

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5162 OF 2021

Mangal Pandit Gadekar .. Petitioner

Vs.

Pandurang Parsuram Damame
& Ors. .. Respondents

...

Mr. Sujeet R. Bugade for the petitioner.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 06TH OCTOBER, 2021.

P.C:-

1. This writ petition is filed assailing the order dated 24/02/2021 passed by the 2nd Jt. Civil Judge, Junior Division, Barshi. The said order came to be passed on an application filed by the defendants for impounding the document dated 05/01/2007 and the application is allowed with the following directions:

- “2. The instrument / document dtd. 05/01/2007 is impounded as it is not duly stamped.
3. The instrument/document dtd. 05/01/2007 be send to the Collector for adjudication in accordance with Section 32(a)(3) of the

Bombay Stamp Act to determine the stamp duty chargeable in respect of said instrument and penalty if any.

4. *The defendant shall immediately file certified copy of the said document for sending it to the Collector.”*

2. The petitioner is the original plaintiff, who filed Regular Civil Suit No.179 of 2018 against the respondents for declaration, possession and injunction of the suit property. The claim is based on the pleading that the petitioner owned and possessed Plot No.24 out of Gat No.921/1/2B at Barshi and he executed a Power of Attorney in favour of the respondents for the purpose of developing the said property and to take care of the litigation. It is pleaded that the possession of the subject plot was made over to the respondents through a possession agreement and it is averred that the respondents obtained the signature of the petitioner on a blank stamp paper and put it to use to show that there was an agreement for sale. The document on which the claim rests was brought on record by the defendants, who filed a written statement and a counter claim, wherein specific performance of the alleged agreement to sell was sought. The plaintiff filed his response to the counter-claim.

3. At this stage, an application was moved for impounding of the possession agreement dated 05/07/2005 and the impugned order is passed on the same.

4. The alleged document dated 05/07/2005 in the form of an agreement is not produced in original but what is produced is a photocopy along with another document in the form of an agreement dated 05/01/2007 signed by the plaintiff and the defendants, which refer to a conveyance is also placed on record. However, the documents are not produced in original.

5. The learned Judge considered the contentions of the rival parties and recorded that the defendants have filed a counter claim for specific performance and relied upon a document dated 05/01/2007, which is executed on a stamp paper of Rs.100/-. In the said document, a reference is made to an agreement dated 05/07/2005 being executed and consideration being received. The document has been exhaustively referred to by the learned Judge and it is held by him that the document need to be impounded and the question whether such document confers any right, title and interest would be considered after recording of the evidence.

6. Since the question which arises in the writ petition is no more *res integra* and is settled by the decision of this court in the case of **Pradeep Shyamrao Kakirwar v. Dr. (Smt.) Seema Arun Mankar in Writ Petition No.8245 of 2019 decided on 27/04/2020** and since I am in agreement with the view taken by learned Single Judge (Manish Pitale, J.) I do not deem it

expedient to notice the respondents. Ultimately, it is between the petitioner and the court and the court has taken a decision to impound the said document, in my considered opinion, the court has not considered the legal position of law, which has been succinctly set out by this court in the judgement in case of **Pradeep Shyamrao Kakirwar (supra)**. The issue which requires consideration is whether the photocopy of the document can be impounded? Reliance was placed by learned Single Judge on the decision of the Apex Court in case of **Hariom Agrawal v. Prakash Chand Malviya** reported in **(2007) 8 SCC 514** and after referring to the decision exhaustively, it has been concluded as under:

“13. Section 33 of the said Act pertains to examination and impounding of instruments. This provision gives power to the competent authority to impound the “instrument” if it is found to be not duly stamped. The said provision repeatedly refers to the “instrument”, which is under examination on the aspect of requisite stamp duty. Reading of the said provision does not in any manner indicate that a photo copy of an original document would qualify to be an “instrument” or that such photo copy could be impounded.

*14. In the case of **Hariom Agrawal (supra)**, the Hon’ble Supreme Court was concerned with a similar question in the backdrop of Madhya Pradesh Stamps Act, containing provisions similar to the Maharashtra Stamps Act, 1958. In the said case, the Trial Court had ordered a photo copy of the document to be impounded and upon payment*

of requisite stamp duty for such photo copy to be sent back to the Court for consideration admitting the document for secondary evidence. The order of the Trial Court was challenged before the High Court and it was held that such photo copy could neither be impounded nor be accepted in secondary evidence. On a challenge raised before the Hon'ble Supreme Court, upon analysis of the relevant provisions and earlier judgments of the Hon'ble Supreme Court, it was held as follows :

“It is clear from the decisions of this Court and a plain reading of Sections 33, 35 and 2(14) of the Act that in instrument which is not duly stamped can be impounded and when the required fee and penalty has been paid for such instrument it can be taken in evidence under Section 35 of the Stamp Act. Sections 33 or 35 are not concerned with any copy of the instrument and party can only be allowed to rely on the document which is an instrument within the meaning of Section 2(14). There is no scope for the inclusion of the copy of the document for the purposes of the Stamp Act. Law is now no doubt well settled that copy of the instrument cannot be validated by impounding and this cannot be admitted as secondary evidence under the Stamp Act, 1899.”

15. xxx xxx xxx

16. *The said judgment of the Hon'ble Supreme Court was followed by a learned Single Judge of this case of **Gayabai Hemlal Jadhav (supra)** and after referring to the provisions of the Maharashtra Stamps Act, 1958, applicable in the State of Maharashtra, it was held as follows :*

“16. It can, thus, be concluded that photocopy of the document cannot be termed as an “instrument” within the meaning of section 2(14) of the Indian Stamp Act, 1899 or Section 2(l) of the Bombay Stamp Act, 1958 and the provisions of section 33 of the Bombay Stamp Act cannot be made applicable in respect of copy of the document.

17. It is needless to say that the trial Court has adopted a correct approach in the matter and was justified in turning down the request made by the petitioner herein. The trial Court would surely consider the provisions relating to admissibility of the document, contained in relevant Act, applicable to the copy of a document and would render appropriate decision.

18. Considering the limited scope of inquiry by the trial Court while dealing with application for grant of probate, determination of the question relating to entitlement of deceased to the property, in reference to the document placed on record by the probate applicant – Respondent No.1 herein, is surely of a secondary character. The trial Court, in the facts and circumstances, was justified in rejecting the application tendered by the petitioner herein.”

17. Therefore, the position of law appears to be absolutely clear to the effect that photo copy of a document cannot be treated as an “instrument” under Section 2(l) of the Maharashtra Stamps Act, 1958 and no order for impounding such document can be passed. Thus, the Court below erred in

passing the impugned order directing that the document in question i.e. photo copy of alleged agreement dated 26/10/1999, was to be impounded for payment of requisite stamp duty and penalty thereon. As a result, the consequent direction for exhibiting the document for collateral purpose after payment of requisite stamp duty and penalty can also not be sustained”.

7. In the wake of the aforesaid, the observations, which govern the controversy in the present case and the position of law being well settled, I am of the firm opinion that the impugned order cannot be sustained as the position of law is what has been set out in the aforesaid paragraphs.

8. The impugned order dated 24/02/2021 is quashed and set aside and writ petition is made absolute in terms of prayer clause (a).

[SMT. BHARATI DANGRE, J.]