" comes under purview of evidence of any collateral transaction not required to be effected by registered instrument.



7. Here, it is worth to mention that the learned trial Court itself vide order dated 12.10.2023 ordered for stamping the document as per Section 35 of Indian Stamp Act and in compliance thereof, the document was duly stamped by the Collector of Stamps by imposing and levying stamp of Rs.39,300/- including penalty, which was paid by the petitioner and photocopy of receipt of the same, was annexed as annexure-P/8. In this regard, proviso of Section 49 of Registration Act clearly indicates that the said document can be taken as evidence for any collateral transaction.

8. At this stage, the petitioner has relied upon the judgment in the case of **Brajesh Rai Vs. Gurmeet Singh** reported in 2018 SCC OnLine Del 11611 passed by High Court of Delhi and **Umde Bhojram Vs. Wadla Gangadhar** reported in 2004 (2) APLJ 200 (HC) passed by High Court of Andhra Pradesh at Hyderabad.

9. The following extracts of the judgment **Brajesh Rai** (supra) is condign to quote here :-

"The trial court has held that the Mortgage-cum-Loan Agreement need not be registered inasmuch as the said agreement would be operative if the suit was for recovery of moneys on the basis of a mortgage, but the subject suit is only a simple suit for recovery of moneys and not a suit filed under Order XXXIV CPC alleging existence of a mortgage. In my opinion, the trial court in this regard has committed no illegality inasmuch as the factum of loan which is the subject matter of a mortgage deed is a collateral transaction, and such an agreement, so far as the grant of loan is concerned, is not required to be registered under Section 17(1)(b) of the Registration Act. A direct judgment in this regard is the judgment of a Single Judge of the Madras High Court in the case of *Murugan v. Sumathradevi and Durairaj*, *CRP(P.D.) No. 1863/2003* and this judgment



holds that if there is a mortgage-cum-loan agreement, the said mortgage-cum-loan agreement can be looked into as an independent transaction so far as the aspect of loan is concerned, and in doing so, the said document can be looked into as a collateral transaction with respect to the loan given. In the case of **Murugan (supra)**, the learned Single Judge has relied upon earlier judgments of the Madras High Court starting from the year 1931, wherein it has been held that a mortgage-cum-loan agreement, even if not registered, can be looked into, so far as a grant of loan under the subject agreement is concerned. In my opinion, therefore, the trial Court has committed no illegality in referring to the Mortgage-cum-loan Agreement with respect to the aspect of grant of loan."

10. Likewise, the relevant excerpt of the judgment **Umde Bhojram (supra)** is also worth to be quoted here:-

"2. The plaintiff filed the suit for recovery of Rs. 22,500/- on the basis of an unregistered mortgage deed dated 10-10-1996 alleged to be executed by the defendant in his favour....."

"14. According to the above rulings, a document required to be registered but not registered can be used as evidence of any collateral transaction not required to be effected by a registered document and it prohibits only the user of the documents for establishing any right, title or interest to or any immovable property."

11. In view of the aforesaid discussion, it is crystal clear that if the document in question contains a written pledge whereby the executant undertakes to discharge liability personally and without reference to the



mortgaged property and if that document is not registered, still it can be admissible as evidence for the purpose of establishing the personal liability and the debt. Since it is clearly mentioned in the said document that the creditor may file a civil suit for recovery of the said loan alongwith interest, the said document comes under the purview of agreement for loan.

12. Hence, taking into consideration of the facts and circumstances of the case, this Court is of the considered opinion that said document is required to be exhibited in the suit and accordingly, the application under Order XVIII Rule 17 read with Section 151 of CPC for tendering evidence of plaintiff deserves to be and is hereby allowed.

13. Consequently, the order of learned trial Court dated 04.09.2024 passed in COS No. 22-B/2014 is set aside and trial Court is directed to give an opportunity to the plaintiff for exhibiting the said document and also give a chance to the defendant to cross-examine the same.

14. Before parting, it is clarified that the learned trial Court while passing the final judgment be not influenced by observation made by this Court in this miscellaneous petition.

15. With the aforesaid directions, the miscellaneous petition stands allowed and disposed of.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE