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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.1236 OF 2015

- 1 Nitin s/o Vithal Chaudhary,
age: 50 years, Occ: Agri. &
Business.
- 2 Sau. Anita w/o Nitin Chaudhary,
age: 44 years, Occ: Agri. &
Business,

Both R/o Near Kumbharkhunt,
Old Dhule, Tq. & District Dhule.

PETITIONERS

VERSUS

- 1 Madhavrao @ Rajendra Walji Patil,
age: 38 years, Occ: Agriculture;
- 2 Sunil s/o Walji Patil,
age: 34 years, Occ: Agriculture;
- 3 Sandip w/o Walji Patil,
age: 34 years, Occ: Agriculture;
- 4 Pramila d/o Walji Patil,
age: 32 years, Occ: Household;
- 5 Smt.Vimalabai wd/o Walji Patil,
age: 56 years, Occ: Household;

All residing at Avdhan, Tq. And
District Dhule.

RESPONDENTS

Mr.K.C.Sant, Advocate for the petitioners
Mr.S.P.Brahme, Advocate holding for Mr.Sudhir Nandode (Topiwale),
Advocate for Respondent No.1.

CORAM : N.W. SAMBRE, J.

DATE : 23rd November, 2015

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ORAL ORDER :

1. The appellate Court, while dealing with the appeal arising out of decree for specific performance of contract, was called upon to deal with application Exhibit-6, moved by original plaintiffs seeking impounding of agreement, on which the suit for specific performance was based.

2. The learned appellate Court granted the said application and ordered impounding of agreement Exhibit-42 under Section 34 of the Maharashtra Stamps Act and further ordered that the stamp duty be determined and deficit stamp duty along with penalty be recovered from the petitioners.

3. While questioning the impugned order, Mr.Sant, learned Counsel appearing on behalf of petitioners/plaintiffs/appellants, would urge that it was the pleading of both the parties that possession of the suit property is with them, respectively. According to him, once the parties have come out with such pleadings, the order of impounding of the agreement ought not to have been passed.

4. The aforesaid submissions are opposed by Mr.Brahme, learned Counsel appearing on behalf of Respondent No.1, by relying upon the judgment of this Court in the matter of **Bhupendrabhai Rambhai Patil Vs. Lilabai Mahadeorao Labde & another**, reported in **2011 (3) Bom. C.R. 434**, based on which he would then urge that it is the recitals in the agreement which shall prevail for the purpose of reaching to a conclusion

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as to whether the possession is passed or not. In case possession is handed over, the Court was right in ordering impounding of the document. Learned Counsel also placed reliance on the judgment of the Andhra Pradesh High Court, in the matter of **B. Bhaskar Reddy Vs. Bommireddy Pattabhi Rami Reddy (died) Per L.Rs. & others**, reported in **2011 (1) CCC 535 (A.P.)**

5. Having bestowed my anxious thought over the issue, it is not in dispute that the recitals in agreement Exhibit-42 speak of passing over of possession in favour of the plaintiffs.

6. The law laid down in the matter of Bhupendrabhai Rambhai Patil (cited supra), deals with the above aspect and the relevant consideration appears to be the recitals in the document. In view thereof, in my opinion, no case for interference in the extraordinary jurisdiction of this Court is made out, as the learned Court, while passing the impugned order, has taken into account all the facets of the matter and it is the petitioners who have invited the order for themselves.

7. In view thereof, no case for interference is made out. Petition, thus, stands rejected with no order as to costs.

(N.W. SAMBRE, J.)

amj