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

WRIT PETITION NO. 10772 OF 2016

Sou. Ashabai w/o Balaji Patil,
Age: 45 years, Occ: Agri., and
Household, R/o. Dadgi,
Tq. Nilanga, Dist. Latur. ..PETITIONER

VERSUS

1. Balaji s/o Kashinath Patil,
Age: 51 years, Occ: Agri.,
r/o. Dadgi, Tq. Nilanga,
Dist. Latur.
2. Lalitabai w/o Dnyanoba Jadhav,
Age: 51 years, Occ: Household,
R/o. Patel Nagar, Opposite New
Gul Market, Nanded, Ring Road,
Latur, Tq. Latur, Dist. Latur.
3. Vithal s/o Rajaram Dudhabhate,
Age: 45 years, Occ: Agri.,
r/o. Jakekur, Tq. Umarga,
Dist. Osmanabad. ..RESPONDENTS

Mr Pratap G. Rodge, Advocate for petitioner;
Mr V.V. Kabade, Advocate for respondent Nos.2 & 3

CORAM : NITIN W. SAMBRE, J.

DATE : 21st SEPTEMBER, 2017

ORAL ORDER :

The petitioner-plaintiff filed Regular

(2)

Civil Suit No. 129 of 2007 for declaration of ownership and perpetual injunction based on their matrimonial status and the document entered into between the parties in relation to entitlement of the suit property dated 31st May, 1996.

2. Since respondent No.2, who has purchased the suit property from respondent No.1-husband, has raised objection to the admissibility of the said document, same was sent for adjudication for payment of stamp duty and registration charges by virtue of Court's order dated 7th October, 2010. After the order of adjudication was received, the Court framed issues at Exhibit-98 on 17th December, 2014, after which, the petitioner-plaintiff moved an application that she is ready and willing to deposit the amount of stamp duty alongwith fine amount, which application is rejected by the impugned order. As such, this petition.

3. Mr. Rodge, learned Counsel for the petitioner-plaintiff submits that the circumstances

(3)

which prompted respondent No.1-husband to give property in favour of the present petitioner are required to be appreciated, as same was for the purpose of maintenance of the petitioner. According to him, respondent No.1 has transferred the property to respondent No.2 with intention to frustrate the claim of petitioner over the property. He would then urge that in view of above petitioner suffered financial hardship, as such, was unable to deposit the amount immediately after adjudication and he would then submit that she shall deposit such amount as ordered within four weeks from the date, if so permitted, by this Court.

4. Learned Counsel for respondent Nos. 2 and 3, who are subsequent purchasers of the suit property, has objected the same on the ground that the Court should not extend the time ordered by the Court below for deposit of the deficient stamp duty. According to him, since the issues are already framed, the petitioner is estopped from depositing the amount.

(4)

5. Considered rival submissions. In suit, effective trial is yet to be commenced, as only issues were framed and the evidence is not recorded. Hence, the prayer of the petitioner for permission to deposit the stamp duty with penalty, can not be termed to be an act of delaying the trial. Rather, the suit is by petitioner-plaintiff and intentional delay, if any, shall not be in her interest.

6. The order of adjudication of the stamp duty and penalty was communicated to the Court some time in 2014. The statute contemplates that if there is delay in payment of stamp duty, same shall carry penalty/fine. If statute itself provides for indulgence, the objection raised by the respondents for delayed payment of stamp duty is required to be overruled in favour of the petitioner. Delay caused in payment of stamp duty by the petitioner has not resulted in delaying the trial.

(5)

7. Apart from above, the object with which the property was given to the petitioner by respondent No.1-husband is also required to be appreciated.

8. In view thereof, writ petition stands allowed. The order impugned dated 6th April, 2016 passed by learned Civil Judge, Senior Division, Nilanga, District Latur, below Exhibit-119 in Regular Civil Suit No. 129 of 2007 refusing the petitioner to deposit the stamp duty and the penalty charges, is hereby quashed and set aside.

9. The petitioner is permitted to deposit the deficient stamp duty as ordered alongwith amount of fine/penalty, which she undertakes to deposit within four weeks from today. The petitioner also undertakes that costs of Rs.1000/- will be paid to the respondents, which is to be deposited in the trial Court within four weeks from today, to which, the respondent Nos.2 and 3 are entitled to.

(6)

10. With above observations, the petition is allowed.

11. Since the suit is pending from 10 years, it will be appropriate, to expedite the hearing of the suit. The trial Court shall make every endeavour to decide the suit within one year from today.

(NITIN W. SAMBRE, J.)

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