2023:BHC-NAG:17348

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

WRIT PETITION NO.7852/2023

Niteen s/o Shivnarayan Jaiswal and another
...Versus...
Suresh s/o Bhaiyyalal Jaiswal and others

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

Mr. S.S. Sitani, Advocate for petitioners
Mr. Z.Z. Haq, Advocate for respondents

CORAM : AVINASH G. GHAROTE, J.
DATE : 19/12/2023

1. The petition questions the order dated 26/09/2023, by which the learned Trial Court has refused to impound the agreement of sale dated 04/09/2015 on the basis of which the plaintiffs/respondents have filed the suit for declaration and injunction. The rejection is on the ground that the matter is still pending for decision of Exh.5 and is at initial stage.

2. Mr. Sitani, learned counsel for the petitioners while assailing the said order submits that the provisions of Section 33 of the Maharashtra Stamp Act, 1958 ("Stamp Act", for short hereinafter) do not contemplate any stage at which the powers under Section 33 of the Stamp Act are to be

exercised and theretofore, the rejection of the application is improper.

3. Mr. Haq, learned counsel for the respondents while supporting the impugned order contends that the provisions of Section 33 (1) of the Stamp Act would come into picture when the document is sought to be tendered into evidence and therefore, since the stage is for decision of Exh.5, the mandate of Section 33 of the Stamp Act would not be attracted.

Section 33 of the Maharashtra Stamp Act reads as under :

*"**33. Examination and impounding of instruments.** - (1) Subject to the provisions of section 32-A, every person having by law or consent of parties 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 a 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 Chapter X 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.*
>
> *(3) For the purposes of this section, in cases of doubt, -*
>
> *(a) the State Government may determine what offices shall be deemed to be public offices; and*
>
> *(b) the State Government may determine who shall be deemed to be persons in charge of public offices."*

4. Perusal of the language of Section 33 (1) of the Stamp Act would indicate that it does not contemplate any stage for production of any document when the power of impounding has to be exercised. There is, therefore, no reason why it cannot be exercised even at the initial stage. What Section 33 (1) of the Stamp Act requires is the production of the document before any authority as contemplated therein and the satisfaction of such authority that the document is not duly stamped and then enjoins upon the authority to impound the same.

5. A perusal of the agreement of sale dated 04/09/2015 would indicate that it asserts the possession having been delivered under the said agreement on the date of the agreement itself (pg.36), considering which, it would be an agreement requiring impounding. That being the position, the impugned order therefore, in my considered opinion, cannot

be sustained and is hereby quashed and set aside. The application below Exh.14 is hereby allowed. The Trial Court shall send the agreement of sale dated 04/09/2015 to the Collector of Stamps for impounding, forthwith, as the matter is listed today before the learned Trial Court. The Collector of Stamps, upon receipt of the same, shall determine the appropriate stamp duty and penalty to be paid thereupon by 29/12/2023 and in case the same is paid by the plaintiffs, shall certify the same and send the document back to the learned Trial Court, who shall thereafter hear the application below Exh.5.

6. The writ petition is allowed in the aforesaid terms. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar