

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2539 OF 2015

Waqar Ahmed Mohd. Yusuf & Anr. ...Petitioners
vs.
Mohd. Yusuf Mohd. Ishaq & Anr. ...Respondents

Mr. Milind M. Sathaye for the Petitioners.
Mr. N. R. Bubna for Respondent Nos.1 and 2.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 4th October, 2017**

PC.:

. Rule. Learned counsel for the Respondents waives service. By consent, the Rule is made returnable forthwith.

2. The Petitioner happens to be the original Plaintiff in Special Civil Suit No.96/2012 pending before the Civil Court at Malegaon. The Plaintiff had filed a document which is purportedly an agreement for sale dated 19/7/2012 purportedly executed by the Defendant in favour of the Plaintiff. It is the case of the Petitioner that the original Plaintiff i.e. the Petitioner had filed an application Exhibit 33 seeking impounding of his own document. The learned Joint Civil Judge, Senior Division, Malegaon rejected the said application on the ground that the purported amount of stamp was to be determined by reference to sections 3 to 9, sections 20 to 29 of the Bombay Stamp Act and Articles under Schedule-I under which the instrument falls. It is observed by the learned Court that the impugned document is unregistered and unstamped and, therefore, it cannot be said that it is either duly stamped or insufficiently stamped. The learned Trial Court has observed that it is not stated in the said document that it is a receipt of payment of Rs.1 Lakh by the Plaintiff to the Defendant as an earnest amount. Infact, the Petitioner who happens to be the Plaintiff had

prayed for impounding of his own document and naturally consequences would follow. The nature of the document would be decided only by leading evidence at appropriate stage after framing of the issues. The admissibility of the said document as contemplated under the Act shall also be determined by the Trial Court at the stage of framing of issue in that regard.

3. In view of the aforesaid, the following order:

- i) Petition is allowed. Rule is discharged.
- ii) The impugned order dated 5/2/2015 passed by the Jt. Civil Judge(S. D.), Malegaon stands quashed and set aside.
- iii) Since the suit is of the year 2012 i.e. 5 years old, the learned Trial Court shall make every endeavour to impound the document before 10/11/2017 and proceed with the further stages and dispose of the suit as far as possible by 30/4/2018.
- iv) The learned Trial Court shall proceed with the further stages consequential to the impounding of documents as expeditiously as possible and take further steps in accordance with law.

(SMT. SADHANA S. JADHAV, J.)