



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

WRIT PETITION NO. 7424 OF 2019

- 1) Shri Hitesh s/o Hariram Nathani,
age about 41 years, Occ. – Business,
- 2) Kumari Palak d/o Hitesh Nathani,
(Minor), age about 14 years,
Occupation – Student,
through its Natural Guardian.

Nos. 1 and 2 Both R/o. Top Floor,
Vyankatesh Complex, Subhash Road,
Ganeshpeth, Nagpur – 440018.

.... **PETITIONERS**

VERSUS

- 1) Shri Damodhar s/o Ramaji Sakharkar,
age about 55 years, Occ. – Service,
- 2) Shri Sunil s/o Sudhakar Sakharkar,
age about 36 years, Occ.- Service,
- 3) Shri Rahul s/o Sudhakar Sakharkar,
age about 32 years, Occ.- Private,

Nos.1 to 3 all R/o Dighori, Tajbagh,
Umred Road, Nagpur.

.... **RESPONDENTS**

Mr. A.C. Khare, Counsel for the petitioners,
Mr. C.N. Deshpande, Counsel for the respondents.

CORAM : ABHAY J. MANTRI, J.
DATE : 23rd SEPTEMBER, 2024

ORAL JUDGMENT :

Rule. Rule is made returnable forthwith and heard finally by consent of the learned Counsel for the parties.

2. The petitioners have challenged the order dated 09-10-2019 passed by the learned 5th Joint Civil Judge, Sr. Dn., Nagpur (for short- '*the learned Judge*') below Exhibit 69 in Special Civil Suit No.653/2014, thereby rejecting the application to recall the order dated 17-11-2017 passed below Exhibit 57. By the said order, the document of '*agreement to sale*' came to be impounded as per Section 33 of the Maharashtra Stamp Act.

3. Perused the impugned order, record, and the judgments relied upon by the parties.

4. Mr. A.C. Khare, learned Counsel for the petitioners, has vehemently argued that the trial Court has not taken into consideration the aspect that it is not necessary to impound the document. However, the passing of the impugned order by the trial Court is contrary to the provisions of the law; therefore, the same cannot be sustained in the eyes of the law and is liable to be set aside.

Besides, he argued that the agreement of sale was authored by petitioner No.1 and that, in such circumstances, the petitioner could prove his signature on the said document. For that purpose, it is not required to impound the document for exhibiting it. Thus, the trial Court erred in passing the impugned order. Hence, he prays for setting aside the same.

Lastly, he argued that the trial court erred in interpreting the law laid down in the judgments of the Hon'ble Apex Court and that the passing of the order is not sustainable; hence, he urges that the application be allowed.

To substantiate his contentions, he has relied upon the judgments in the cases of *R. Hemalatha V Kashthuri*, AIR Online 2023 SC 257 and *Ameer Minhaj V Dierdre Elizabeth (Wright) Issar and Others*, (2018) 7 SCC 639.

5. As against, Mr. C.N. Deshpande, learned Counsel for the respondents-original defendants, has strenuously argued that the trial Court, after considering the provisions of Section 34 of the Maharashtra Stamps Act, has rightly held that if instruments/documents are not duly stamped, are inadmissible in evidence and, therefore, passed the order of impounding the document. Hence, no interference is required in writ jurisdiction.

6. Having considered the rival submissions, the core question that arises before this Court is that,

“Whether the document is required to be impounded under Section 34 of the Maharashtra Stamp Act or not.”

7. To determine the facts in controversy, I would like to reproduce Section 34 of the Maharashtra Stamps Act, which reads thus :

“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 a 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 of 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 ;

(e) nothing herein contained shall prevent the admission of a copy of any instrument or of an oral admission of the contents of any instrument, if the stamp duty or a deficient portion of the stamp duty and penalty as specified in clause (a) is paid.”

8. On a plain reading of this provision, it is amply clear that if the document is not duly stamped, it is inadmissible in evidence. The provision in the said section clearly shows that to admit the document in evidence, the same is required to be duly stamped.

9. In the case at hand, the agreement in question is undisputedly not duly stamped. Therefore, by order dated 17-11-2017, passed below Exhibit 57, the learned Judge directed to impound the document as per Section 33 of the Maharashtra Stamp Act. However, the petitioners did not challenge the said order until filing the application (Exhibit 69) on 04-9-2019.

10. Exhibit 69 further reveals that the petitioners had filed an application (*Exh.-57*) before the trial court seeking to impound the document. Accordingly, the trial court allowed the application, which itself denotes that the order was passed on the petitioners' application. It is not the case that the trial court has *Suo Moto* or, on the application

of the other side, has passed the order to recall the same. Thus, the petitioners cannot be claimed to recall the said order.

11. It is pertinent to note that as per Section 34 of the Maharashtra Stamp Act if the instrument/document is not duly or properly stamped, it is inadmissible in evidence. In such an eventuality, in my view, the passing of the impugned order is just and proper.

12. In the authorities cited by the learned Counsel for the parties, the issue differed from the case at hand. In the said cases, the question of deficit stamp duty was not in question, but the issue was that the document was not registered. Whether that document is admissible in evidence or not and after considering the facts in the said cases, the Apex Court has observed that the document is required to be registered, but if unregistered, can still be admitted as evidence of a contract in a suit for specific performance and its evidentiary value will have to be adjudicated at appropriate stage if the parties adduce their oral and documentary evidence. However, in the case at hand, the facts are different than those of the authorities cited. Therefore, the dictum laid down in the above-cited cases is hardly of any use to the petitioners in support of their contentions.

13. On perusal of the impugned order, it seems that the learned Judge, after considering the provisions of the Maharashtra Stamp Act, has rightly held that the document, which is not duly stamped, is required to be impounded under Section 34 of the said Act. Therefore, there is no error on the face of the record to recall the order dated 17/11/2017. Thus, the order passed by the trial Court is well reasoned, and no interference is required to be caused in writ jurisdiction.

14. As such, the petition, being bereft of any merit, stands dismissed with no order as to costs.

15. Rule stands discharged.

Inform the trial court accordingly.

(ABHAY J. MANTRI, J.)

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