

Bombay High Court
Rekha W/O Ramrao Bhujang vs (on 4 January, 2012

Bench: S.V. Gangapurwala

REPORTED

**Citation: 2012(3)ALLMR509, 2012(3)BomCR156,
2012(3)MhLj249**

2. Rule. Rule returnable forthwith. With the consent of the parties, the petition is taken up for final hearing.

3. The present petitioner/original plaintiff has filed a suit for partition and separate possession in respect of the suit properties described in Schedule A and B of the plaint.

4. The Respondents/defendants pursuant to suit summons appeared and denied the case of the petitioner and further claimed that the plaintiff has executed Hakksod affidavit on 30.7.2007.

5. The Respondent No.1/defendant No.1 during the pendency of the suit filed an application (Exh.61) stating that the plaintiff 4 W.P.No.4603/11

has executed Hakksod affidavit on accepting consideration of Rs.6,00,000/- (Rupees six lacs) and has relinquished her share in the ancestral property. The said document is on insufficient stamp. Vide said application prayed to impound the document. The said application is filed on 23.2.2009. The said application was pending consideration and was not decided. The plaintiff led her evidence. The defendants also led their evidence. DW 5 was examined and referred the said Hakksod-patra in his examination-in-chief and in the said examination-in-chief referred it as Exh.80. The said document was never exhibited by the Court prior to the examination-in-chief. The said examination-in-chief of DW5 was filed on affidavit and in the

said affidavit itself he referred to said document as Exh.80. The said witness was cross-examined. on the document also Exh.80 was given. The plaintiff on the very same day i.e. the date when the affidavit of DW5 of examination-in-chief was filed on 27.8.2009, filed an application Exh.82 for de-exhibiting the document. The trial Court vide its order dated 8.6.2011 rejected the said application Exh.82 5 W.P.No.4603/11

filed by the plaintiff. On that day, the learned trial Judge also passed an order below Exh.61 i.e. the application given by the defendant to impound the said Hakksood affidavit. The learned Judge vide order below Exh.61 observed that at present it is not possible to accept the request made on behalf of the defendants. However, as and when nature of the document would be clear further legal order will be passed.

6. The plaintiff has assailed the order below Exh.82, rejecting his application for de- exhibiting the said document in the present Writ Petition.

7. Mr.Totala, learned counsel for the petitioner/plaintiff submits that the petitioner had taken objection regarding the insufficiency of stamp earlier only i.e. prior to its exhibition. The defendants themselves had filed an application to impound the said document being insufficiently stamped. When that was the position, the Court could not have exhibited the said document without deciding the objection 6 W.P.No.4603/11

about insufficiency of the stamp. According to the learned counsel, the said document is inadmissible in evidence for want of registration and also on account of the fact that it is on insufficient stamp. The learned counsel contends that the said document is not exhibited as per the procedure laid down in order 13 of the C.P.C. and it is no exhibition in the eyes of law. The application Exh.82 of the plaintiff should have been

allowed. The learned counsel relies on the judgment of the learned Single Judge of this Court in a case of "Sunil Tukaram Bharadkar Vs. Santosh Gopichand Rane" reported in 2006(5) Bom.C.R. 237. The learned counsel submits that the document was required to be de-exhibited and the learned Judge has committed an error in rejecting the said application. It is incorrect to observe that the said document is exhibited on the basis of evidence given by DW 5.

8. Mr.V.D.Sapkal, learned counsel for the defendants/respondents submits that the Court was right in passing the impugned order below Exh.82. There is no provision for de-exhibiting the 7 W.P.No.4603/11

document. The plaintiff has not challenged the order exhibiting the document. In view of that the Writ Petition can not be entertained. When the original order exhibiting the document itself is not challenged, the plaintiff can not assail any other order passed below Exh.82 for de- exhibiting the document as there is no provision for de-exhibiting the document. The learned counsel further contends that once rightly or wrongly a document which is on insufficient stamp is exhibited in evidence then the question about the insufficiency of the stamp can not be gone into. For the said purpose, the learned counsel relies on the judgment of the Apex Court in a case of "Zaver Chand Vs. Pukhraj Surana, reported in AIR 1961 Supreme Court 1655.

9. Mr.Sapkal, learned counsel further relied on the judgment of the Full Bench of this Court in a case of "Mr.Hemendra Rasiklal Ghia Vs. Subodh Mody" reported in 2008(6) ALL MR 352 and contends that the objection relating to deficiency of stamp must be taken when the document is tendered in evidence and can not be 8 W.P.No.4603/11 entertained subsequently. He further contends that an objection to the document which in itself is

inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case. The learned counsel further contends that in view of the above conspectus, the Writ Petition need not be entertained.

