IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3076 OF 2025

Babasaheb Shripati Mane and Others ...Petitioners
vs.
Deepak Bapusaheb Patil ...Respondent

Mr. Drupad Patil a/w. Ms. Srushti Chalke, for the Petitioners.
Mr. Abhijit Adagule a/w. Ms. Ketki Patil, for the Respondent.

CORAM : N. J. JAMADAR, J.
DATE : MARCH 25, 2025

P.C:

1. This petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order dated 4th December, 2024 passed by the learned Civil Judge, Kolhapur whereby an application preferred by the plaintiff to impound two receipts dated 12th March, 2015 and 16th July, 2015 acknowledging the receipt of the money thereunder came to be allowed.

2. The respondents/ plaintiffs instituted a suit for recovery of a sum of Rs. 18,70,000/- with the assertion that the defendant No. 1 had induced the plaintiffs to part with consideration of Rs. 27 lakhs by entering into an Agreement for Sale of the suit land, dated 12th March 2015. It transpired that the defendant no. 1 had entered into the said agreement for sale despite pendency of two civil suits in respect of the suit property. Thus, the Agreement for Sale came to

be terminated. The defendant repaid a sum of Rs. 16 lakhs. However, defendant No. 1 committed default in payment of the balance amount of Rs. 11 lakhs. Hence, the suit for recovery of the principal amount along with inerest @ 12% p.a.

3. The plaintiffs claimed that defendant No. 1 had acknowledged the receipt of a sum of Rs. 22 lakhs by passing a receipt overleaf the agreement for sale on 12th March, 2015 and further acknowledged the receipt of a sum of Rs. 5 lakhs by passing another receipt dated 16th July, 2015.

4. During the pendency of the suit, the plaintiff filed an application to impound the said receipts purportedly under the provisions of section 33 of the Maharashtra Stamp Act, 1958. By the impugned order, the learned Civil Judge ordered the impounding of the receipts by invoking the provisions of section 33 of the Indian Stamps Act, 1899 as the receipts were required to be stamped under Article 53 of the Schedule I of the Act, 1899.

5. Mr. Patil, the learned counsel for the petitioners, submitted that the order passed by the learned Civil Judge suffers from an error of law. It was urged that under section 33 of the Act, 1958 what can be impounded is an instrument, as defined under section 2(l) of the said Act, 1958. In the case at hand, the learned Civil Judge did not impound the Agreement for Sale and instead

impounded the receipt dated 12th March, 2015 purportedly passed overleaf the Agreement for Sale. It was submitted that the said receipt, de hors the Agreement for Sale, does not fall within the ambit of the term ‘instrument’, defined under section 2(l) of the Act, 1958.

6. Mr. Adagule, the learned counsel for the respondent, submitted that the submissions premised on the provisions of the Act, 1958 do not merit countenance as the learned Civil Judge has explicitly recorded that reference to an incorrect provision of law can not be a ground to refuse relief to a party which it is otherwise entitled to, and, thus, by invoking the provisions contained in Indian Stamp Act, 1899 impounded the receipts. No prejudice is likely to be caused to the defendants by adjudication of the stamp duty and penalty thereon.

7. I find substance in the submission of Mr. Adagule. The provisions of Indian Stamp Act, 1899 are abundantly clear and seem to govern the facts of the case at hand. There is no reason to obfuscate the issue by referring to the provisions contained in the Maharashtra Stamp Act, 1958 as they are clearly not attracted to the facts of the case at hand.

8. Under section 2(23) of the Indian Stamp Act, 1899, “Receipt” includes, “any note, memorandum or writing whereby any money,

or any bill of exchange, cheque or promissory note is acknowledged to have been received". Article 53 of the Schedule I to the Indian Stamp Act, 1899, prescribes the stamp duty payable on receipt, as defined under section 2(23), for any money or other property the amount or value of which exceeds five thousand rupees.

9. Section 35 of the Indian Stamp Act, 1899 proscribes admission in evidence of any instrument chargeable with duty for any purpose by any person having by law or consent of parties authority to receive evidence, or to act upon such instrument unless such instrument is duly stamped. Proviso (b) thereto, however, provides that where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it.

10. In the face of the aforesaid statutory prescription, the learned Civil Judge was within his rights in impounding the receipt notwithstanding the application having been filed under the provisions of Maharashtra Stamp Act, 1958 as it is trite nomenclature of the application or reference to an incorrect provision of law is not of decisive significance.

11. The submission of Mr. Patil that a part of the instrument cannot be impounded is also unworthy of acceptance. An Agreement for Sale which does not amount to a conveyance under Article 25 of the Maharashtra Stamp Act, 1958 is not chargeable with duty under the said Act. Conversely, a receipt is chargeable with duty under the Indian Stamp Act, 1899. Thus, the learned Civil Judge, has rightly impounded the receipts. No interference is, thus, warranted in the impugned order.

12. The petition stands dismissed.

(N.J. JAMADAR, J.)