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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13301 OF 2017

Shetkari Sahakari Sangh Limited PETITIONER
At Pachora, Bhadgaon Road, Pachora,
District – Jalgaon
Through its Manager,
Prabhakar s/o Pandurang Bhavsar
Age – 63 years, Occ – Service
At Post – Bhadgaon, Road,
Taluka – Pachora, District – Jalgaon

VERSUS

Ramesh @ Ramchandra More (Gurav) RESPONDENT
Age – 62 years, Occ – Pensioner,
R/o Krushi Udyog Colony,
Bhadgaon Road, Pachora,
Taluka – Pachora, District – Jalgaon

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Mr. B. R. Warma, Advocate for the petitioner
Mr. P. S. Shendurnikar, Advocate for the respondent

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[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON : 8th SEPTEMBER, 2022
PRONOUNCED ON : 22nd SEPTEMBER, 2022

JUDGMENT :

1. This petition, filed under Article 226 and 227 of the Constitution of India, challenges order dated 6th March, 2017 passed by the learned Civil Judge, Junior Division, Pachora below Exhibit-275 in Regular Civil Suit 6 of 2004.

2. Facts, in brief, are that, the petitioner is the original

defendant in the suit filed by the respondent-plaintiff for injunction in respect of the suit property being survey No. 6 admeasuring 4 Acre 18 Guntha, situated at Pachora.

3. The plaintiff claimed that the suit property was owned by Handu Gurav and Bapu Gurav and he is the grandson of Bapu Gurav. According to him, the defendant has committed breach of agreement dated 3rd July, 1896 and the defendant has no right to construct on the suit property. Hence, he prayed that the suit property be given in possession of the plaintiff by demolishing the buildings constructed on the same. In the alternative, he has prayed that 5 anna 4 ps share of the plaintiff in the suit property be handed over to him, by demolishing the buildings constructed on the same.

4. In the suit, the plaintiff led his evidence. Thereafter, the defendant also led evidence of his witness No.1 (DW-1). In the said evidence agreement dated 25th May, 2004 was exhibited at Exhibit-207 and the agreement dated 13th May, 2003 was exhibited at Exhibit-208. This witness was cross-examined by the plaintiff. Thereafter, the defendant filed evidence affidavit of witness No.2 (DW-2). After filing of the said affidavit, the plaintiff filed an application Exhibit-275 contending that since the defendant is relying on two agreements (Exhibits-207 and

208), he is liable to pay stamp duty on the same. Both these agreements are executed on insufficient stamp duty and, therefore, both the agreements be impounded and they be forwarded to Sub Registrar, Pachora for valuation and deficit stamp duty be recovered from the defendant and till then both these agreements cannot be read in evidence. He, therefore, prayed that Exhibits-207 and 208 be impounded and further action be initiated. The said application was resisted by the defendant, claiming that the said objection ought to have been raised at the time of exhibiting the agreements. Since this objection is raised at belated stage, it cannot be considered now. The agreements were executed between the defendant and predecessor of the plaintiff, therefore, the plaintiff has no right to take objection to the same.

5. The Trial Court has allowed the application Exhibit-275 and impounded agreements Exhibits-207 and 208 and forwarded the same to the Collector for adjudication of appropriate stamp duty and penalty. This order is impugned in the present petition.

6. Heard learned advocate for the petitioner and learned advocate for the respondent.

7. Learned advocate for the petitioner, by placing reliance on section 35 of the Maharashtra Stamp Act (for short "the said Act"), submits that since both the agreements are already exhibited, they cannot be called in question at a subsequent stage on the ground that the same have not been duly stamped. According to him, the Trial Court failed to properly interpret the said section and has erred in placing reliance on ***"Santosh Anant Raut V/s Pukharaj Chogmal Rathod" 2010 (4) Mh.L.J. 22,*** while allowing the application of the respondent - plaintiff. He assailed the impugned order by relying on ***"Babybai w/o Pandurang Madankar V/s Ghjelabhai Narayanji Sakariya and Others" 2020 Legal Eagle Bom 409***.

8. Per contra, learned advocate for the respondent supported the impugned order. He submits that in view of the decision in ***"Santosh Raut"*** (*supra*), the Trial Court was justified in allowing the application filed by the respondent - plaintiff. By relying on section 33 of the said Act, he submits that the Trial Court is justified in impounding the documents.

9. For the consideration of the rival submissions, it is apposite to reproduce relevant provisions of the said Act :

> *" **33. Examination and impounding of instruments** – (1) Subject to the*

provisions of section 32A, every person having by law or consent of parteis authority to receive evidence, and every person in charge of a public office, except an officer of police or any other officer, empowered by law to investigate offences under any law for the time being in force, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall, if it appears to him that such instrument is not duly stamped, impound the same irrespective whether the instrument is or is not valid in law.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed:

Provided that -

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter IX or Part D of the Code of Criminal Procedure, 1973.

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.

