

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

CIVIL REVISION APPLICATION NO. 03 OF 2021

Shri Prakash S/o. Ramchandra Wanjari,
Aged about 40 years, Occ. - Agriculturist,
R/o. Tarsa Road, Kanhan, Tahsil Parshioni,
District - Nagpur.

... Applicant

.. Versus ..

1) Sau. Vasundh W/o. Domaji Pantawane,
Aged about 57 years, Occ. Housewife,

2) Sau. Leela Domaji Pantawane,
Aged about 67 years, Occ. Housewife,
Both R/o. Kandri-Kanhan, Tahsil Parshioni,
District – Nagpur

...Non-applicants

Shri A.S.Kulkarni, Advocate for applicant.
Shri D.C.Chahande, Advocate for non-applicants.

CORAM : SMT. M.S. JAWALKAR, J.

DATED : 05/12/2022

ORAL JUDGMENT

Heard finally at the stage of admission by consent
and at the request of learned counsel appearing for the parties.

2] The present civil revision application is filed being
aggrieved by the order dated 23/06/2014 passed by learned Civil
Judge, Senior Division, Nagpur in Spl. Civil Suit No. 816/2011.

3] The brief facts for consideration are as under:-

The applicant alongwith one Shri Shyamkumar Daulat Barve and Shri Parmanand Gajanan Shende and non-applicants entered into an agreement to sale in respect of agricultural land out of Survey No. 164/1 admeasuring about 3.51 Hecter and Survey No. 164/2 admeasuring 4 Hecter out of Mouza Kandri (Kanhani), P.H. No. 15 for consideration of Rs. 6,00,000/- on 18/01/2009. Shri Shyamkumar Barve and Shri Parmanand Shinde entered into “आपसी संमती पत्र” dated 24/04/2011, as they were unable to proceed with the agreement to sale dated 18/01/2009. Therefore, the applicant alone became entitled to enforce the rights under the agreement to sale dated 18/01/2009.

4] As no steps were taken by the non-applicants for execution of sale deed, the legal notice dated 15/02/2011 came to be served by the applicant upon the non-applicants. The non-applicants replied it on 23/02/2011. Though the non-applicants did not dispute the agreement to sale, however, their intention was apprehended by the applicant for not to execute the sale deed.

5] The applicant filed suit for specific performance of contract, declaration and possession on 04/07/2011 and valued the suit property at Rs. 1,09,00,000/- and accordingly, the applicant paid Court fees. Along with the said suit, the applicant filed an application under Order 39, Rule 1 and 2 of the Civil Procedure Code for grant of temporary injunction. The non-applicants filed their written statement and reply on it. Thereafter, the learned Trial Court rejected the application for temporary injunction, which was challenged in Appeal Against Order No. 38/2012 before this Court and this Court passed the interim order directing the parties to maintain status-quo and matter was remanded back to the learned Trial Court for fresh consideration of the application for temporary injunction with further direction that till pending decision of application Exh. 5, the status-quo order to continue.

6] There was an application (Exh. 16) dated 24/04/2011 moved by the non-applicants for impounding of document i.e. “आपसी संमती पत्र”. On the said application, counsel for the applicant gave no objection for sending the document to the Collector of Stamps for determination of proper stamp duty.

Thereafter, the learned Civil Judge, Senior Division, Nagpur allowed the said application by order dated 04/10/2012 and it was directed to send the documents to Stamp Collector for determining requisite stamp duty under Sections 33, 34 of the Bombay Stamp Act, and the plaintiff was directed to take necessary steps.

7] The non-applicants, thereafter, filed an application for dismissal of suit on the ground that the plaintiff has no regard and respect with the orders of the Trial Court and failed to comply with the order and nor taken any steps in this regard and prayed for dismissal of the suit. The learned Civil Judge, Senior Division, Nagpur passed the order below Exh. 1 on the said application and accordingly, allowed the application and dismissed the suit.

