

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

WRIT PETITION NO. 2113 OF 2018

Baburao Kishanrao Bidve

..PETITIONER

VERSUS

Punjaji @ Punamchand Kishanrao Bidve
(Died) Through L.Rs.
Shantabai Punjaji Bidve and Others

..RESPONDENTS

....

Mr. S.B. Kakade, Advocate for petitioner
Mr. S.S. Kulkarni, Advocate for respondents

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**CORAM : R.G. AVACHAT, J.
DATED : 18th SEPTEMBER, 2019**

PER COURT :

The challenge in this petition is to order dated 02nd May, 2017 passed by learned 02nd Joint Civil Judge, Junior Division, Gangapur below application (Exh.62) in Regular Civil Suit No. 124 of 2013. By the impugned order, application preferred by the petitioner/Defendant No.1 for impounding of three documents came to be rejected.

2. Heard.

3. Petitioner/Defendant No.1 moved application (Exh.62) requesting the Court to impound three documents viz. (i) unregistered agreement for sale deed dated 03rd February, 1995, (ii) unregistered sale deed dated 04th

February, 1995 and (iii) unregistered sale deed dated 04th April, 1995. According to the petitioner/Defendant No.1, the aforesaid three documents were executed on insufficient stamp papers. He, therefore, preferred the application. Said application was resisted by the respondents/plaintiffs.

4. Learned Trial Court rejected the application in terms of order as under :-

“Heard both advocates Shri. D.K. Taru for the defendant and Shri S.B. Pasrate for the plaintiff.

The defendant no.1 and 2 moved application to impound the documents i.e. one unregistered agreement to sale at Exh.56, two unregistered sale deed at Ex.24\2 and 3. The provision of impounding regarding sufficient stamp which instrument requires.

Perused sec.33 of Bombay Stamp Act, 1958.

Perused three deeds which defendant no.1 and 2 wants impound are not registered. There is no any question of impounding.

Hence application rejected.”

5. Perusal of the impugned order would indicate that the trial Court erred in rejecting the application. Section 33 of the Maharashtra Stamp Act reads thus :-

“33. Examination and impounding of instruments

(1) Subject to the provisions of section 32-A, every person having by law or consent of parties authority to receive evidence and every person in charge of a public office, except an officer of police or

any other officer, empowered by law to investigate offences under any law for the time being in force, before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same irrespective whether the instrument is or is not valid in law.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed :”

6. Here, the petitioner/Defendant No.1 is ready and willing to pay the stamp duty as was chargeable on the aforesaid three documents at the time of their execution. He also proposes to pay a penalty @ 2% of the deficit portion of the stamp duty.

7. In view of the above, writ petition is allowed in terms of following order :-

(I) Order rejecting application (Exh.62) dated 02nd May, 2017 is set aside. Said application is allowed.

(II) Trial Court is directed to send authenticated copies of the aforesaid documents to the Collector of Stamps for impounding of those documents.

(III) The Collector of Stamps shall recover from the petitioner/Defendant No.1 the deficit amount towards stamp duty to make up the deficit, besides penalty as is imposable according to law.

(IV) The Collector of Stamps shall give the Trial Court compliance report within two months from the date of receipt of the communication in this regard from the Trial Court.

(V) The aforesaid three documents would only be read in evidence after they are duly proved in accordance with law and found to be admissible in evidence.

(R.G. AVACHAT, J.)

SSD