

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 4682 OF 2015

Shri. Bhudha Bhila Pardhi,
Age 40 years, Occu. Agriculture
At Post Pardhi Wada, Sindkheda,
Tal. Shindkheda, Dist. Dhule.

....Petitioner.

Versus

Hausabai Magan Pardhi,
Age 72 years, Occu. Agriculture,
Through - Magan Nhanku Pawar (Pardhi),
At Post Mora Bhagal, Hanuman Tekdi,
Jitendra Nagar, House No. 85, Rander,
Surat, (Gujrat).

....Respondent.

WITH
WRIT PETITION NO. 4683 OF 2015
WITH
CIVIL APPLICATION NO. 10672 OF 2015

Manishabai Budha Pardhi,
Age 35 years, Occu. Farmer,
At Post Pardhi Wada, Sindkheda,
Tal. Shindkheda, Dist. Dhule.

....Petitioner.

Versus

Magan Nhanu Pardhi,
Age 70 years, Occu. Farmer,
At Post Mora Bhagal, Hanuman Tekdi,
Jitendra Nagar, House No. 85, Rander,
Surat, (Gujrat).

....Respondent.

WITH
WRIT PETITION NO. 4817 OF 2015

Bebibai Budha Pardhi,
Age 40 years, Occu. Agriculture,

At Post Pardhi Wada, Sindkheda,
Tal. Shindkheda, Dist. Dhule.

....**Petitioner.**

Versus

Raju Magan Pardhi,
Age 46 years, Occu. Farmer,
At Post Mora Bhagal, Hanuman Tekdi,
Jitendra Nagar, House No. 85, Rander,
Surat, (Gujrat).

....**Respondent.**

Mr. M.V. Bhamre, Advocate for petitioners.

Mr. S.P. Shah, Advocate for respondents.

CORAM : T.V. NALAWADE, J.

DATED : 22nd December, 2016.

ORAL JUDGMENT :

1) Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2) In the three suits, the applications were filed by plaintiff for impounding of the documents like agreement written on stamp paper of Rs.100/- denomination and the possession receipt. Readiness was shown by the plaintiff to pay the stamp duty and penalty.

3) The learned Judge of the Trial Court has rejected the applications by holding that such step was not taken for about three years. Other reason is given that in view of the provision of

section 47 of Indian Registration Act, the agreement can be considered for collateral purpose when the suit is filed for relief of specific performance of contract.

4) The reasoning given by the Trial Court shows that the Court has not touched the provisions of Maharashtra Stamp Act, 1958. Both the sides took this Court through the provisions of sections 33 to 37 of the said Act. These provisions show that it is the duty of the Court to see that the document on which proper stamp duty is not paid, is impounded and further procedure is followed. It appears that in the present matters, there is some misconception. In the agreement which was written on stamp paper, the consideration amount was shown, but separate possession receipts were prepared to avoid the payment of stamp duty and also registration. In view of these circumstances, this Court holds that the Trial Court has committed error in view of provision of section 34 of the aforesaid Act. The Trial Court ought to have impounded the documents. The Trial Court is to follow the procedure laid down for recovery of stamp duty and penalty.

5) The learned counsel for respondents placed reliance on two cases of this Court reported as **2005(1) ALL MR 335**

[M/s. Conwood Agencies Pvt. Ltd. Vs. Namdeo Pandurang Panchal & Anr.] and the case bearing **W.P. No. 1175/2010** dated **30th June 2010 [Sangeeta Rajendra Wani Vs. Bhaskar Gangadhar Shinde and Anr.]** to show the procedure.

6) In the result, the petitions are partly allowed. The applications filed by the plaintiffs for impounding aforesaid two documents in each case are allowed to that extent. The aforesaid observations in respect of the documents are for the present purpose only. Civil Application is also disposed of.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/