

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.4068 OF 2019  
(Mohd.Hanif Khan s/o Mohd.Naki Khan Vs. Narsing s/o Ganeshrao  
Gore)

Mr.Y.D.Pawar, Advocate for the petitioner.

( CORAM : Ravindra V.Ghuge, J.)

DATE : 03/06/2019

PER COURT :

1. The petitioner/original plaintiff is aggrieved by the order dated 12/10/2018 passed by the Trial Court below Application Exh.37 in RCS No.13/2016, by which the agreement to sell Exh.34 and the possession receipt Exh.35 are directed to be impounded u/s 33 of the Maharashtra Stamps Act and are further directed to be sent to the Collector of Stamps for verifying deficit stamp duty.

2. The contention of the petitioner is that though the parties to the suit had entered into an agreement to sell on 29/01/2005 and according to the said agreement, a possession receipt was executed, both these documents were un-registered. It is even conceded that in view of the amendment to the Registration Act, if by an agreement to sell, possession of the property is to be handed over, then, such a document has to be registered if it has to be read in evidence. There

is no dispute that as both these documents are not registered, they cannot be read in evidence.

3. The defendant had moved the application Exh.37 seeking a direction that these documents be impounded and be sent to the Collector of Stamps for verifying whether they are insufficiently stamped and for the recovery of deficit stamp duty. In doing so, both the documents would become admissible in evidence.

4. The contention of the petitioner is that unless the petitioner consents for such impounding of documents, no such order can be passed considering Section 33(1) of the Maharashtra Stamps Act. I do not find that the submissions of the petitioner are well placed in view of sub section 1 to Section 33. It is not solely and exclusively dependent upon the consent of the other side for such impounding of documents. If this interpretation is to be accepted, every opponent would refuse consent thereby rendering such instruments inadmissible in evidence so as to take advantage of such inadmissibility.

5. In view of the above, this petition, being devoid of merits, is therefore, dismissed.

( Ravindra V.Ghuge, J.)