IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7505 OF 2016
(Deelip Rajmal Kokani Vs. Kantilal Tulshiram Kokani and another)

Mrs.C.S.Deshmukh, Advocate for the petitioner.
Mr.S.V.Natu, Advocate for the respondents.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 29/08/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 28/01/2016 by which application Exh.43, praying for impounding a document dated 17/05/1996 so as to send it to Collector of Stamps, Dhule for calculating the deficit stamp duty and for payment of penalty, has been rejected.

2. The petitioner has relied upon the judgment delivered by the learned Division Bench of this Court in the matter of Hari Shanker Singhania and others Vs. State of Maharashtra and others (2009(5) Mh.L.J.247) wherein the learned Division Bench has observed that, *"As is well settled, stamp duty is not a duty on the transaction but on the instrument. The scheme of the Stamp Act, therefore, is that an instrument is chargeable to the stamp duty. The act has taken note of*

several instruments which are chargeable to stamp duty and they are listed in the first schedule."

3. Learned Advocate for respondent No.1/original plaintiff submits that initially a document was prepared on 17/05/1996 mentioning an amount of Rs.12,000/- as the amount of consideration in the said instrument. That instrument has been discarded by the parties and the subsequent instrument of the same date 17/05/1996 has been signed and executed in which the amount of Rs.40,000/-, as the amount of consideration, has been mentioned. That document has already been impounded and the plaintiff has already paid the stamp duty on the said document.

4. It is categorically stated that the instrument, in which the amount of Rs.12,000/- is mentioned, has been given up by the plaintiff and never acted upon by the parties who have executed the 'Sauda Pavati' dated 17/05/1996 mentioning Rs.40,000/- as the amount of consideration.

5. In the light of the above, since the concerned document, which is Exh.43, has been given up and is not being referred to by the plaintiff

in so far as RCS No.63/2013 is concerned, the impugned order does not call for any interference. By recording the statement made by respondent No.1, this petition is disposed of.

(Ravindra V.Ghuge, J.)