

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3026/2021

Pralhad Bhawarlal Agrawal

...Versus...

Hariram Bhawarlal Agrawal thr L.R

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri S.S.Joshi, Advocate petitioner
Shri S.K.Bhoyar, Advocate for Respondent

CORAM : AVINASH G. GHAROTE, J.

DATE : 20/09/2021

Heard Mr. Joshi, learned counsel for the petitioner and Mr. Bhoyar, learned counsel for respondent.

2] The petition challenges the order passed below Exh.51, dated 10.02.2021, rejecting the same. Mr. Joshi, learned counsel for the petitioner submits that the application at Exh.51 sought the impounding of document dated 17.01.1989, which was a deed of relinquishment, due to which since the deed was presented before the Court in the civil proceedings, by virtue of Section 33 of the Maharashtra Stamps Act, as the document was not duly stamped as per the requirement of law, it was the duty of the trial Court to have impounded the same and sent it to the Collector of Stamps for assessing the appropriate stamp duty payable thereupon

along with penalty therefor. He submits that instead of doing the same, the learned trial Court has postponed the same to the stage of disposal of the suit, which is impermissible in law. He therefore submits that the impugned order needs to be quashed and set aside and the application at Exh.51 needs to be allowed.

3] Mr. Bhoyar, learned counsel for the respondent does not dispute the proposition of law that when a document insufficiently stamped, comes before the Court, it is the duty of the Court to impound the same and send it to the Collector of Stamps for assessing the appropriate stamp duty and the penalty payable thereupon. He however submits that under the garb of assessing the document to the stamp duty payable, a plea was raised that the document became admissible, which is not permissible.

4] The position of law enunciated in Section 33 of the Maharashtra Stamps Act clearly enjoins upon the Court before whom the document is produced, which is insufficiently stamped, to send the same to the Collector of Stamps for assessing the appropriate stamp duty and the penalty payable thereupon, if any. That however, does not mean that the Court is called upon to decide the admissibility of the document, in view of which the impugned order is hereby quashed and set aside. Application at Exh.51 is

allowed and the document dated 17.01.1989 is directed to be sent to the Collector of Stamp for assessing the appropriate stamp duty and penalty, if any.

5] The learned trial court shall upon presentation of a net downloaded copy of this order, act upon the same and send the document to the Collector of Stamps for the above purpose within a period of one week therefrom and the Collector of Stamps upon receipt of the said document, shall perform his task within a period four weeks therefrom and shall send his report to the concerned Court along with the document.

JUDGE

rvjalit