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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9904 OF 2015

Pralhad D. Jadhav

...Petitioner

V/s.

Dattatraya K. Uthekar & Anr.

...Respondents

Mr.Prabhanjan Gujar for the Petitioner.

Mr.Kirankumar Phakade for the Respondent No.1.

CORAM : R.D. DHANUKA, J.

DATE : 30TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 15th November, 2014 passed by the 2nd Joint Civil Judge, Junior Division, Satara in RCS No.517 of 2013, thereby impounding the agreement for sale below Exhibit – 17 and directing the office to forward the said document to the District Superintendent of Stamps for his report insofar as payment of stamp duty is concerned.

2. Learned counsel for the petitioner invited my attention to the prayers in the plaint filed by his client and would submit that the suit was for recovery of the amount paid under the said agreement. No prayer for specific performance or for possession of the property was prayed in the plaint filed before the learned trial Judge.

3. Learned counsel placed reliance on the judgment delivered by the Division Bench of this Court in case of **Balwantgir Ganpatgir Giri & Ors. vs. Manasi Construction & Developers & Ors. (2006) 5 Mh.L.J. 306.**

4. A perusal of the plaint clearly indicates that the petitioner has not applied for specific performance of the agreement but only applied for refund of the amount paid by the petitioner. There was no question of any possession under the said agreement. Learned trial Judge in my view, thus could not have passed an order of impounding the said document and could not have referred the said document for adjudication before the Stamp Authorities. The impugned order passed by the learned trial Judge is accordingly quashed and set aside. In view of the fact that this Court having set aside the impugned order passed by the learned trial Judge, the order dated 28th January, 2015 passed by the learned Collector, Satara does not survive and is accordingly quashed and set aside.

5. The writ petition is allowed in aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)