



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 8131 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

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Approved for Reporting	Yes	No
	Yes	

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SAVITABEN BACHUBHAI TRIVEDI

Versus

TRIVEDI ROMABEN WD/O DIPAKBHAI BACHUBHAI TRIVEDI & ORS.

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Appearance:

MR SHEGUN B CHOKSHI(12790) for the Petitioner(s) No. 1

MR SP MAJMUDAR(3456) for the Petitioner(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Date : 23/06/2025

ORAL JUDGMENT

1. Heard learned advocate Mr. S.P. Majmudar with learned advocate Mr. Shegun Chokshi for the petitioner at length.
2. The present application is filed under Article 227 of the Constitution of India seeking following reliefs :-

“(A) YOUR LORDSHIPS may be pleased to issue a writ of mandamus/Certiorari or a writ in the nature of mandamus/Certiorari and/or any other appropriate writ, order or directions quashing and setting aside the impugned order dated 17.12.2024, passed below Exh. 113 in Regular Civil Suit No. 456 of 2015 (Old Special Civil Suit



No. 184 of 2009) by the 4th Additional Senior Civil Judge, Vadodara (Annexure-L) and further be pleased to allow the application below Exh. 113, in interest justice;

(B) During the pendency and final disposal of the present petition, YOUR LORDSHIPS may be pleased to stay the implementation of the impugned order dated 17.12.2024, passed below Exh. 113 in Regular Civil Suit No. 456 of 2015 (Old Special Civil Suit No. 184 of 2009) by the 4th Additional Senior Civil Judge, Vadodara (Annexure-L) in the interest of justice ;

(C) Pass any such other and/or further orders that may be thought just and proper, in the facts and circumstances of the present case.

The Short Facts of the case

3. The petitioner herein is original plaintiff, whereas respondents are original defendants of Regular Civil Suit No. 456 of 2015 pending before the 4th Additional Senior Civil Judge, Vadodara. The plaintiff has filed suit seeking declaration, permanent injunction, partition as well as challenged the sale-deed executed by defendant No.1 in favour of defendants No. 4 to 9 in relation to the suit properties which was dated 28.06.2007 registered with the competent authority at serial No. 6052. It appears that along with the suit, only photo copy of the said sale-deed is submitted by the plaintiff but not given exhibit so far as its original is not on record.

3.1 The evidence of plaintiff as well as defendants already



got over and despite an application given by plaintiff to exhibit the documents which are submitted by her, except the aforesaid sale deed, all other documents are given exhibits i.e. received in evidence. At that point of time, plaintiff did not raise any objection and even allowed to complete evidence of defendants.

3.2 Thereafter, plaintiff preferred an application below Exh. 105 under Order 11 rule 12 of CPC, whereby requested the trial Court to called upon the defendants Nos. 4 to 9 to submit original sale-deed dated 28.06.2007 registered with the competent authority at serial No. 6052 executed between defendant No.1 and defendant Nos. 4 to 9 before the trial court which is subject matter of challenge of the suit. Such application was allowed by the trial Court vide its order dated 20.07.2024, thereby, directed the defendants No. 4 to 9 to produce original copy of the sale-deed if available in their custody or in alternate submit the affidavit stating reason of its non-production.

3.3 It appears that defendant Nos. 4 to 9 through their power of attorney holder submitted an affidavit below Exh. 112 on 02.09.2024 whereby declared that aforesaid registered sale-deed is not in possession /custody as due to insufficiency of stamp, the same is not released by the

Registrar concerned, accordingly it is not available with them.

3.4 So, in view of the aforesaid facts, at the stage of final argument, the plaintiff had preferred the impugned application below Exh. 113 on 02.09.2024 whereby requested the trial Court to give exhibit to the aforesaid sale-deed. Such request of plaintiff was objected by defendants.

3.5 After hearing the parties at length, the trial Court has rejected the impugned application vide its order dated 17.12.2024 which is questioned by the plaintiff by filing the present writ application.

Submission of the petitioner- plaintiff

4. Learned advocate Mr. S.P. Majmudar with learned advocate Mr. Shegun Chokshi for the petitioner would submit that the trial Court has committed serious error of law by refusing to exhibit the sale-deed in question which is undisputed document by the defendants No. 4 to 9. He would respectfully submit that as per settled legal position of law, when document in question, though photo copy is not disputed by the other side, the same is required to be exhibited irrespective of fact that whether photo copy can



be proved as a secondary evidence or not.

