

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12710 OF 2019

Arun Damji Gada, Petitioners
Sole Proprietor of
M/s Divya Developments

Vs.

Sabhajit Sankataprasad Sharma Respondents
& Ors.

Mr. Ketan Chothani i/by Manjiri S. Parasnis for Petitioners.
Mr. Vaibhav A. Sadgure i/by J.S. Jadhav for Respondent No.1.
Mr. Sushil Upadhyay i/by Ashok M. Saraogi for Respondent No. 3.

Coram : NITIN W. SAMBRE, J.

Date : 4th MARCH, 2021

P.C.:

1. Heard.
2. The order impugned is passed on 3rd October, 2019 thereby rejecting Notice of Motion taken out by the Petitioner/ Defendant seeking impounding of the documents, pursuant to the provisions of Section 33 of the Maharashtra Stamp Act. The disputed documents is an agreement of sale-deed dated 7th September, 1999 produced at Exhibit 30.

3. Having heard respective counsel for sometime, I am of the opinion that the impugned order is not sustainable for the following reasons.

4. Section 33 of the Maharashtra Stamp Act caste an embargo that impounding of the documents, which is not properly registered.

5. As far as the disputed document is concerned, the timely recitals therein speaks of receiving of possession by the Respondent-Plaintiff. The other recitals if read with such issue of receiving of possession by the Respondent, the document falls within the definition of the conveyance and as such is an instrument.

6. Though it is claimed that the disputed document is sought to be relied on only for ancillary purpose as provided under Proviso to Section 49 of the Registration Act, still this Court cannot be oblivious to the recitals of such documents.

7. As such, in my opinion, the Court below while rejecting the Notice of Motion has committed an error in considering the necessity of documents to be properly stamped and registered based on the prayer clause in the plaint.

8. In my opinion, the order impugned is not sustainable and liable to be quashed and set aside.

9. As far as the Notice of Motion is concerned, the same is allowed in terms of prayer clause (a). The disputed documents i.e. Exhibit 30 is directed to be impounded. The Court below shall pass an appropriate order of forwarding the documents for its valuation. Plea if any raised by the Respondent pursuant to the provisions of Section 4 be looked into by the authority while valuing the said document.

10. The Petition stand allowed in above terms.

(NITIN W. SAMBRE, J.)