

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

WRIT PETITION NO. 8571 OF 2018

Kamal Narsinghdas Vaishnav (Ramawat),
Aged about 48 years, Occ.: Service and
Agriculturist, R/o. Inside Jawahar Gate,
Amravati, Tq. and Dist. Amravati.

.... **PETITIONER.**

// VERSUS //

1. Sau. Vaijayanti Wamanrao Wagh,
Aged about 58 years, Occ. Household
Work, R/o. A-4-A/202, Mahadkar
Residency, Paund Road, Kothrud,
Pune, Tq. & Dist. Pune – 411 038.
2. Sau. Komal Gajendra Sonane,
Aged about 37 years, Occ. Household
Work, R/o. Sarswati Nagar, Kandali
(Paratwada), Tq. Achalpur,
Dist. Amravati

.... **RESPONDENTS.**

Shri Apurv De, Advocate for Petitioner.
Shri Sawan Alaspurkar, Advocate for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : JANUARY 17, 2023

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. In this writ petition the order dated 21/08/2018 passed below Exh.95, allowing the application moved by the defendant/respondent seeking direction to impound the documents at Exh.66 and Exh.67 i.e. Agreement of Sale and Possession Receipt, respectively, passed by the 2nd Joint Civil Judge Senior Division, Amravati, is under challenge.
4. The learned counsel for the petitioner submits that once the document is exhibited as per Section 35 of the Maharashtra Stamps Act, 1958 (hereinafter referred to the “Act of 1958”) the Court cannot go back and ask the party to impound the document, whereas, such action is permissible only at the stage of appeal or reference as provided under Section 58(1) of the Act of 1958. He, therefore, submits that once the document is marked as exhibit and has been used by the parties in examination and cross-examination of the witness, it can be said that the stage of Section 35 is crossed and therefore, it is not now open for the Court to go back and direct the plaintiff to impound the document.

5. On the other hand, the learned counsel for the defendant / respondent No.2 argues that the duty is casted upon the party who is producing such document to pay requisite stamp duty as per the provisions of Section 34 of the Act of 1958 and failure to pay the stamp duty or impound the document, the consequences are provided including that the document is not admissible in evidence and the said document cannot be read in evidence. It is submitted that there is no bar provided under Section 35 of the Act of 1958 to impound the document.

6. In the light of rival submissions of the parties, I have perused documents and the impugned order. After going through the impugned order passed below Exh.95, which was passed at the instance of the defendant No.2, it is evident that the Court has not discussed the provisions namely Sections 34, 35 or Section 58 of the Act of 1958. The Court has also not considered the effect of Section 53 of the Act of 1958, that is once the document is exhibited whether the Court can go back and ask the party to impound the document. The Court has also not discussed about the jurisdiction to ask the parties to impound the document after crossing the stage of Section 35, particularly in view of Section 58(1) of the of the Act of 1958.

7. In the circumstances, I am of the opinion that by quashing and setting aside the impugned order the matter needs to be remanded back for the purpose of deciding the application Exh.95 afresh by considering the observations made herein above. Accordingly, I pass the following order:

- i) The writ petition is partly allowed.
- ii) The impugned order dated 21/08/2018 passed below Exh.95 by 2nd Joint Civil Judge Senior Division, Amravati in Special Civil Suit No.03 of 2013 is hereby quashed and set aside.
- iii) The matter is remanded back to the trial Court to decide the application Exh.95 afresh, according to law, after hearing both the parties and taking into consideration the observations made in this judgment.
- iv) The parties are directed to appear before the trial Court on 03/03/2023 at 11:00 a.m.
- v) The learned trial Court shall make an endeavor to decide the application at the earliest possible.

Rule accordingly. No costs.

(ANIL S. KILOR,J)