4.1 Learned advocate Mr. Majmudar would further submit that defendants No. 4 to 9 in their oral evidence has referred such sale-deed, later on not allowed to object its exhibit on the ground that its original copy is not produced by them.

4.2 Learned advocate Mr. Majmudar would further submit that merely because an application to give exhibit was filed at the stage of final argument of suit, it could not have been rejected on the ground of negligence of plaintiff as it is settled law that rule of procedure is handmaid of justice and hyper technical view ought to have been avoided by the trial Court to advance the justice to the parties.

4.3 Learned advocate Mr. Majmudar would further submit that by exhibiting sale-deed in question, no prejudice would be caused to defendants No. 4 to 9 as they have already referred such sale deed in their evidence and as such document in question sought to be exhibited is undisputed so far its execution is concerned, except plaintiff has already challenged such sale-deed in the suit itself.

4.4 To buttress his argument, learned advocate Mr. Majmudar would refer and rely upon the judgment/order of



this Court as well as the Hon'ble Apex Court.

(i) Pankajben Rudradattbhai Rawal Vs. Harijan Deva Natha passed in Special Civil Application No. 6679 of 2023 dated 09.06.2023.

(ii) Nikhil Ashokkumar Shelke and ors. Vs. Subhash Ramchandra Alias Bhausahem Shelke and ors. Passed in Special Civil Application No. 11373 of 2023 dated 22.08.2024.

(iii) Sugandhi (Dead) by Lrs. and another Vs. Rajkumar Rep. By his Power Agent Imam Oli reported in (2020) 10 SCC 706.

4.4 Making the above submission, learned advocate Mr. Majmudar would request this Court to allow the present writ application.

Points for determination.

(i) Whether in the facts and circumstances of the case, the sale-deed in question can be exhibited or not?

(ii) Whether in the facts and circumstances of the case, any gross error of law or jurisdictional error committed by the

trial Court while rejecting the impugned application filed below Exh. 113 by the plaintiff seeking exhibit of photo copy of sale-deed in question?

ANALYSIS

5. The facts which are enunciated hereinabove are not in dispute. The plaintiff since inception of the suit challenged the aforesaid sale-deed executed in favour of defendant Nos. 4 to 9. For the reason best known to the plaintiff, before commencement of trial of suit, she never called upon defendant Nos. 4 to 9 nor other defendant, to produce the original copy of such sale-deed though specifically challenged in the suit. The plaintiff has submitted its photo copy which is only marked all throughout and not given exhibit which has been clearly observed by the trial Court in its impugned order that when plaintiff has after completion of his oral evidence and gave an application to exhibit the documents, trial court was pleased to order to give exhibit to all her documents except the aforesaid sale-deed in question. Nonetheless, plaintiff never had raised any question about non exhibiting aforesaid sale-deed at relevant point of time between year 2019 to 2014.

5.1 The reason best known to plaintiff, a production



application came to be filed after closure of evidence of defendants, which appears to have been filed under Order 11 rule 12 of CPC. The trial Court did allowed such application though filed at a very belated stage, thereafter, defendant Nos. 4 to 9 has submitted an affidavit through their power of attorney holder contending inter-alia that due to insufficiency of stamp, the sale-deed in question is retained by Registrar thereby, not available its original copy with them for its production before the trial Court.

5.2 Once, such fact came to light and not disputed by the plaintiff, it would be incumbent upon the plaintiff to get its certified copy and could have been produced before the trial Court before completion of evidence, thereby, it could have been exhibited subject to fulfill other conditions stipulated in Section 63 read with Section 65 of Evidence Act.

5.3 The plaintiff has not chosen to adopt such recourse rather filed impugned application with a request to give exhibit to photo copy of sale-deed in question which was objected by the defendants.

5.4 Ordinarily, it is true that rule of procedure is handmaid of justice and hyper technical approach should be avoided by the trial Court but at the same time rule of procedure can



not bend to such an extent that every legal requirement thereby evidence can be brought on record of the civil suit can go by, irrespective of admissibility of such evidence whether receivable or not required to be admitted or not on the pretext of handmaid of justice. To my mind, such would not be an intention of maker of rule of procedure when made a century back. Further, when in a civil trial where strict rule of Evidence Act would apply, trial court is always requires to consider provisions of Evidence Act vis-à-vis CPC. Of course, technicality should not override justice oriented approach but such an approach can not be and should not be arbitrary, fanciful and contrary to mandatory provision of law.

