IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 525 OF 2015

Abhijit s/o Ashokkumar Bogawat,
Age: 34 years, Occ: Agri. & Business,
R/o. Khist Galli, Ahmednagar. ...Petitioner

versus

1. Radhakisan s/o Vithal Tube,
Age: 50 years, Occ: Agri.,

2. Tukaram s/o Vithal Tube,
Age: 45 years, Occ: Agri.,

3. Satish s/o Vithal Tube,
Age: 40 years, Occ: Agri.,

4. Vithal s/o Mahadu Tube,
Age: 75 years, Occ: Agri.,

All R/o. Tube Mala, Kedgaon
Devi Road, Kedgaon, Ahmednagar.

5. Mahesh Nagari Sahakari Patsanstha,
Branch Bhingar, Bhingar, Ahmednagar. ...Respondents

.....
Mr. V.S. Bedre, Advocate for petitioner
Mr. N.V. Gaware, Advocate for respondent Nos. 1 to 4
.....

CORAM : N.W. SAMBRE, J.

DATE : 8th DECEMBER, 2015

ORAL ORDER :

Based on an agreement dated 09/06/2006, which is unregistered, the respondents-plaintiffs filed Special Civil Suit No. 169 of 2009 in the Court of Civil Judge, Senior Division, Ahmednagar for specific performance. Since the agreement dated 09/06/2006 was unregistered one, pursuant to an application Exhibit-1 at the behest of the plaintiffs, on 09/12/2010, the said document was impounded in view of Section 33 of the Bombay Stamps Act, 1958 with further directions to forward the said document with the copy of order passed below Exhibit-1 to the Registrar of Stamps pursuant to Section 37(2) of the Bombay Stamps Act, 1958 for recovery of deficit stamp duty.

2. Present petitioner-defendant No. 1 thereafter filed an application Exhibit-44 alleging that the alleged agreement is inadmissible in evidence, which is an deed of exchange, as the same is not properly stamped and registered, hence the plaintiffs are not entitled for claim of specific performance. It is claimed that in view of same, suit is liable to be dismissed.

3. An application Exhibit-44 was resisted by the plaintiffs stating that pursuant to the order passed below Exhibit-1 on 09/12/2010, the plaintiffs have paid appropriate stamp duty as ordered by the Collector and as such, according to them, the document is admissible in evidence and prayed for rejection of the application. The application came to be rejected by an order dated 30/11/2013 by learned Civil Judge, Senior Division, Ahmednagar, as

such, present writ petition.

4. Mr. Bedre, learned Counsel for the petitioners, while inviting attention of this Court to the provisions of Maharashtra Stamps Act and Registration Act, particularly Sections 17 and 49 of the Registration Act, would urge that the document in question is since unregistered is not admissible in evidence and has sought to place reliance upon the judgment of this Court in the matter of ***Nilkanth s/o Sampat Khandade vs. Bhaurao s/o Sampat Khandade and another [2008(4) Mh.L.J. 215], Nivrutti s/o Kushaba Binnar vs. Sakhubai w/o Keru Jorvar and others [2009(3) Mh.L.J. 737]*** and Full Bench judgment of Patna High Court in the matter of ***Ashutosh Saha and another vs. Mohammad Yusuf Ali and others*** reported in ***AIR 1987 Patna 102***. According to him, Section 49 of the Registration Act is required to be adhered to. He would then urge that the law cited in above referred judgments take care of issue as is sought to be canvassed in the matter.

5. Per contra, Mr. Gaware, learned Counsel for the respondents, while inviting attention of this Court to the fact that, the document was already ordered to be impounded and the plaintiffs have paid requisite stamp duty and complied with the order in terms of provisions of Section 33, 37(2) of the Act and as the plaintiffs have

paid requisite stamp duty. According to him, the petition lacks merits and liable to be rejected. He would draw support from the judgment of this Court in the matter of ***Krishna Sheena Shetty vs. Suresh Anant Sawant and another [2008(4) Bom.C.R. 313]***, and in the matter of ***Canwood Agencies Pvt. Ltd. vs. Namdeo Pandurang Panchanal & another [2004(O) BCI 494]***. He prays for dismissal of the writ petition.

6. Having considered the rival submissions of the parties, it is to be noted that learned trial Court has noted that the document in question is unregistered exchange deed, which was executed by and between the plaintiffs and defendant. Learned trial Court then considered the provisions of Section 17 of the Registration Act, as are pressed into service by the petitioners for making document inadmissible and rejection thereof. The trial Court then noticed that the document in question after being impounded pursuant to Section 37 of the Act, upon assessment of stamp duty and penalty, the plaintiffs have paid stamp duty to the tune of Rs. 27,000/- and Rs.3780/- by way of Challan and Collector of Stamps has accordingly certified the same. Learned trial Court then noted that the document in question has become admissible in evidence, as there is compliance of provisions of Section 34 of the Bombay Stamps Act.

7. It is required to be noted herein that pursuant to the order passed below Exhibit-1 ordering impounding of the document under Section 33 of the Act and then forwarding the same to the Collector of Stamps under Section 37(2) of the Act, the plaintiffs have complied with necessary requirements for making the document admissible in evidence.

