

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

**WRIT PETITION NO. 9889 OF 2016**

Dileep Sitaram Patil

..PETITIONER

VERSUS

Sudhakar Sitaram Patil and Others

..RESPONDENTS

....  
Mr. M.M. Bhokarikar, Advocate for petitioner.

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**CORAM : T.V. NALAWADE, J.  
DATED : 16<sup>th</sup> DECEMBER, 2016**

**ORDER :**

1. The petition is filed to challenge the order made on Exhibit 60 in Regular Civil Suit No. 83 of 2010 which is pending in the Court of Civil Judge, Junior Division, Jamner. Heard learned Counsel for petitioner.

2. It appears that partition deed is produced by the defendants which is written on general stamp of Rs. 20 denomination. In the partition document the property like immovable property as house is mentioned. As the stamp duty which is payable under the Bombay Stamp Act is not paid, the learned Judge of the Trial Court made order on application moved by the defendants and gave direction to the Collector

to follow the necessary procedure. The impugned order came to be passed under Section 34 of the Bombay Stamp Act.

3. Learned Counsel for petitioner placed reliance on some observation made by this Court in the case reported as ***AIR 2003 Bombay 192 ( Naginbhai P. Desai Vs. Taraben A. Sheth )***. In that matter agreement of sale of 1988 was involved and there was question of payment of stamp duty. This Court held that when the objection was decided by the Court and the document was accepted in the evidence and as that order had become final, that decision cannot be reopened in the appeal. Thus point involved was different.

4. The provision of Section 34 of the Bombay Stamp Act is clear. It impose duty on the Court to see as to whether proper stamp duty is paid on document. Even if other side has not raised objection, the Court is expected to take such steps, impound it and then send it to the competent authority for doing needful. Such step is taken by the Court. It is surprising that plaintiff has objection to this order made by the Trial Court. It appears that plaintiff has apprehension that forged document will be accepted in the evidence. This apprehension is not having any foundation. Only after the procedure is followed, the document will come

before the Court and then the Court can allow the party to lead the evidence for proving execution of document. If execution is proved, then only there will be opportunity to the party challenging the genuineness is to prove the forgery.

5. This Court holds that it is not necessary to issue notice to other side. Petition is disposed of with aforesaid observations.

**( T.V. NALAWADE, J. )**

SSD