



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.2527 OF 2026

1] Dagu Sabaji Badhe,
Age: 77 years, Occ: Agri,

2] Sunil Dagu Badhe,
Age: 47 years, Occ : Agri.

Both R/o.Ghari, Tq. Kopargaon,
District : Ahmednagar.

.. PETITIONERS

VERSUS

Anuradha Dilip Deshmukh,
Age: 57 years, Occupation : Farming & Household,
Residing at : Tanaji Chowk, Sinnar,
Taluka Sinnar, District Nashik. **.. RESPONDENT**

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Mr.Shailesh S. Chapalgaonkar, Advocate for the petitioners.

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CORAM : MEHROZ K. PATHAN, J.

DATE : 10.03.2026

ORDER :

1] The petitioners have filed present Writ Petition thereby praying for quashing and setting aside the order dated 06.01.2026 passed by the Joint Civil Judge Senior Division, Kopargaon, below Exh.72 in Regular Civil Suit No. 06/2014 whereby the learned trial Court has allowed

Exh.72 filed by the plaintiff to impound document Exh.69, which is a sale deed relied upon by the defendant – petitioner herein on the ground that the said sale deed is executed on a stamp paper of Rs.50/- and such document is inadmissible in evidence and the same is not impounded yet and thus the same cannot be read in evidence.

2] The learned counsel for the petitioners submits that the original plaintiff – respondent herein – Anuradha Dilip Deshmukh has filed a Regular Civil Suit No.06/2014 for permanent injunction in respect of agricultural land bearing Survey No. 28/1/1, admeasuring 1 H. 18 R. situated at village Ghari, Taluka Kopargaon, District Ahmednagar, against the present petitioners i.e. Dagu Badhe and Sunil Badhe.

3] The petitioners herein have filed their written statement contending that predecessor-in-title of the respondent, namely, Paraji Karbhari Sable had sold portion of the said land admeasuring 3 R. from the north-east corner to the father of the petitioner no.1 herein by way of

unregistered sale deed dated 18.04.1998 for consideration of Rs.7500/-, since then the petitioners and his family have been in continuous possession of the said 3 R portion since the date of purchase and have constructed a residential structure thereon. The trial had commenced and after evidence of the plaintiff, the defendants – petitioners herein have also examined witness Bhikaji Tukaram Kandalkar [DW-2] as one of the attesting witnesses to the sale deed dated 18.04.1998 and Balasaheb Paraji Sable [DW-3] at Exh.70 as another witness, who had proved the contents of the sale deed. The said document was admitted by the learned trial Court in evidence and marked as Exhibit-69 in Regular Civil Suit No.06/2014.

4] It is the contention of the learned counsel for the petitioners that at the time of examination in chief and cross examination of the witnesses, the plaintiff did not take any objection about inadequate stamp duty being paid on the sale deed dated 18.04.1998, which was executed on stamp paper of Rs.50/- and as such the said sale deed

Exh.69 came to be admitted in evidence and sale deed was exhibited as Exh.69. The said evidence was over on 19.07.2025. However, on 29.07.2025, after the document was already admitted in evidence and exhibited, the respondent-plaintiff has filed an application Exh.72 raising belated objection to the admissibility of Exh.69 on the ground of 'insufficient stamp duty' and prayed for de-exhibiting the said document and impounding of the said document.

5] The learned counsel for the petitioners submits that as per mandate of Section 35 of the Maharashtra Stamp Act, 1958, once document is admitted in evidence, such document cannot be called into question at any subsequent stage of the proceeding on the ground of it being insufficiently stamped. It is further submitted by the learned counsel for the petitioners that the learned trial Court has wrongly exercised inherent powers under Section 151 of the Civil Procedure Code to recall the document on the ground that there was no judicial determination of the

said document at the time of marking the same as Exhibit and as such the impugned order directing the Collector [Stamp], Ahmednagar, to impound the document by payment of deficit stamp along with penalty as per the procedure is arbitrary, illegal, erroneous and thus liable to be set aside.

6] I have gone through the plaint filed along with the petition, written statement filed by the petitioners, evidence of DW-2 Bhikaji Kandalkar and evidence of DW-3 Balasaheb Sable. I have also gone through the sale deed dated 18.04.1998 filed along with petition, application filed by the respondent below Exh.72 and say filed by the petitioners. I have also gone through the impugned order dated 06.01.2026 passed by the learned Joint Civil Judge Senior Division, Kopergaon.

7] After having considered the entire record it emerges that the defence has been set up by the petitioners herein in their written statement that the petitioner no.1 has purchased 3 R. i.e. 50 ft. x 66 ft. land from the erstwhile

owner, namely, Paraji Karbhari Sable through an unregistered sale deed dated 18.04.1998 for consideration of Rs.7500/- on stamp paper of Rs.50/- and thus the defendants is in the possession of the said land. The written statement dated 20.06.2014 shows that the defendants have relied upon the said sale deed dated 18.04.1998 to raise their claim of ownership on the said land. The said document sale deed dated 18.4.1998 though was exhibited as Exh.69, there is no evidence on record to show that the trial Court had judicially determined question of admissibility of the said document.