5.5 At this stage, it is apposite to refer and to rely upon the observation so made by Hon'ble Apex Court in regards to principle as regards to rule of procedure is handmaid of justice in the case of ***Atcom Technologies Ltd. vs Y.A. Chunawala And Co. reported in (2018) 6 SCC 639***, more particularly in Para-17 (highlighted portion) wherein it is held as under:-

"17. We fail to persuade ourselves with this kind of reasoning given by the High Court in condoning the delay, thereby disregarding the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 and the spirit behind it. This reason of the High Court that delay was condoned 'by balancing the rights and equities' is farfetched and, in the process, abnormal delay in filing the written statement is condoned



without addressing the relevant factor, viz. whether the respondents had furnished proper and satisfactory explanation for such a delay. The approach of the High Court is clearly erroneous in law and cannot be countenanced. No doubt, the provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 are procedural in nature and, therefore, handmaid of justice. However, that would not mean that the defendant has right to take as much time as he wants in filing the written statement, without giving convincing and cogent reasons for delay and the High Court has to condone it mechanically.”

(emphasis supplied)

5.6 So far in the present case, where it came to light that sale deed in question is not released by the Registrar due to insufficiency of stamp. It would be profitable to read and rely upon Section 34 of the Gujarat Stamp Act, 1958 which reads as under :-

“34. Instrument not duly stamped in admissible in evidence etc :-

No instrument chargeable with duty [(not being an instrument referred to in sub-section (1) of section 32A),] shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped:

Provided that

(a) any such instrument not being an instrument chargeable with a duty of twenty naye paise and less shall be subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, of the amount required to make up such duty, [together with a penalty as per clause (b) of sub-section (1) of section 39 of the Act.]



(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898 (V of 1898);

*(d) nothing herein contained shall prevent the admission of any instrument in any Court, when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act.”
(emphasis supplied)*

5.7 At this stage, it would be profitable to place reliance upon decision of Hon’ble Apex Court in a case of **Vijay V/s Union of India & Ors. reported in (2023) 17 SCC 455** wherein after considering similar provision of law held thus:

“[8] To adjudicate this issue, it is pertinent to reproduce Section 35 of the Stamp Act:

"Section 35 - Instruments not duly stamped inadmissible in evidence, etc. - No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instruments are duly stamped: Provided that-

(a) any such instrument (shall] be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;



xxxx"

[9] It is evident from a bare perusal of the section that it prohibits admission in evidence of instruments that are chargeable with duty unless they are "duly stamped." Duly stamped as defined under Section 2(11) of the Stamp Act means that the instrument bears a stamp and that such stamp has been affixed or used in accordance with law for the time being in force in India.

[28] The object of the Stamp Act is to collect proper stamp duty on an instrument or conveyance on which such stamp duty is payable. Section 35 is a provision to cater for the instruments not being properly stamped and, as such, not being admissible in evidence. A document not duly stamped cannot be admitted for any purposes. To impose the bar of admissibility provided under this section, the following twin conditions are required to be fulfilled:

(i) Instrument must be chargeable with duty;

(ii) It is not duly stamped."

(emphasis supplied)

5.8 Thus, from bare reading of said mandatory provision of law applicable so far State of Gujarat and considering ratio of decision in a case of **Vijay** (supra), it is clear like a day that when instrument is not duly stamp can not be received in evidence and can not be even admitted as an evidence for any purpose by any person irrespective of any consent of the parties authority to receive evidence.

5.9 When it has been brought and declared before the trial Court that sale deed in question is not released by the Registrar due to insufficiency of stamp, such document by no

stretch of imagination can be received and or admitted in evidence, especially when the plaintiff has challenged such sale-deed having made prayer to that effect in the suit.

6. The judgments which are cited and relied by the learned advocate Mr. Majmudar for the petitioner would not be applicable to the facts of the present case as in the light of the aforesaid peculiar facts and circumstances and as per mandatory provisions of Section 34 of the Gujarat Stamp Act, the document which is sought to be exhibited i.e. sale-deed in question can not be received/admitted in evidence.

7. Nonetheless, I would like to deal with the ratio of such judgments passed by the Co-ordinate Bench of this Court delivered on the basis of its in-peculiar facts of the case.