10. With the assistance of the learned counsel, I have gone through the order passed by the Court below. The order to exhibit the document is governed by the provisions of Order 13 of the C.P.C. In the present case the document i.e. Hakksod affidavit is exhibited on the basis of the evidence of DW 5. The examination-in-chief on affidavit of DW 5 is submitted on 27.8.2009. The defendant/present Respondent No.1 herself had given an application Exh.61 requesting the Court to impound the document i.e. Hakksod affidavit as the same is insufficiently stamped. The said application Exh.61 was given on 23.2.2009 i.e. prior to deposition of DW 5. Even plaintiff had filed say 9 W.P.No.4603/11

to the said application in which objection of insufficiency of stamp is raised but the said objection about insufficiency of stamp was not decided. I have also perused the certified copy of the said Hakksod affidavit. On the said document, Exh.80 is endorsed and it is mentioned as filed by the defendants, proved by DW 6 and it is written below that as IIIrd Joint C.J.S.D. However, the signature of the learned Judge does not appear on the said endorsement of exhibit. It is also clear that the defendants have not examined any DW 6. The question that would arise whether the said document is exhibited as is required U/o 13 Rule 4 of the C.P.C. Order 13 Rule 4 reads as under :

"Order XIII Rule (4)

4. Endorsement on documents admitted in evidence. - (1)

Subject

to the provisions of the next following sub-rule, there shall be endorsed on every document which has been admitted in evidence in 10 W.P.No.4603/11 the suit the following particulars,

namely :-

(a) the number and title of the suit,

(b) the name of the person producing the document,

(c) the date on which it was produced, and

(d) a statement of its having been so admitted;

and the endorsement shall be signed or initialled by the Judge.

(2) Where a document so admitted is an entry in a book, account or

record, and a copy thereof has been substituted for the original under

the next following rule, the particulars aforesaid shall be endorsed on the copy and the endorsement thereon shall be signed

or initialled by the Judge."

11. Perusal of said order 13 Rule 4, it is 11 W.P.No.4603/11 manifest that if the document is admitted in evidence in the suit, the particulars as are enlisted in Rule (4) of Order 13 have to be complied. The document contains an endorsement that it is proved by DW 6. There is no DW 6 on record. The said endorsement of 'exhibit' has to be signed or initialled by the Judge. No signature or initial of the learned Judge appears on said endorsement of 'Exhibit' nor there is a statement of the document having been admitted in evidence nor it contains the name of the person producing the document. All these anomalies would make it abundantly clear that the document was not

exhibited in accordance with Rule 4 of Order 13 of the C.P.C. It is trite that when law requires a particular thing to be done in particular manner, it has to be done in that manner. In view of that it will have to be held that the said document is not exhibited according to Rule 4 of Order 13 of the C.P.C. and the same is no exhibit in the eyes of law. In such circumstances, the judgment of the learned Single Judge of this Court in a case of "Sunil Tukaram Bharadkar Vs. Santosh Gopichand Rane" 12 W.P.No.4603/11

referred supra would be squarely applicable.

12. No doubt, in view of the judgment of the Apex Court in "Zaver Chand Vs. Pukhraj Surana" referred supra and also Full Bench of this Court in a case of "Mr.Hemendra Rasiklal Ghia Vs. Subodh Mody" referred supra, the objection regarding deficiency of stamp duty must be determined before it is marked as exhibit and can not be allowed to be raised subsequently. However, the objection regarding insufficiency of stamp was raised before the said document was marked as exhibit. Even the defendant who has relied on the said document and has produced the same had herself given an application (Exh.61) for impounding the said document as it is on insufficient stamp. In such cases, where the defendant herself admitted the document to be insufficiently stamped, so also the plaintiff had stated that the said document is insufficiently stamped, the Court should have first determined the deficit stamp duty. It is not a case that no objection was raised regarding the deficiency in the stamp duty prior to exhibiting the 13 W.P.No.4603/11 document but the Court did not pass any orders on the application for impounding the document being on insufficient stamp. The parties can not be faulted for the same. The Full Bench of this Court in a case of Mr.Hemendra Rasiklal Ghia Vs. Subodh

Mody" referred supra has laid down the criteria as to when the objection has to be decided by the Court. The Hon'ble Full Bench has laid down the following principles with regard to exhibiting the document and dealing with the objection.

"92. In view of the above analysis of the statutory provisions and our discussion, we,

accordingly, articulate our conclusions as follows :

Answer to Question-A:

As already noticed, (i) objection to the document sought to be produced relating to the deficiency of stamp duty must be taken when the document is tendered in evidence and such objection must be 14 W.P.No.4603/11 judicially determined before it is marked as exhibit;

(ii) Objection relating to the proof of document of which admissibility is not in dispute must be taken and judicially determined when it is marked as exhibit;

(iii) Objection to the document which in itself is inadmissible in evidence can be admitted at any stage of the suit reserving decision on question until final judgment in the case."

13. It is manifest that the objection regarding insufficiency of stamp has to be decided before exhibiting the document. In the present case, the learned trial Judge has failed to decide the said objection about the insufficiency of stamp though was raised before it was exhibited nor the procedure as is laid down under Rule (4) of Order 13 of the C.P.C. for exhibiting the document has been followed. The 15 W.P.No.4603/11

said endorsement of exhibit on the document is no endorsement in the eyes of law and can not be said to have been given proper 'exhibit' as per law.

14. In view of the above, it will have to be held that the Court below committed an error in rejecting the application Exh.82 filed by the plaintiff. The objection of the learned counsel for Respondents that as the order exhibiting the document is not challenged, the Writ Petition can not be entertained, can not be sustained for the reason the endorsement of exhibit on the document was not as per Rule (4) of Order 13 of the C.P.C.

15. In the result, the impugned order is quashed and set aside. The learned Judge shall decide about insufficiency of stamp duty of the said document, so also regarding other objections raised by the plaintiff.

16. Rule is accordingly made absolute in above terms. However, there shall be no order as to costs.

(S.V.GANGAPURWALA,J.)

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