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

**WRIT PETITION NO.3274 OF 2018**

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|----|-----------------------------------|-------------|
| 1. | Bapu Baban Aamle                  | PETITIONERS |
|    | Age – 46 years, Occ – Agriculture |             |
| 2. | Dattu Baban Amle                  |             |
|    | Age – 42 years, Occ – Agriculture |             |
| 3. | Shivaji Baban Amle                |             |
|    | Age – 40 years, Occ – Agriculture |             |
| 4. | Hirabai w/o Baban Amle            |             |
|    | Age – 69 years, Occ – Household   |             |

All Above R/o Isalak, Taluka – Ahmednagar  
District – Ahmednagar

VERSUS

- |    |                                   |             |
|----|-----------------------------------|-------------|
| 1. | Appa Vitthal Amle                 | RESPONDENTS |
|    | Age – 32 years, Occ – Agriculture |             |
| 2. | Eknath Vitthal Amle               |             |
|    | Age – 37 years, Occ – Agriculture |             |
| 3. | Mirabai Vitthal Amle              |             |
|    | Age – 63 years, Occ – Hosuehold   |             |
| 4. | Sarubai Vitthal Amle              |             |
|    | Age – 40 years, Occ – Agriculture |             |

Abvoe No.1 to 4 R/o Isalak,  
Taluka – Ahmednagar  
District – Ahmednagar

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|----|---------------------------------|--|
| 5. | Jijabai Tukaram Pansare         |  |
|    | Age – 43 years, Occ – Household |  |
|    | R/o Khatgaon Road, Isalak       |  |
|    | Taluka – Ahmednagar             |  |
|    | District – Ahmednagar           |  |

6. Babu Bhanudas Amle  
Age – 63 years, Occ – Agriculture  
R/o Kashti, Taluka – Shrigonda  
District – Ahmednagar

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Mr. Sanket S. Kulkarni, Advocate for the petitioners  
Mr. M.S.Shah h/f Mr.S.P.Brahme, Adv. for respondents No.1 to 4

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**[CORAM : SUNIL P. DESHMUKH, J.]**

**DATE : 9<sup>th</sup> JULY, 2018**

**ORAL JUDGMENT :**

1. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the appearing parties.
2. Request of petitioners – original defendants No. 1 to 4, for impounding document referred to in application at Exhibit-34 in Regular Civil Suit No. 327 of 2013, has been rejected under impugned order dated 10<sup>th</sup> January, 2018 by Joint Civil Judge, Senior Division, Ahmednagar. Petitioners contend that Laxmibai, Bhagubai and Bhimabai had transferred their respective shares in Gut No. 96 situated at Isalak, Taluka and District – Ahmednagar for a consideration of Rs.5000/- each and had executed a sale receipt on 21<sup>st</sup> September, 1989 and since then the property is in possession of the purchasers. The purchasers, pursuant to said transaction had caused mutation entry No.

1506. The plaintiffs, despite knowledge of the same, have kept the same back.

3. The petitioners filed application Exhibit-34 in Regular Civil Suit No. 237 of 2013 contending that document dated 21<sup>st</sup> September, 1989 is not only relevant but is an important document. The same does not bear proper stamp duty payment. In view of the same, pursuant to the provisions of the Maharashtra Stamp Act, 1958, impounding of the document was necessary. The petitioners are ready to pay the requisite stamp duty as per rules, with penalty.

4. The application was resisted by present respondents No. 1 to 4 – original plaintiffs contending that the application is not maintainable and is time barred. The application is not proper. The contentions with regard to mutation entry and document dated 21<sup>st</sup> September, 1989 are incorrect and the document is bogus. The consideration claimed is also not correct. The respondents do not admit the document and signatures thereon.

5. The trial court, after hearing the parties, has considered that in the present case not only the provisions of Maharashtra Stamp Act, but also the Provisions of the Indian Registration Act, 1908 are applicable and since the document has been tendered

after the period referred to in section 23 i.e. after expiry of four months from the date of execution, the application is belated. The court, in the circumstances, considered that since the document would not be registered pursuant to provisions of the Indian Registration Act, request for impounding is not sustainable.

6. Learned advocate for the petitioners, Mr. Kulkani, at the outset, purports to clarify position that tenor of the application, if properly seen, would evince that it is primarily for impounding and it is only incidentally registration aspect has been referred to, however, prayer clauses, if read in proper context, would show that it is for impounding and no further. He submits that discussion, as such, in respect of Indian Registration Act and provisions thereunder, perceived impediment in registration are not considerations germane while considering application for impounding pursuant to the provisions of the Maharashtra Stamp Act. He particularly puts emphasis on section 33 of the Maharashtra Stamp Act and a couple of judgments. He submits that while it has been brought to the notice of the court that proper stamp duty will have to be paid on the documents and once the same having brought to the notice, the court has no option but to impound the document. He places reliance on a

decision of this court in the case of “*Santosh Anant Raut V/s Pukharaj Chogmal Rathod and Another*” reported in 2010 (4) Mh.L.J. 22 and particularly draws attention to paragraphs No. 5, 6 and 7 thereof. He also refers to and relies on a decision of the Supreme Court in the case of “*Omprakash V/s Laxminarayan and Others*” reported in (2014) 1 SCC 618 and purports to focus on paragraph No. 17 thereof.

7. Mr. Kulkarni submits that the cumulative effect of the decisions would make it incumbent to impound the document, in the present matter, when it is brought to the notice that the documents concerned are insufficiently stamped.

8. Mr. Mohit Shah, learned advocate holding for Mr. Brahme, for respondents No.1 to 4, persuasively puts forth his case to not to indulge into the request made under the writ petition. He submits that it is not a plain application for impounding documents, it is coupled with a request to send the document for registration as well. He submits that so far as registration is concerned the same is way outside the period of limitation, and under the garb of request a mandate cannot be had to the authority to do an act which would not be authorized under the statutory provisions. He submits that even so far impounding is

concerned, it has dawned on the defendants long after the suit had been instituted, three years down and that too during the course of evidence. He submits that attempt after all is to procrastinate proceedings and to keep the matter pending and hang fruits of litigation away from the plaintiffs. He submits, all the relevant aspects have been duly considered by the trial court while passing the impugned order. He submits that while document is not registered and is insufficiently stamped, it cannot be read in evidence and such a subsisting deficiency shall not be allowed to be removed under the garb of impounding document. He submits that the trial court, looking at the application, has seen that the matter not only attracts Maharashtra Stamp Act, but also attracts provisions of the Indian Registration Act. He, therefore, submits that no indulgence be given to the request made under the writ petition.

9. Having heard learned advocates as aforesaid, since learned advocate for the petitioners, on instructions, has clarified the position that efficacy of the application is restricted to impounding documents, it would be pertinent to consider that having regard to the scheme under the provisions of Maharashtra Stamp Act, particularly section 33 thereof, it appears that since it has been noticed that document is

insufficiently stamped, it would be required to be impounded, as has been observed under the citations relied upon on behalf of the petitioners.

10. In view of the same, the impugned order dated 10<sup>th</sup> January, 2018 passed on Exhibit-34 in Regular Civil Suit No. 237 of 2013 by Civil Judge, Senior Division, Ahmednagar is set aside and the application Exhibit-34 is allowed to the extent of impounding.

11. Writ petition, as such, is partly allowed. Rule is made absolute in aforesaid terms. Looking at that suit is of 2013, the same be expedited and disposed of expeditiously.

**[SUNIL P. DESHMUKH, J.]**