

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1562 OF 2014

Mr. Mohamad P. Pathan & Others .. Petitioners.
v/s.
Mr. Vithal S. Gujar & Others .. Respondents.

Mr. Vilas Tapkir, for the Petitioners.
Mr. Ramdas Shelke, for Respondent No.1.

CORAM: M.S.SANKLECHA, J.
DATE : 29th AUGUST, 2017.

P.C:-

This Petition under Article 227 of the Constitution of India, challenges the order dated 21st October, 2013 passed by Joint Civil Judge, Junior Division, Daund, Pune. By the impugned order dated 21st October, 2013, the Petitioners' (Original Plaintiffs) application for impounding the agreement of sale dated 10th February, 2004, was rejected.

2 On 7th April, 2015, notice was issued by this Court to the Respondents for purposes of admission of this Petition. However, the notice also informed the parties that the Petition itself may be finally disposed of at the stage of admission.

3 Petitioner had filed a suit bearing No.92 of 2012 for specific performance of an agreement dated 10th February, 2004. In the pending suit, the Petitioner herein (Plaintiffs) filed an application dated 5th February, 2013, seeking the impoundment of the agreement to sell under

Order XIII Rule 8 of the Code of Civil Procedure, 1908 (Code), and sending the same to the Assistant Registrar, Kedgaon, for passing an order on the requisite stamp duty and penalty payable on the Agreement of Sale under the Maharashtra Stamp Duty Act, 1958 (the Act). The impugned order while rejecting the application for impounding and sending Agreement of Sale to the Assistant Registrar for the purpose of determining and paying the stamp duty and penalty, recorded the fact that the documents itself is not legal and, therefore, the impoundment and payment of stamp duty on the Agreement, is not required. This is so as the sale is prohibited under the Fragmentation Act.

4 Mr. Tapkir, learned Counsel appearing for the Petitioners point out that the issue arising herein is no longer res-integra as it is covered by the decision of this Court in ***Santosh Anant Raut v/s. Pukharaj Chogmal Rathod 2010 (4) Mah. L.J. 22*** on similar facts.

5 Mr. Shelke, learned Counsel appearing for Respondent No.1 contends that the aforesaid decision in Santosh Raut (supra) would have no application to the present facts. This for the reasons that in that case, the Court was dealing with the documents which was insufficiently stamped while in the present facts, the documents which is being sought to be impounded, is not stamped at all. Therefore, the aforesaid decision would have no application. Besides, it is submitted that the document itself is illegal as it seeks to transfer the agricultural land which is covered by the Fragmentation Act and an alienation of such land is prohibited therein. In the above view, it is submitted that no interference with the impugned order, is warranted.

6 The decision of this Court in Santosh Raut (supra) as relied

upon by the Petitioner would cover the issue. In the above case, a party relying upon a document applied for impounding of his own document, to enable proper stamping. The Court held when a document/ instrument is not sufficiently stamped, it is the duty of the Court to impound the same in accordance with Section 33 of the Act and send it to the Collector for him in exercise power under Section 31 of the Act to adjudicate the proper stamp duty payable on the documents/ instruments whether or not the instruments/ document had been properly stamped or not. Thereafter, under Section 32 of the Act, the Collector has to issue a certificate that the stamp duty has been properly paid and the same is endorsed on the said instruments. It is only, thereafter, the document can be taken in evidence by the Court.

7 The distinction which is sought to be made between insufficiently stamp and non-stamped document is not a valid distinction, because insufficient stamped would include within its ambit non-stamping of document. In fact, this Court in Santosh Raut (supra) has held that the adjudication of stamp duty by the Collector in terms of Section 31 of the Act is to be exercised whether the instrument is previously stamped or not.

8 The second objection on behalf of the Respondent is that there is no requirement to have the document stamped as it is an illegal document. Therefore, it need not be impounded and/or stamped.

9 In terms of Section 33 of the Act read with Order XIII Rule 8 of the code, the every authority including the Court has an obligation before receiving any document in evidence, if it is of view that the instrument/ documents is not properly stamped, as required, then to

impound the same. This obligation is de hors whether the instrument is valid or not in law. Moreover, the legality of the Instrument/ Document is to be considered after the instrument/ document comes on record as evidence after it is properly stamped in terms of Section 34 of the Act. It is at that stage that it would be open to the Respondents to point out that the alienation of agricultural land done by the said instrument is illegal, as it is contrary to the provisions of the Fragmentation Act. Thus, this objection is also not sustainable.

10 In the above view, the impugned order dated 21st October, 2013 of the Joint Civil Judge, Junior Division, Pune is quashed and set aside.

11 The Trial Court will impound the document/ instrument dated 10th February, 2004 and send the same to the jurisdictional Collector, for adjudication of the appropriate stamp duty payable. After adjudication and payment of the stamp duty and penalty thereon, the Petitioner will produce necessary certificate from the Collector before the Trial Court. It is only thereafter that the instrument/agreement dated 10th February, 2004 would be received in evidence, provided it is duly proved and otherwise admissible in evidence. It is made clear that no adjudication has been done by this Court with regard to the proof and evidentiary value of the said document.

12 Accordingly, **Petition allowed** in the above terms.

(M.S.SANKLECHA,J.)