8. In view of same, it is not open for the petitioners to raise question as regards inadmissibility of the said document on that count. Reliance placed by learned Counsel for the petitioners upon the judgment of this Court in the matter of Nilkanth s/o Sampat Khandade, Nivrutti s/o Kushaba Binnar and judgment of Patna High Court in the matter of Ashutosh Saha (supra) is wholly misplaced, as in the matter of Nilkanth s/o Sampat Khandade, it was admitted position on record that the plaintiff has not complied with the requirements of Sections 34 and 37 of the Act and in the said matter, the suit was for partition and possession, wherein possession of the defendant was admitted. So far as the judgment in the matter of Nivrutti s/o Kushaba Binnar, in the matter of Nilkanth s/o Sampat Khandade and also to the case of Ashutosh Saha, in my opinion, for the reason cited supra the said law has no applicability to the case in hand.

9. It is required to be noted herein that in the judgment of Krishna Seena Sheety's case cited supra, this Court has observed in paragraph-9 thus :

> “9. Perusal of the provisions contained in section 34 of the Act show that it deals with admissibility of an instrument either not duly stamped or insufficiently stamped. This section provides a procedure for admission of such instrument in evidence on payment of the duty with which the same is chargeable, or in the case of an instrument insufficient stamped, the amount required to make up such duty and in addition thereto a penalty. This is so because if an instrument chargeable with the duty is produced before Court by any person to receive it in evidence is not admissible unless it is duty stamped. In other words, such instrument, subject to all just exceptions, could be admitted in evidence only on payment of the duty with which the same is chargeable and if the instrument is insufficiently stamped, the amount required to make up such duty, and in addition thereto the penalty at the rate provided for under section 34(a)(ii) of the Act.”

10. Similar view is also expressed in the matter of M/s. Canwood Agencies Pvt. Ltd., cited supra, of which paragraph-7, 7.1 and 7.2 are relevant, which reads thus :

> “7. That takes me to consider the objection that the said document was insufficiently stamped. When the document

is tendered in evidence by the party while in the witness box and if an objection is raised by the opposite party that the document is inadmissible in evidence as it is not duly stamped and also for want of registration, it is obligatory upon the learned Judge to apply his mind to the objection raised and to decide the objection in accordance with law. Tendency, sometimes is to postpone the decision to avoid interruption in the process of recording evidence and, therefore, a very convenient device is resorted to, of marking the document in evidence subject to objection. Undoubtedly, in a given case, the Courts can resort to such device. But if the objection is raised as to admissibility of a document on the ground that the document is not duly stamped, it is necessary for the Trial Court to decide the objection before proceeding further with the case. In other words, in such situation the Court should judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case.

7.1 The provisions contained in sections 33, 34 and 37 of the Act of 1958 in particular, are clear which provide the procedure to be adopted by a Court whenever a question is raised that an instrument is not duly stamped. Whenever such instrument is tendered in evidence, the Court has to impound it as obligated by Section 33 and then proceed as required by Section 34. That section empowers the Court, to recover deficit stamp duty alongwith penalty. Section 33 provides that if a person having by law authority to receive evidence and the Civil Court is one such person before whom any document chargeable with duty is produced and it is found that such document is not duly stamped, the same has to be impounded. The duty and penalty has to be recovered according to law. Section 34 prohibits its admission in evidence till such duty and penalty is paid. Therefore, unless the stamp duty and penalty is paid, such document is not admissible in evidence. In other words, such document cannot be received in evidence and the opposite party cannot be invited to cross-examine the witness in respect of such document.

7.2 Sub-section (1) of Section 37 provides that the Court has power to admit the document in evidence if the party producing the same would pay the stamp duty together with a penalty as provided by Section 34 or duty as provided by Section 36. When the Court chooses to admit the document on compliance with such condition, the Court need forward only a copy of the document to the Collector, together with the amount collected from the party for taking adjudicatory steps. But if the party refuses to pay the amount aforestated, the Court has no other option but to impound the document and forward the same to the Collector, as provided under sub-section (2) of Section 37. On receipt of the document through either of the said avenues the Collector has to adjudicate on the question of deficiency of stamp duty. If the Collector is of the opinion that such document is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same together with the penalty provided by Section 34. Unless the aforestated procedure is scrupulously followed by the Court, a document which is not duly stamped is not liable to be

> looked into for any purpose or received in evidence. The question of inviting the opposite party to cross-examine the witness to prove such document, does not arise. The opposite party cannot be compelled to cross-examine the witness unless the procedure contemplated under Sections 33, 34, and in particular 37 of the Act of 1958 is scrupulously complied with."

11. In view of above, in my opinion, the view taken by learned trial Court in rejecting the application Exhibit-44 is in tune with the provisions of Bombay Stamp Act. That takes me to the only conclusion that the objection that the said document is not appropriately valued under Bombay Stamps Act, 1958, is liable to be rejected. No case for interference is made out. The writ petition fails, stands dismissed.

[**N.W. SAMBRE, J.**]

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