IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9974 OF 2013

Vasant Nagnath Gapat ..PETITIONER

VERSUS

Prashant Panditrao Chede ..RESPONDENT

Mr S. Y. Mahajan, Advocate for petitioner;
Mr V.M. Humbe, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 21st April, 2015

ORAL ORDER :

In a suit for injunction, based on the alleged agreement dated 16th July, 1988 (Exh.57), an application (Exh.55) came to be moved by the petitioner/plaintiff, who is owner of the property, before the Trial Court, at the time of recording of evidence, to call upon the defendant to pay deficit stamp duty and penalty.

2. The application (Exh.55) came to be rejected by the Joint Civil Judge Junior Division, Washi, by his order dated 30th September, 2013.

3. Mr Mahajan, learned Counsel appearing on behalf of the petitioner/plaintiff would urge that the impugned order does not take into

account the very scheme of the provisions of sections 33 and 34 of the Maharashtra Stamps Act. He has invited attention of this Court to the specific provision, i.e. section 34 (ii) of the Maharashtra Stamps Act, so as to canvass that the Act provides for penalty @ 2% of the deficit portion of the stamp duty for every month or part thereof, from the date of execution of such instrument.

4. Learned Counsel would further urge that in case of non-payment of stamp duty and the penalty, such document is not admissible in evidence.

5. If the above referred contentions of the present petitioner/plaintiff are examined in the light of the observations made by the Trial Court in the order impugned and the documents which are produced by the respondent/defendant at record pages 37 and 38, which disclose deposit of stamp duty of Rs.1,590/- in the Government Treasury with penalty of Rs.3,180/-. The Collector Stamps has duly acknowledged the said payment. If the petitioner/plaintiff is aggrieved by the same, it is always open for him to question the same before the competent authority under the Maharashtra Stamps Act and not to raise an objection like the one, in the suit in question. The fact remains that if the document in question was subjected by the defendant for adjudication before the Collector of Stamps under the provisions of the Maharashtra Stamps Act and the said authority

has already adjudicated the stamp duty and penalty thereon, the learned Trial Court was right in presuming said fact in favour of the respondent/defendant.

6. In view of above, no case for interference is made out. Petition stands dismissed, with liberty to the petitioner to take appropriate objection before the competent authority under the Maharashtra Stamps Act, in relation to the grievance made herein above.

In the circumstances, there shall be no order as to costs.

(N.W. SAMBRE, J.)

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