8] The learned trial Court has rightly relied upon various judgments of the Hon'ble Supreme Court to hold that the sale deed relied upon by the petitioners cannot be said to have been admitted so as to attract the bar under Section 35 of the Maharashtra Stamp Act unless it is judicially determined.

9] The following observations of the judgment delivered by the Hon'ble Supreme Court in the case of **G.M.**

Shahul Hameed V. Jayanthi R. Hegde 2024 (7) SCC 719

would be relevant to decide the present petition wherein the Hon'ble Supreme Court was pleased to observe as under:

22. The Presiding Officer of a court when confronted with the question of admitting an instrument chargeable with duty but which is either not stamped or is insufficiently stamped ought to judicially determine it. **Application of judicial mind is a sine qua non having regard to the express language of Sections 33 and 34 and interpretation of pari materia provisions in the Stamp Act, 1899 ("the 1899 Act" hereafter)** by this Court. However, once a decision on the objection is rendered - be it right or wrong - Section 35 would kick in to bar any question being raised as to admissibility of the instrument on the ground that it is not duly stamped at any stage of the proceedings and the party aggrieved by alleged improper admission has to work out its remedy as provided by Section 58 of the 1957 Act.

25. The pivotal aspect emerging for consideration on the terms of Sections 33 and 34 of the 1957 Act, with which we are concerned, is that whether the Trial Court did **judicially determine** the question of admissibility. It is here that we need to ascertain the rationale behind the trial court's approach to go behind admission of the GPA in evidence and marking thereof as an exhibit, leading to the order under challenge before the High Court.

27. On the face of such an order, it does not leave any scope for doubt that on the date the GPA was admitted in evidence and marked as an exhibit, the trial court did not deliberate on its admissibility,

much less applied its **judicial mind**, resulting in an absence of **judicial determination**. In the absence of a 'decision' on the question of admissibility or, in other words, the trial court not having 'decided' whether the GPA was sufficiently stamped, Section 35 of the 1957 Act cannot be called in aid by the respondent. For Section 35 to come into operation, the instrument must have been "**admitted in evidence**" upon a judicial determination. The words "**judicial determination**" have to be read into Section 35. Once there is such a determination, whether the determination is right or wrong cannot be examined except in the manner ordained by Section 35. However, in a case of "no judicial determination", Section 35 is not attracted.

10] The Hon'ble Supreme Court in the case of **Ram Rattan V. Bajrang Lal 1978 (3) SCC 236** was pleased to observed as under:

The court, and of necessity it would be the trial court before which the objection is taken about admissibility of document on the ground that it is not duly stamped, has to judicially determine the matter as soon as the document is tendered in evidence **and before it is marked as an exhibit in the case and where a document has been inadvertently admitted without the court applying its mind as to the question of admissibility, the instrument could not be said to have been admitted in evidence with a view to attracting Section 36.**

11] The perusal of the said above observations of the Hon'ble Supreme Court, in aforesaid two judgments

and after having considered the entire law on the subject, it would be clear that what is to be seen is that whether the trial Court has applied its judicial mind to the admissibility of the said document. In the absence of any such effort on the part of the trial Court to deliberate upon admissibility of the said document and absence of judicial determination as to whether the said document was sufficiently stamped or not, the bar under section 35 would not operate. Section 35 of the Karnataka Stamp Act 1957 is *pari materia* to Section 35 of Maharashtra Stamp Act 1958. For the bar of Section 35 to operate, the instrument / document [sale deed herein] ought to have been admitted in evidence upon judicial determination. The words 'judicial determination' is to be read into Section 35 of the Karnataka Stamp Act, 1957. There is no reason why such an analogy shall not be applied in the bar in Section 35 of the Maharashtra Stamp Act 1958 as both sections are *pari materia* to Section 36 of Indian Stamp Act, 1899. Therefore, in my opinion, said word of 'judicial determination' will also have to be equally applied in Section 35 of the Maharashtra Stamp Act 1958.

In the absence of any “judicial determination” about admissibility of the document [sale deed] and in absence of reasoned order whether the sale deed was sufficiently stamped, bar under Section 35 of the Maharashtra Stamp Act 1958 would not apply. The powers under Section 151 of the Civil Procedure Code are meant to do justice and to prevent the abuse of process of law. The learned trial Court has rightly exercised its inherent power under section 151 CPC to hold that though the alleged sale deed is exhibited at Exh.69, the same cannot be said to be admitted in evidence or judicially determined only with a view to attract bar.

12] Taking into consideration law laid down by the Hon’ble Supreme court in the aforesaid judgment of **G.M.Sahul Hameed** [supra], the learned trial Court has rightly allowed the application below Exh.72, with further direction to the Collector to impound document by paying deficit stamp duty along with penalty, if any, as per the procedure.

13] The petitioners have thus failed to make out the case to interfere with the impugned order. The impugned order is just and proper and liable to be maintained. The Writ Petition is devoid of substance and merits and the same is hereby dismissed.

[MEHROZ K. PATHAN]
JUDGE

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