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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION 10553 OF 2017

Tejinderpalsingh Gurubachansingh Dardi & anr. .Petitioners

Vs.

Ranjitsingh Charansingh Gathode & anr. .Respondents

Mr. Sanjiv A. Sawant a/w Mr. Abhishek Matkar i/b. Mr. Abhishek P. Deshmukh, Advocate, for the Petitioners
Mr. Dilip P. Devadiga, Advocate, for the Respondent 1
Mr. A. P. Vanarse, AGP, for the Respondent 2 - State

CORAM : ROHIT B. DEO, J.

DATE : 25.07.2022

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. At the oral request of the learned counsel for the Petitioners, the Collector of Stamps, Pune is added as party Respondent 2. The learned AGP waives service on behalf of the Respondent 2 – State.

2. The Petitioners are the Defendants in R.C.S. 1457 of 2014 and are assailing the Order dated 17.06.2017, whereby the learned trial Judge rejected the Application Exh.61 whereunder the Defendant 1 applied for impounding

of the notarized Isar Pavti dated 11.12.1996.

3. The Respondent is the Plaintiff, who has claimed injunction simplicitor qua the possession in respect of the suit property. According to the Defendants, they are in possession of the suit property. Be that as it may, the issue as regards possession shall be finally adjudicated in the suit and, for the purpose of deciding the issue involved in the present Petition, suffice it to refer to the Application – Exh. 61 which seeks impounding of the document styled as Isar Pavti and the undertaking of the Defendants to pay deficit stamp duty and penalty.

4. The learned trial Judge noted the case of the Plaintiff that the document of which impounding is sought is not relevant. According to the Plaintiff, the Isar Pavti refers to flat 22 while the suit properties involved are flats 23, 24 & 25. The learned trial Judge then observes that since the relevancy of the document is not admitted, and the suit is delayed, no ground is made out for considering the prayer for impounding.

5. In my considered view, the order impugned is manifestly erroneous. The Defendants sought impounding of the document on the premise that the said document is required to be tendered in evidence. It is apparent that Isar Pavti is not sufficiently stamped. The said document records that the possession is delivered. The explanation I to Article 25 of the Stamp Act, 1899 is clearly attracted and the stamp duty payable is by considering the Agreement to sell as deemed conveyance. The learned trial Judge was obligated to impound the document.

6. The learned trial Judge committed serious error in rejecting the Application seeking impounding on the premise that the relevancy of the document is not established. Whether the document is relevant, genuine or is admissible in evidence are aspects which the learned trial Judge ought to have considered after impounding the document, and as and when the document is tendered in evidence.

7. The order impugned is set aside. The document Isar Pavti dated 11.12.1996 be impounded.

8. The learned trial Judge shall forward the document dated 11.12.1996 to the Collector of Stamps within the next 14 days and the Collector of Stamps shall ascertain the stamp duty and penalty payable within 14 days from the receipt of the document. The requisite stamp duty and penalty, if any, shall be paid by the Defendants within the next 14 days.

9. After impounding of the document and payment of stamp duty, the learned trial Judge shall decide the suit as expeditiously as possible and in any event, within the next six months.

10. The Petition is allowed in the aforesaid terms.

11. It is, however, made abundantly clear that every objection as to the genuineness, relevancy or admissibility,

other than the objection on the basis of stamp duty is left open for the Plaintiff to raise and the trial Court to consider at an appropriate stage.

12. The Petition is disposed of.

(ROHIT B. DEO, J.)