

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13973 OF 2017

Lotan Dharma Koli
and another

.... Petitioners

Versus

Hari Laxman Koli (Died)
Through L.Rs.
Rambhabai Hari Koli
and others

.... Respondents

.....

Mr. Vinod P. Patil, Advocate for the Petitioners

Mr. Girish Rane, Advocate for Respondent Nos.1B, 1C and 2

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 05th JUNE, 2023

ORDER :

1. The petitioners are aggrieved by the order passed by the learned Joint Civil Judge, Junior Division, Amalner, below Exhibit 86 in Regular Civil Suit No.14 of 2005.

2. The petitioners/original plaintiffs filed Suit against the respondents/defendants for execution of sale deed on the basis of agreement to sale dated 03/01/1995 and for injunction. Defendants resisted the Suit by filing written statement. Plaintiffs filed list of documents Exhibit 4 alongwith the documents. The said agreement to sale is filed at Sr. No.2 in the list of documents, the same is marked as Exhibit 4/2.

3. The defendants filed application Exhibit-86 contending that the said agreement to sale is executed on stamp paper of Rs.20/-, and the same is insufficiently stamped, and therefore, the said agreement to sale should not be exhibited and read in evidence. The plaintiffs opposed the said application by filing say. The Trial Court has allowed the application. The plaintiffs are aggrieved by the said order.

4. Heard the learned advocate for the petitioners and the learned advocate for the respondents. Perused the writ petition memo, annexures thereto and the impugned order.

5. It appears from the recital in the said agreement to sale that the plaintiffs were already in possession of the suit land even prior to the said agreement to sale, and therefore, possession was confirmed and continued by the said agreement. In the plaint as well as in the written statement, possession of the plaintiffs is admitted by the parties. It also appears from the record that the defendants have filed Suit for possession of the suit land against the plaintiffs.

6. It is clear from the record that the said agreement is executed on insufficient stamp, and hence is inadmissible as per Section 34 of the Maharashtra Stamp Act. The Trial Court

has rightly held that the said agreement is insufficiently stamped, and it cannot be marked exhibit unless the statutory compliance is made. Admittedly, the possession of the plaintiffs was continued on the basis of agreement to sale, and therefore, the Trial Court has rightly held that the said agreement is insufficiently stamped, and it cannot be exhibited without legal compliance.

7. In this view of the matter, the Trial Court is justified in allowing the application Exhibit-86 by the impugned order. There is no illegality or perversity in the order impugned in the present petition. No case is made out by the petitioner to warrant exercise of extraordinary writ jurisdiction.

8. The writ petition being devoid of merit is dismissed. No costs.

9. The petitioner is at liberty to make necessary legal compliance for exhibiting the said agreement.

[NITIN B. SURYAWANSHI]
JUDGE

S.P. Rane