IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2972 OF 2012

1. Shri. Anil Ashok Kagale
Age : 41 yrs, Occ. Agriculture

2. Shri. Dipak Ashok Kagale,
Age : 37 yrs, Occ. Agriculture,
Both R/o. Gadmudshingi,
Tal. Karveer, Dist. Kolhapur

3. Suvarna Ashok Kagale
Age : 64 years, Occ. Household,
Agr., R/o. Gadmudshingi,
Tal. Karveer, Dist. Kolhapur. .....Petitioners

: V E R S U S :

Sou. Kamal Shatrughna Mali
Age : 43 years, Occ. Household,
R/o. Gadmudshingi, Tal. Karveer,
Dist. Kolhapur ....Respondent

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Mr. Amit B. Borkar, Advocate for the petitioners.

None for the respondent.

CORAM : SANDEEP K. SHINDE, J.

Monday, 17th June, 2019.

ORAL JUDGMENT :

1. The petitioner, instituted Regular Civil Suit No. 244 of 2006 for declaration of his title to the suit property and mandatory injunction. The defendant had produced an agreement dated 05th May, 1980 in support of his defence. The plaintiff applied to the trial Court to impound the said agreement in terms of the provisions of the Maharashtra Stamp Act instrument being not duly stamped. The learned Judge rejected the said application on the ground that the agreement has been produced for "collateral purposes" and can be used as evidence as provided in the proviso to Section 49 of the Registration Act.

2. Admittedly, an application was for impounding document, being not duly stamped, though, it is subject to duty of amount, in terms of Section 3 of the Maharashtra Stamp Act. Section 34 of the Maharashtra Stamp Act, reads

as under :

> “**S. 34 Instruments not duly stamped inadmissible in evidence, etc.** :
>
> No instrument chargeable with duty [] shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped [or if the instrument is written on sheet of paper with impressed stamp [such stamp paper is purchased in the name of one of the parties to the instrument]”

3. This Section casts a duty on the Court or any other judicial officer or quasi-judicial person or public officer not to admit any instrument not duly stamped for <u>any purpose</u> irrespective of whether any party raises any objection as to stamp duty or not. (emphasis supplied) Therefore, this Section is in contrast to Section 49 of the Registration Act. Under Section 49, an unregistered document which requires registration is inadmissible in

evidence, but it can be admitted; (i) as an evidence of part performance of the Act, and (ii)for any collateral transaction not effected for any document. The words “for any purpose by any person” therefore should be given natural meaning and effect. These words are introduced with a view to avoid difficulty in deciding what are the collateral matters.

4. The learned Judge therefore misread the application made under Section 33 of the Maharashtra Stamp Act and arrived at incorrect decision. Thus, the order impugned dated 16th September, 2011 is quashed and set aside.

5. The learned Judge shall impound the subject agreement dated 5th May, 1980 in accordance with the provisions contained in Chapter-IV of the Maharashtra Stamp Act.

6. The petition is allowed in aforesaid terms.

(SANDEEP K. SHINDE, J)