34. ***Instruments not duly stamped inadmissible in evidence, etc.*** *- No instrument chargeable with duty shall be admited 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:*

Provided that :
(a) any such instrument shall, subject to all just exceptions, be admitted in evidence on payment of -

(i) the duty with which the same is chargeable, or in the case of an instrument insuffciently stamped, the amount required to make up such duty, and

(ii) a penalty at the rate of 2 percent of the deficient portion of the stamp duty for every month or part thereof, from the date of executionof such instrument:

35. ***Admission of instrument where not to be questioned*** *– Where an instrument has been admited in evidence, such admission shall not, except as provided in section 58, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."*

10. Section 33 of the said Act gives power to the Court or authority to impound insufficiently stamped document. Plain reading of section 35 of the said Act makes it clear that the instrument, which is admitted in evidence, cannot be called in question on the ground that it is insufficiently stamped. The wording used in section 35 of the said Act clearly indicates that admission of such instrument cannot be called in question at any stage of proceeding, on the ground that the instrument has not been duly stamped. There is no prohibition for the court to

impound the document admitted in evidence. Section 35 of the said Act cannot be interpreted to mean that the Court is not empowered to impound the document, which is found to be insufficiently stamped, merely because it is admitted in evidence and exhibited.

11. Admittedly, agreements Exhibits-207 and 208 are referred by the petitioner – defendant in the written statement and they are relied upon to oppose the case of the respondent-plaintiff. Both these agreements are exhibited in the examination in chief of defendant's witness No.1. By the impugned order, the Trial Court has impounded the agreements on the ground that they are insufficiently stamped. The plaintiff has neither questioned admission of the documents nor has sought de-exhibition of the same. Therefore, section 35 of the said Act cannot be relied on to challenge the impugned order.

12. In ***"Santosh Raut"*** (*supra*), it is held :

> *"5 When a document is sought to be tendered in evidence before the Court, if it is found that the document/instrument is not sufficiently stamped, it is the duty of the Court to impound the said document in accordance with section 33 of the said Act. In view of section 34 of the said Act, the said document cannot be admitted in evidence. Proviso makes it clear that if the deficit stamp duty is paid and if penalty as provided therein is paid, the document can be admitted in evidence. Under the said Act, no power is conferred on the Court to determine the*

stamp duty chargeable in respect of any instrument. In view of sections 31 and 32 of the said Act, the said power is vested in the Collector. Jurisdiction of the Civil Court is confined to recording a finding on the question whether an instrument is duly stamped. The Civil Court cannot determine the stamp duty payable on a particular instrument.

6. If the Civil Court finds that the document which is not duly stamped is sought to be tendered in evidence, the power under section 33 of the said Act will have to be exercised and the document will have to be impounded. After impounding the document, the Court is under an obligation to send a true copy of the said document to the adjudication of the Collector in accordance with sub section (3) of section 32-A of the said Act. Only after adjudication is made by the Collector, the party relying upon the document will have to pay deficit stamp duty and penalty. After a certificate issued by the Collector regarding compliance with the requirement of payment of deficit stamp duty and penalty, Civil Court can exercise power under proviso (a) to section 34 of the said Act. Thereafter, the document can be admitted in evidence if the same is proved and if it is otherwise admissible in evidence.

7 . ……… A grievance has been made by the learned counsel for the petitioner that the document is already marked as exhibit. Even if the document is marked as exhibit, it cannot be read in evidence unless the procedure as laid down above is followed.”

13. Thus, it is clear from the aforesaid observations that though the document in that case was already marked as exhibit, it is held that it cannot be read in evidence unless the procedure, as laid down in sections 33 and 34 of the said Act, is followed. The Trial Court has relied on this rulling while passing

the impugned order.

14. In ***"Babybai"*** (*supra*), learned Single Judge of this court framed following question for consideration:

> *"An objection being raised to the admissibility of documents at Exhibits-49 and 50 which aspect was not decided by the trial Court, whether the appellate Court was precluded from entertaining this objection in the light of provisions of Section 35 of the Maharashtra Stamp Act"*

15. In paragraph No. 8 of the judgment in ***"Babybai*** (*supra*) expression *"admitted in evidence"* was considered and interpreted and it is observed :

> *"8. The expression "admitted in evidence" as occurring in Section 34 of the Maharashtra Stamp Act necessarily refer to the stage at which the document is being sought to be put in evidence or tendered in evidence, with the object of getting it exhibited so as to enable the Court to read the same in evidence, after the proof of the same has been tendered. Any objection as to the admissibility of the document on account of it being insufficiently stamped, has necessarily to be taken by the Counsel, at the stage before the document is marked as an exhibit. Once the document is marked as an exhibit, there is no provision in law to de-exhibit the same on any count whatsoever, in absence of which, it would not be permissible for the Court to reverse the action of having exhibited the document. Insofar as the plea regarding insufficiently stamped document this is further supported by the language of Section 35 of the Maharashtra Stamp Act, which creates an embargo or prohibition, in raising any question as to the inadmissibility of the document on account of it*

being insufficiently stamped "at any stage of the same suit or proceeding". The language of Section 35 of the Maharashtra Stamp Act is,therefore, express and implicit, inasmuch as once the document is admitted in evidence, either without any objection or objection having been raised and rejected, the same cannot be called in question at any subsequent stage of the suit.