7.1 In a case ***Nikhil Ashokkumar Shelke*** (supra) the plaintiff came forward to give his consent to admit documents submitted by the defendants and in that facts situation the co-ordinate Bench has observed as under :

"When plaintiff is at liberty to admit the document of defendant and if he does so, whether it is primary or secondary document, it shall be oblivious. It is document of defendant and plaintiff is relying and admitting such document on his own wisdom and therefore, it can be exhibited even at the

*stage of argument. **This issue is based on common thread of sense without referring provisions of Evidence Act.....***"

So, the Co-ordinate Bench of this Court has not taken into account the provisions of Evidence Act while order exhibiting the document in question of that case as plaintiff has given consent to exhibit document submitted by defendant. Whereas, in the present case, the document is submitted by the plaintiff i.e. photo copy of the sale deed executed in favour of defendants No. 4 to 9 by defendant No.1 and as such defendant Nos. 4 to 9 though referred such sale deed in their evidence albeit, object its exhibit. Furthermore, provisions of Evidence Act was not considered while passing said order. Thus, considering peculiar facts and circumstances of that case, order was passed to exhibit the document.

7.2. In the case of ***Pankajben*** (supra) again the Co-ordinate Bench of this Court has ordered exhibit of document submitted by the defendants produced alongwith his written statement and request were made by the plaintiff to give exhibit to such document of defendant, meaning thereby, the defendant can not object the document which is submitted by himself. The Co-ordinate Bench of this Court after referring the provisions of Section 63 and 65 of the Evidence Act, ultimately permitted the plaintiff to produce



true copy of the sale-deed produced at mark-17/1 in that case. So, the plaintiff of that case was permitted to produce true copy of such document which was marked as 17/1, whereas the plaintiff in the present case, did not chose to submit true copy of the sale deed in question and as such in the impugned order itself the trial Court has categorically observed that plaintiffs neither submitted certified copy (true copy) of the sale-deed nor any application filed for proving such document by requesting to issue witness summon for the purpose of proving the document i.e. sale deed in question, more particularly when the plaintiff came to know in the year 2019 that such sale deed was not ordered to be exhibited.

7.3 So, in both these aforesaid decisions passed by co-ordinate bench of this Court, question of insufficiency of stamp and whether such document/sale deed can be admitted/received in evidence irrespective of S. 34 of Gujarat Stamp Act was not arose then not dealt with in such decisions. Thus, both these decisions have no help to petitioner.

7.4 Lastly, the judgment of the Hon'ble Court in the case of ***Sugandhi*** (supra), there is no cavil that procedure is handmaid of justice and if procedural violation does not



seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. At the same time, the Hon'ble Apex Court in the case of ***Atcom Technologies Ltd (supra)*** has observed that court should not mechanically applied such principle i.e. rule of procedure is handmaid of justice. So, when mandatory provision, Section 34 of the Gujarat Stamp Act prohibit to admit document not duly stamp being inadmissible in the evidence, the sale-deed in question having found insufficiently stamp which is not disputed by the plaintiff can not be received in evidence, thereby question of giving exhibit to such document would not arise at all.

8. Thus, in view of the aforesaid peculiar facts and circumstances of the present case as well as mandatory provision of Stamp Act and so also decision of Hon'ble Apex Court referred herein above, the sale-deed in question can not be exhibited.

9. It is also now well settled legal position of law that unless there is gross error of law and or jurisdictional error committed by the trial Court while exercising its power under Article 227 of the Constitution of India, this Court can not lightly interfered with such order passed by the trial



Court. It would be profitable to refer and rely upon the ratio laid down by the Hon'ble Apex Court in the case of **(i) Sameer Suresh Gupta TR PA Holder vs. Rahul Kumar Agarwal, reported in 2013 (9) SCC 374 (Para 6 and 7) and (ii) Garment Craft v. Prakash Chand Goel, reported in (2022) 4 SCC 181 (Para 15 and 16).**

Conclusion.

13. In the light of the aforesaid observation, discussion and reasons, I am of the view that neither any gross error of law nor any jurisdictional error committed by the trial Court while rejecting the impugned application and in the aforesaid peculiar facts and circumstances of the case and the provisions of law discussed hereinabove, the sale-deed in question can not be admitted in evidence thereby can not be exhibited.

14. Thus, the present writ application lacks merit and requires to be rejected, which is hereby rejected. No order as to costs.

SALIM/

Sd/
(MAULIK J.SHELAT,J)