

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition NO. 1732 OF 2017

M/s. Samata Industrial Developers
And Anr

...Petitioners

Versus

Ratnakar R Shetty And Ors

...Respondents

....

Mr.Umesh Shetty a/w. Rohan D'Souza i/b. Flavia Legal, for the
Petitioners.

Mr.S.P. Srivastava, Advocate for respondent No.1.

....

CORAM : R. G. KETKAR, J.

DATE : 02nd MARCH, 2017

P.C.

1. Heard Mr.Umesh Shetty, learned Counsel for the
petitioners and Mr.S.P.Srivastava, learned Counsel for respondent
No.1, at length.

2. Rule. Mr.Srivastava waives service on behalf of
respondent No.1. Having regard to the narrow controversy raised
in this Petition as also at the request and by consent of the
parties, Rule is made returnable forthwith and the petition is
taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of
India, the petitioners, hereinafter referred to as the 'defendants',

have challenged the judgment and order dated 17.1.2017 passed by the learned Judge, City Civil Court, Dindoshi, Mumbai below Exhibit-13 in Suit No.713/2009. By that order, the learned trial Judge rejected the application made by the defendants under Order XIII Rule 8 of C.P.C. for impounding agreements of sale dated 11.5.1992 and 12.10.1994 which are tendered by the respondent, hereinafter referred to as the 'plaintiff'.

4. In support of this Petition, Mr. Shetty relied upon Explanation I to Article 25 in Schedule I of the Maharashtra Stamp Act (for short, 'Act'). He submitted that Explanation I along with both the provisos was deleted by Mah.29 of 1994. But it was not brought into force. Subsequently by the effect of Mah. 38 of 1994 s. 2(1)(b) w.e.f. 17.8.1994. This Explanation along with the provisos has remained in force as earlier. He submitted that in view of Explanation I to Article 25 of Schedule I of the Act, the learned trial Judge should have referred the documents to the Collector for verifying whether they are sufficiently stamped or not. He relied upon Section 33 of the Act in support of this submission.

5. Mr.Srivastava, upon taking instruction from the plaintiff,

states that the plaintiff desires to rely upon the agreements of sale dated 11.5.1992 and 12.10.1994 and has no objection for referring the agreements to the Collector for finding out whether they are adequately stamped or not. After that enquiry is made, said documents may be transmitted to the Court. If the Collector holds that the documents are insufficiently stamped, subject to the remedies that are available to the plaintiff, the plaintiff will pay the deficit stamp duty if any.

6. In view thereof, by consent of parties, the impugned order is modified. The agreements of sale dated 11.5.1992 and 12.10.1994 shall be transmitted to the Collector of Stamps, Bandra, Mumbai for holding enquiry under Section 32 of the Act. After that enquiry is made, said documents shall be transmitted to the trial Court. In the meantime, trial Court will not proceed with the trial. Rule is made absolute accordingly with no order as to costs.

7. All parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)