

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

WRIT PETITION NO. 2102 OF 2015

Rukhminibai Kushaba Rithe,
Age: 75 years, Occ: Household,
R/o. Chikalthana, Aurangabad,
Dist. Aurangabad & ors.

...Petitioners

versus

Sudhir s/o Jagmohandas Mehta,
Age: 51 years, Occ: Agri.,
R/o. Akshay, Govind Nagar,
Station Road, Aurangabad,
Tq. & Dist. Aurangabad & ors.

...Respondents

.....
Mr. P.G. Godhamgaonkar, Advocate for petitioners
Mr. Anand Bhandari, Advocate for respondent Nos. 1 & 2
.....

CORAM : N.W. SAMBRE, J.

DATE : 3rd DECEMBER, 2015

ORAL ORDER :

In Regular Civil Suit No. 539 of 2013, learned 7th Civil Judge, Junior Division, Aurangabad passed an order impounding General Power of Attorney, which was tendered by the plaintiff and for handing same for calculation of stamp duty and other charges as are liable to be paid, which order is impugned in the present petition.

2. Mr. Godhamgaonkar, learned Counsel for the petitioner, while inviting attention of this Court to the provisions of Section 2(g) and 2(r) of the Maharashtra Stamp Act, which defines 'conveyance'

and 'power of attorney', would urge that plain reading of these two definitions would draw only conclusion that 'general power of attorney' need not be stamped under the Act but is required to be treated as simple document, for which stamp duty as prescribed under the Statute is already paid. He would then urge that since trial is at advanced stage, objection to non-registration and exhibiting 'general power of attorney' in evidence ought not to have been entertained.

3. While opposing the prayer, Mr. Bhandari, learned Counsel for the respondent Nos. 1 and 2 invited attention of this Court to Article 48(f) to Schedule-1 of the Maharashtra Stamp Act, which reads thus :

	Description of Instrument	Proper Stamp Duty
48.	POWER OF ATTORNEY not being a Proxy: -	
	(f) [(i) when given for consideration and authorising to sell an immovable property;]	The same duty as is leviable on a Conveyance under clause (a), (b), [or (c), as the case may be, of Article 25, on the market value of the property.
	[(ii) when authorising to sell or transfer immovable property without consideration or without showing any consideration, as the case may be,-	
	(a) if given to the father, mother, brother, sister, wife, husband, daughter, [son, grandson, granddaughter or father, mother, brother or sister of the spouse] and	Rupees five hundred
	(b) in any other case ...	The same duty as is leviable on a Conveyance under clauses (b), [or (c)], as the case may be, of Article 25, on the market value of the property.]

4. According to him, in view of the order of learned trial Court impounding general power of attorney, which confers power by the plaintiff to transfer the property was rightly ordered to be sent for adjudication for payment of stamp duty and other charges.

5. Having considered rival submissions, it is required to be noted that both the Sections 2(g) and 2(r) of the Act defines 'conveyance' and 'power of attorney'. It is not in dispute that the document in question that is 'general power of attorney' empower the plaintiff-petitioner to sell the property in question, for which the same was executed. It is also not in dispute that Article 48(f) to Schedule-1 of Maharashtra Stamp Act empowers the Court to order levy or stamp duty in accordance with the said Article. Learned trial Court has considered the powers given to attorney in relation to transfer of property and as such, has passed the order impugned.

6. The order impugned appears to be in tune with Article 48(f) to Schedule-1 of the Maharashtra Stamp Act. So far as second contention of the petitioner that the application and order for impounding is considered at advanced stage of trial is concerned, it is required to be taken note of the fact that the document 'general power of attorney' is exhibited in the evidence. As such, stage at

which the order of sending document for adjudication for payment of requisite stamp duty is required to be considered at appropriate stage. No case is made out. The writ petition fails, stands dismissed.

[N.W. SAMBRE, J.]