9. This is more so, for the reason that once it is brought to the notice of the Trial Court that the document was insufficiently stamped, the provisions of Section 33 of the Maharashtra Stamp Act step in and it becomes,obligatory upon the Court to impound the same and send it to the Collector of Stamps for determining the true market value and assessing the proper stamp duty and penalty chargeable payable thereupon. This however is subject to the provisions of Section 32A of the Maharashtra Stamp Act which would include the statutory mandate as contained in Section 32A (3) of the Maharashtra Stamp Act, which reads as under :-

> *"Section 32A. Instrument of conveyance, etc. undervalued how to be dealt with*
>
> *(1)……*
>
> *(2)……*
>
> *(3) If any person referred to in section 33, before whom any such instrument is produced or comes in the performance of his functions, has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been truly set forth therein, he may, after performing his function in respect of such instrument, refer the instrument along with a true copy of such instrument to the Collector of the District for determination of the true market value of such property and the proper duty payable on the instrument.*

> *Provided that if the person, before whom any such instrument is produced or comes in performance of his functions, is an officer appointed as the Collector under clause (f) of section 2, and he has reason to believe that the market value of the immovable property which is the subject matter of such instrument has not been truly set-forth therein, he shall, for the purpose of assessing the stamp duty, determine the true market value of such property in the manner laid down in the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995"*

16. In this rulling the learned Single Judge interpreted the words *"admitted in evidence"*. It is, therefore, clear that the learned Single Judge was considering altogether different issue about when an objection, as to the admissibility of insufficiently stamped document, has to be raised and held that when the document is exhibited, it cannot be de-exhibited on the ground that it is insufficiently stamped.

17. There cannot be any dispute on the said proposition laid down in ***"Babybai"*** *(supra)*, and it is true that admissibility of the document cannot be questioned after it is admitted in evidence on the ground that it is insufficiently stamped. However, there is nothing in this rulling, which takes away power of the Trial Court to impound the document, which is insufficiently stamped, after the same is admitted in evidence

and exhibited.

18. The Trial Court has not de-exhibited the documents but has impounded the same and forwarded it to the Collector. The Trial Court has not gone behind the order of exhibiting the document and / or has not reviewed or revised its order of exhibiting the document, by impounding the same. In this view of the matter, this Court is of the view that the Trial Court is justified in impounding the documents.

19. In ***"Deepak Corporation, Bombay V/s Pushpa Prahlad Nanderjog" 1995 (1) Mh.L.J. 489,*** learned single Judge of this Court, after considering the provisions of sections 33, 35 and 58 of the said Act and order XXI, Rule 2 of the Civil Procedure Code, has held :

> *"Thus it is evident that section 35 only gives finality to the decision in regard to the admissibility of the document in evidence. It does not operate as a bar to impounding of the same."*

20. In ***"Asset Reconstruction Company (India) Ltd V/s Alpha and Omega Diagnostics (India) Ltd." 2017 (3) Mh.L.J. 315***, Division Bench of this Court was considering purpose of impounding unstamped or inadequately stamped document with reference to sections 33, 34 and 37 of the said Act. In the said rulling, the Division Bench has held:

> *"The provisions for impounding the document, which is not a stamped document or which is inadequately stamped, is made to ensure that unless the revenue is received by the State Government, the said document should not be released to the person, who has tendered that document. The purpose behind impounding the document is therefore abundantly clear. It is a mechanism, which has been evolved in order to ensure that the person, who has tendered that document, does not escape from the clutches of the State, and the revenue is paid in the form of stamp duty by such a person. The second obvious reason for impounding the document is to further ensure that even if suit is withdrawn, the payment can be secured by ensuring that it is impounded, so that the person who wishes to get back the document will have to first pay the stamp duty, and thereafter he can claim return of the document."*

21. Taking into consideration the above observations of the Division Bench, it is clear that the impugned order passed by the Trial Court is in consonance with the purpose and object of sections 33 and 34 of the said Act and therefore, there is no error committed by the Trial Court in impounding the documents.

22. The impugned order passed by the Trial Court cannot be said to be in contravention of section 35 of the said Act and is not liable to be interfered with in extraordinary writ jurisdiction of this Court. Taking into consideration the observations in ***"Santosh Raut"*** *(supra),* and ***"Deepak Corporation, Bombay***" (*supra*) the Trial Court is right in impounding the documents.

The impugned order passed by the Trial Court cannot be held to be in contravention of section 35 of the said Act. In the light of ratio in ***"Deepak Corporation, Bombay "*** (*supra*) and ***"Santosh Raut"*** *(supra),* the impugned order deserves to be upheld.

23. No case is made out by the petitioners to interfere in the impugned order, in extraordinary writ jurisdiction. The writ petition, being devoid of merit, is dismissed. No costs.

[NITIN B. SURYAWANSHI]
JUDGE

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