8] The learned counsel for the applicant drawn my attention to paragraph no. 16 of the revision application that despite the order of status-quo passed by this Court and during the pendency of the application for grant of temporary injunction, the non-applicants executed a Irrevocable General Power of Attorney in favour of 1) Shri Rajesh Bhaiyalal

Deshmukh, 2) Shri Manoj Lovajibhai Patel, 3) Sau. Suvarna Shriniwas Dhoble and 4) Shri Dinesh Dhondbaji Bhole, which is duly registered in the Sub-registrar's Office, Parseoni on 09/04/2014.

9] It is submitted that Sau. Suvarna Shrinivas Dhoble is the wife of then counsel - Shri Shriniwas Dhoble of the applicant. The said counsel Shri Shrinivas Dhoble had joined hands with the non-applicants and even during the pendency of Exh. 5 and order of status quo granted by this Court, executed the Irrevocable Power of Attorney. The counsel for the applicant never informed the applicant about filing of application for impounding of document “आपसी संमती पत्र” and the order passed thereon, so also about filing of application for dismissal of suit. On the contrary, it was informed that Exh. 5 is pending and status-quo order is in effect. As no proper information was given by the then counsel, the applicant availed the services of another counsel to find out the status of the suit and came to know about dismissal of suit on 02/07/2017. The learned counsel for the applicant drawn my attention to Section 34 of the Stamp Act, which reads as under:-

“34. Instruments not duly stamped inadmissible in evidence, etc. - No instrument chargeable with duty shall be admitted 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 insufficiently stamped, the amount required to make up such duty, and

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

Provided that, in no case, the amount of the penalty shall exceed [four times] the deficient portion of the stamp duty].]

(b) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp; the contract or agreement shall be deemed to be duly stamped;

(c) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a

proceeding [under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure 1973;]

(d) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government or where it bears the certificate of the Collector as provided by Section 32 or any other provision of this Act;

10] The applicant explained in paragraph 16 that then counsel played fraud in collusion with non-applicants and created interest in the suit property/transaction. Now, the applicant prayed for setting aside the impugned order.

11] The learned counsel for the non-applicants submitted that the applicant has not complied with the directions issued by the learned Civil Judge, Senior Division, Nagpur. Even the suit is under valued. In view thereof, order of dismissal of suit is proper.

12] I heard both the parties at length and perused the record.

13] The application for impounding of document was allowed. However, I am, prima facie, satisfied that the counsel appearing for the applicant has deliberately not informed to the

applicant about status of suit as the Power of Attorney executed in favour of wife of counsel alongwith others. Even if it is presumed that, steps which were required to be taken by the applicant, were not taken, at the most, the document would have not been admitted in the evidence or produced in the evidence. At any rate, order of dismissal of the suit can not be the effect of impounding of documents. The import of Section 34 is that, the document or the instrument which the party wants to place it on record as an evidence, will not be allowed, unless it is duly stamped. On the face of it, the impugned order is contrary to the provisions of law which is liable to be set aside. So far as the objection of the non-applicants that the suit is under valued, it is nowhere the objection in the application (Exh. 16). As such, it is devoid of any merit. After passing of order for sending the instrument to the Collector for calculating the proper stamp duty, it is not necessary for the applicant to take steps. In fact, it is the Court who has to send the document for appropriate stamp duty to be assessed to the Collector of Stamp. Once the stamp duty is valued, then role of applicant to pay stamp duty will arise. Moreover, the plaintiff was not informed about the order by his then counsel for vested interest that also can be ignored.

14] So, in my considered opinion, instrument has to be dispatched by the Court to the Collector of Stamp. As such, the impugned order is liable to be set aside. Hence, the order of dismissal of the suit dated 23/06/2014 passed by the learned Civil Judge, Senior Division, Nagpur on the application for dismissal of suit (Exh. 25) and on Exh. 1 is hereby set aside. The learned Trial Court is directed to readmit the suit on its original number. After readmitting the suit, send the instrument which was impounded, to the Collector Stamps, Nagpur, within 15 days for assessment of stamp duty.

15] Accordingly, the application is allowed and disposed of.

[SMT. M.S. JAWALKAR, J.]

B.T.Khapekar