

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO.5738 OF 2015**

**Chanbasappa Manikrao Birajdar**

**..Petitioner**

**Vs.**

**Gurusidhappa Chanvirappa Prachande**

**..Respondent**

**Mr. A. B. Tajane for the Petitioner**

**Mr. Kapil Shetye i/b Mr. Randhir Thorat for the Respondent**

**CORAM : R. M. SAVANT, J.**

**DATE : 14<sup>th</sup> SEPTEMBER, 2015**

**P.C.**

1           The Writ Jurisdiction of this Court is invoked against the order dated 4-12-2014 passed by the Learned 2<sup>nd</sup> Joint Civil Judge, Senior Division, Solapur, by which order, the application Exhibits 66 and 67 came to be rejected.

2           In so far as the Exhibit 66 is concerned, the same was filed for de-exhibiting Exhibit 63 i.e. Agreement to Sale dated 6-11-2000 between the Plaintiff and the Defendant. In so far as the application Exhibit 67 is concerned, the same was rejected on the ground that the same was premature.

3           The document Exhibit 63 was exhibited at the trial of the Suit as it finds mentioned in the affidavit of examination in chief of the Defendant in support of his case that he has been handed over possession. In my view, since

the document is already exhibited that part of the impugned order whereby the application Exhibit 66 has been rejected does not merit any interference.

4           In so far as Exhibit 67 is concerned, the same was filed on the ground that the said document has not been properly stamped and therefore sought the impounding of the document and to be sent to the adjudicatory authority for the computation of the stamp duty payable on the said document. The said application Exhibit 67 was replied to on behalf of the Defendant and the reply was interalia to the effect that the payment of stamp duty would only arise if the document is presented for registration and secondly that the said document provides for execution of another document and therefore is not compulsorily registrable under Section 17 of the Registration Act.

5           The Trial Court considered the said application and as indicated above by the impugned order dated 4-12-2014 has rejected the same on the ground that the said application is premature. The Trial Court was of the view that unless the document is subjected to cross-examination and the evidentiary value of the said is determined viz-a-viz the rights, obligations and duties of the parties, the said document could not be impounded. The Trial Court also observed that if the document is required to be impounded, the same can also be done at the time of conclusion of evidence.

6           In my view, the Trial Court has erred in not impounding the document when an objection has been taken on behalf of the other side that the said document has not been properly stamped. The Trial Court ought to have noted that the Defendant seeks to place reliance on the said document in support of his case of being put in possession in part performance of the contract, where the document is susceptible to payment of stamp duty or otherwise, is for adjudicating authority to decide. It is not for the Trial Court to state that upon deciding the evidentiary value a decision can be taken as to whether the document is required to be impounded or not. This, in my view, would be contrary to the mandate of Section 33 of the Stamp Act. However, the document is required to be impounded and sent to the adjudicating authority. It is open for the party who has produced the document to raise the said contentions as are available before the stamp authority as regards its stand that stamp duty is not payable and it is for the adjudicating authority to consider the said contentions.

7           In my view therefore, the order passed on Exhibit 66 does not merit any interference. In so far as the order passed on Exhibit 67 is concerned, the same is required to be quashed and set aside and is accordingly quashed and set aside, resultantly the application Exhibit 67 would stand allowed. The Trial Court is directed to impound the said document and send it to the Collector of Stamps Solapur for adjudication. Needless to state that the

Collector of Stamps Solapur would by giving proper opportunity to the Respondent herein adjudicate upon the said document. The Trial Court is at liberty to direct the Collector of Stamps, Solapur to adjudicate the same within a particular time frame.

8                      With the aforesaid directions, the Writ Petition is disposed of.

**[R.M.SAVANT, J]**

**CERTIFICATE**

Certified to be true and correct copy of the original signed order