

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

WRIT PETITION NO. 2335 OF 2017

**SALIM CHUNNUMIYA SAYYED
VERSUS
NURODDIN CHUNNUMIYA SAYYAD**

...

Advocate for Petitioner : Shri H.I.Pathan
Advocate for Respondent : Shri R.A.Jaiswal

...

**CORAM : RAVINDRA V. GHUGE, J.
DATED : 12th JUNE, 2018.**

...

PER COURT :

1. The petitioner – original defendant is aggrieved by the order dated 13/02/2017 passed by the Trial Court by which, application Exhibit 44 filed in Regular Civil Suit No. 44/2015, has been rejected.

2. The petitioner desires that a relinquishment deed dated 17/01/2011 be impounded and be forwarded to the Controller of Stamps for calculating the stamp duty and the penalty which the petitioner shall be ready to pay. The said relinquishment deed has already been exhibited while recording the oral and documentary evidence. Despite the

document having been proved by oral evidence and being exhibited, the Defendant developed an apprehension that the said document might suffer a controversy since it is not stamped. In order to ensure that no deficiency creeps into his case, the Defendant moved Exhibit 44 and sought appropriate orders.

3. Learned advocate for the respondent- original plaintiff agrees that if the document is not impounded, it may not be read in evidence despite it having been exhibited by the Trial Court while recording oral and documentary evidence. He, however, contends that though the petitioner could have moved a proper application at an appropriate stage for impounding the document, he has caused delay in the suit filed by the respondent and hence heavy costs need to be imposed upon the petitioner.

4. While granting interim relief to the petitioner, this Court (Coram : S.B.Shukre, J.) has observed in the order dated 17/02/2017 as under :-

*"Heard learned Counsel for the petitioner.
His submission is that the relinquishment deed*

dated 17.01.2011 has been sought to be relied upon by the petitioner only for the collateral purpose. He had made an application for impounding these documents and sending it to the Controller of Stamp for calculating the stamp duty and levying the same with the penalty as applicable, but this fact has not been appreciated in proper perspective by the learned Civil Judge. Learned Counsel for the petitioner relies on the judgment of the Supreme Court in the case of Yellapu Uma Maheshwari & Anr. Vs. Buddha Jagadheeswararao & Ors., 2015 AIR (SCW) 6184" .

5. Considering the above, I find that the ends of justice could be met by allowing application Exhibit 44 and imposing costs of Rs. 2,000/- (Two Thousand only) on the petitioner and to be paid to the respondent.

6. This petition is, therefore, allowed. The impugned order dated 13/02/2017 is quashed and set aside. Application Exhibit 44 is disposed of. The trial Court shall issue appropriate directions forwarding the document relinquishment deed to the appropriate authority for impounding and for calculating the stamp duty and the penalty which the petitioner would pay.

7. The costs of Rs.2,000/- (Two Thousand only) shall be deposited by the petitioner with the Trial Court on or before

17/07/2018 and the respondent would be at liberty to withdraw the said amount without conditions.

8. All the contentions of the litigating sides are kept open.

(RAVINDRA V. GHUGE, J.)

shp/-