IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8535 OF 2024

Santosh Baban Nale,
Age : 45 years, Occu. : Agri.,
R/o. Kashti, [Sangawi Fata],
Tq. Shrigonda, Dist. Ahmednagar. .. **PETITIONER**
[Ori.Defendant]

VERSUS

Sau. Vimal Rajendra Shinde
Age: 45 years, Occu. : Business,
R/o. Kashti, [Sangawi Fata],
Tq. Shrigonda, Dist. Ahmednagar. .. **RESPONDENT**
[Ori. Plaintiff]

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Mr.G.R.Syed, Advocate holding for Mr.V.P.Narwade & Adv.Manjushri V. Narwade, Advocates for the petitioner
Mr.Dilip B. Rode, Advocate for respondent.

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CORAM : ARUN R. PEDNEKER, J.
DATE : 20.08.2024

ORDER :

1] By the present Writ Petition, the petitioner is challenging the order dated 25.04.2024 passed by the 3rd Joint Civil Judge Senior Division, Shrigonda below Exh.38 in Regular Civil Suit No.67 of 2015 whereby the application filed by the plaintiff-respondent for impounding of the agreement to sell dated 31.03.2008 and submitting the same to the Collector for payment of stamp duty in accordance with the provisions of the Maharashtra Stamp Act, 1958, was allowed.

Brief facts leading to filing the present Writ Petition are summarized as under:

2] The respondent – plaintiff has filed a suit for specific performance of contract on the basis of unregistered agreement to sell dated 31.03.2008. The petitioner – defendant filed written statement and denied all the contentions raised by the plaintiff in the suit. During pendency of the suit, the plaintiff filed an application below Exh.27 on 07.09.2017 for impounding of the agreement to sell dated 31.03.2008 under Section 33 of the Bombay Stamp Act and requested it to be sent to the Collector for payment of stamp duty. The said application was withdrawn by the plaintiff. Thereafter another application was filed by the plaintiff for impounding of the said agreement dated 31.03.2008 at Exh.38 on 10.11.2023. The said application is resisted by the petitioner – defendant contending therein that the respondent – plaintiff is trying to register the illegal document which is ab initio void contract between the parties. The plaintiff has already filed an application for the same purpose and withdrawn the same. However, the trial Court, by order dated 25.04.2024, allowed the subsequent application. Against the said order, the present writ petition is filed.

3] It is the contention of the petitioner that void contract which ceases to be enforceable by law cannot be become lawful by permitting it to be stamped, so also, it is stated that once application for impounding of the agreement to sell is withdrawn by the plaintiff, he could not have moved another application for the same purpose. The learned counsel for the petitioner relied upon the judgment in the case of **Ameer Minhaj Vs. Dierdre Elizbeth [Wright] Issar and Ors.** in **Civil appeal No.18377 of 2017**, decided on 04.07.2018 relevant paras 10 and 11.

4] *Per contra*, the learned counsel for the respondent submits that once the document liable for payment of stamp duty is executed, it become liable to be impounded for payment of stamp duty and merely because earlier application is withdrawn by the plaintiff, the Court can proceed with the process of impounding the document for payment of stamp duty. Therefore, the application filed by the plaintiff is rightly allowed by the trial Court.

5] Having considered the rival submissions. It is required to be noted that the agreement dated 31.03.2008 is a notarized agreement and written on the stamp of Rs.100/-. The agreement dated 31.03.2008 is to sell an immovable property and the agreement notes that possession of the immovable property is to be given to the purchaser on part payment of consideration. The agreement to sell is thus deemed to be a conveyance under the Maharashtra Stamp Act, 1899 and stamp duty is leviable on the instrument. As such, it is the duty of the Court under Section 33 of the Stamp Act to impound the document and forward it to the Collector for payment of stamp duty. The validity of the agreement does not depend upon impounding and further stamping of the document. The validity of the agreement to sell could be considered at the stage of the trial. The earlier application filed by the plaintiff for impounding, the document even if it is withdrawn is of no consequence. It is the duty of the court to impound the document liable for payment of stamp duty, is insufficiently stamped. In the case of **Omprakash Vs. Laxminarayan & others** in **Civil Appeal No.9032 of 2013 [Special Leave Petition [C] No.20721 of 2008,** decided on 07.10.2013, the Hon'ble Supreme Court at para nos. 10 and 11 has held as under :

> *10. The aforesaid Explanation has come into effect from 26th September, 1990. The Explanation, therefore, creates a legal fiction. The agreement to sell shall be deemed to be a conveyance and stamp duty is leviable on an instrument whereby possession has been transferred. Thus the agreement to sell in question is a conveyance within the meaning of Section 2 (10) of the Act and is to be duly stamped. Section 35 of the Act makes instruments not duly stamped inadmissible in evidence, the relevant portion whereof reads as follows :*
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> > *"35. **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 :

Provided that -

(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

xxx xxx xxx."

11. From a plain reading of the aforesaid provision, it is evident that an authority to receive evidence shall not admit any instrument unless it is duly stamped. An instrument not duly stamped shall be admitted in evidence on payment of the duty with which the same is chargeable or in the case of an instrument insufficiently stamped, of the amount required to make up such duty together with penalty. As we have observed earlier, the deed of agreement having been insufficiently stamped, the same was inadmissible in evidence. The court being an authority to receive a document in evidence to give effect thereto, the agreement to sell with possession is an instrument which requires payment of the stamp duty applicable to a deed of conveyance. Duty as required, has not been paid and, hence, the trial court rightly held the same to be inadmissible in evidence. The view which we have taken finds support from a decision of this Court in the case of ***Avinash Kumar Chauhan v. Vijay Krishna Mishra, 2009 (1) RCR (Civil) 615 : 2009 (1) Recent Apex Judgments (R.A.J.)***

297 : (2009) 2 SCC 532, *in which it has been held as follows :*

"21. It is not in dispute that the possession of the property had been delivered in favour of the appellant. He has, thus, been exercising some right in or over the land in question. We are not concerned with the enforcement of the said agreement. Although the same was not registered, but registration of the document has nothing to do with the validity thereof as provided for under the provisions of the Registration Act, 1908.

22. We have noticed heretobefore that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. Adequate stamp duty admittedly was not paid. The court, therefore, was empowered to pass an order in terms of Section 35 of the Act."

6] The above judgment of the Supreme Court has held that if the document is not sufficiently stamped it cannot be read in evidence unless the document is stamped after following process as available under the Bombay Stamp Act. The agreement to sell, in the instant case, is liable for payment of stamp duty and is correctly impounded by the trial Court. Hence, the present Writ Petition is dismissed.

[ARUN R. PEDNEKER]
JUDGE

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