

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 164 OF 2018

Sou. Supriya Vijaykumar Vhora .. Petitioner
Vs.
Shri Balu Jagannath Yeralkar and ors. .. Respondents

Mr.Shamsunder Solanke I/b Mr.Pratap Patil, for the Petitioner.

CORAM : M.S.KARNIK, J.

DATE : 14th JANUARY 2019

P.C. :

. Heard learned Counsel for the petitioner.

2. The petitioner – original plaintiff filed Suit for specific performance against respondent No.1. The original agreement dated 28/10/1993 of which specific performance is sought was also filed. On 19/07/2002 the trial Court impounded the said agreement and sent the same to the Collector, Pune as per section 33 of the Bombay Stamp Act, 1958. It is contended that though the document was sent to

Collector, Pune, the same was not received back nor any communication from Collector is forthcoming. On various dates, the trial Court sent reminders to Collector, Pune.

3. It is the Petitioner's case that the Collector's office orally informed the petitioner that document is not traceable and is lost. The petitioner therefore filed an application to lead secondary evidence in the form of photo-copy of suit agreement on 20/07/2016. By the impugned order dated 13/01/2017, the trial Court rejected the application on the ground that the document is not properly stamped.

4. Learned Counsel for the petitioner on instructions has informed me that the trial Court has now issued summons to the Collector of Stamps. In my opinion, as the document is impounded and there is no clear communication from the Collector of Stamps as to the fate of the document and now that trial Court has issued summons to the Collector of Stamps, it would be appropriate if the petitioner makes an application for

permission to lead secondary evidence in the form of photo-copy of the agreement dated 28/10/1993 only after the status of the original document is ascertained from the Collector pursuant to the issuance of the summons. In the event application for allowing secondary evidence in the form of photo-copy of the agreement is made at the subsequent stage, the same may be considered afresh on its own merits without being influenced by any observations made in the impugned order.

5. The Petition is disposed of in the above terms.

(M.S.KARNIK, J.)