



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

WRIT PETITION NO. 5467 OF 2024

Ramrao Wamanrao Gavande, Age : 53 years, Occ: Private Service, R/o c/o Keshav Navghare, Plot no.A/6, Mhada Colony, Jaytala Road, Nagpur – 440036.

PETITIONER

VERSUS

1. Namdeo Shyamrao Shinde, Aged-66 years, Occ-Private, R/o At kharaskhanda, Po-Thanegaon, Tq. Karanja, Dist. Wardha-442203.

2. Goodluck Co-op Housing Society Ltd. Nagpur Through its President/Secretary, Add. Kelibag Road, Mahal, Nagpur-440032.

New Add-C/o Sanjay Anandrao Dhapodkar, 620, Kanzi House Road, Anand Nagar, Binaki, Nagpur.

RESPONDENTS

Shri Sawan Alaspurkar, counsel for the petitioner.

Shri P.K. Mishra, counsel for the respondent no.1.

None for the respondent no.2, though served.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE ON WHICH ARGUMENTS WERE HEARD : DECEMBER 04, 2025

DATE ON WHICH JUDGMENT IS PRONOUNCED : JANUARY 09, 2026

JUDGMENT

RULE. Rule is made returnable forthwith and heard finally with consent of the learned counsel for the parties.

2. This petition under Articles 226 and 227 of the Constitution of India takes exception to the order dated 17.08.2024 passed by the trial Court rejecting the application for impounding of the document of agreement to sell.

3. The petitioner is the original plaintiff who has filed the suit for specific performance of contract with respect to the agreement to sell dated 21.05.2015. The respondent no.1/defendant no.1 appeared in the

suit and filed his written statement. At the stage of evidence of the plaintiff, he filed an application at Exhibit 37 for impounding of the document of agreement to sell. The application was resisted by the defendant no.1 and it came to be rejected by order dated 17.08.2024, which is subjected to challenge by way of instant petition.

4. Arguing for the petitioner, learned counsel Shri Sawan Alaspurkar submitted that the agreement to sell dated 21.05.2015 contained a recital about possession and was thus required to be impounded so that the document could be held to be admissible in evidence in accordance with Section 34 of the Maharashtra Stamp Act, 1958 (for short, 'the Act'). He submitted that the entire suit depended on the admissibility of the said document and in view of the amnesty scheme of the Government of Maharashtra in respect of impounding of documents, the application at Exhibit 37 dated 25.06.2024 was filed seeking impounding of the said document in accordance with law. He submitted that the document being a conveyance in view of Explanation I to Article 25 of Schedule-I of the Act, it was required to be impounded at the stage of evidence. However, the trial Court has erroneously interpreted the recital of the document even before any evidence was led and wrongly concluded that the recitals about possession in the agreement are concocted and untrue. He submitted that in view of the provisions of Explanation I to Article 25 of Schedule-I and Section 34 of the Act, the application ought to have been allowed.

5. In support of his submissions, he placed reliance on the judgments of the Coordinate Bench of this Court in *Gulam Murtuza Khan Gulam Ahmed Khan Versus Ramdas Banaji Ilame & Others* [2016(2) Mh.L.J. 300], *Santosh Anant Raut Versus Pukharaj Chogmal Rathod & Another* [2010(4) Mh.L.J. 22], *Bhupendrabhai Rambhai Patel Versus Lilabai Mahadeorao Labde & Another* [2010(5) Mh.L.J. 990] and the judgment of the Division Bench of this Court in *Naginbhai P. Desai Versus Taraben A. Sheth* [AIR 2003 Bombay 192]. By highlighting the legal position as laid down in *Bhupendrabhai Rambhai Patel* (supra), he submitted that the recital in the agreement to sell about handing over of the possession is sufficient to attract the provisions of Explanation I to Article 25 of Schedule-I and Section 34 of the Act.

6. Per contra, Shri P.K. Mishra, learned counsel for the respondent no.1 opposed the petition and justified the impugned order. He submitted that the trial Court has rightly considered the pleadings in the suit and in view of the apparent dispute about handing over of possession, the document cannot be considered to be a conveyance. By relying upon the provisions of Order XIII Rule 8 of the Code of Civil Procedure, 1908, he submitted that the Court is empowered to order impounding of any document if it finds sufficient cause and in the instant case having seen absence of sufficient cause, the trial Court has rightly rejected impounding of the document of agreement to sell.

7. By inviting attention to the fact that although the original agreement to sell dated 21.05.2015 was filed on record before the trial Court, without obtaining permission from the Court the plaintiff has paid the necessary stamp duty alongwith penalty and got the procedure completed, he submitted that the plaintiff has not acted bonafidely. He submitted that there is no handing over of actual possession as alleged and therefore the provisions of Explanation I to Article 25 of Schedule-I and Section 34 of the Act cannot be attracted.

8. Rival contentions, thus, fall for my consideration.

9. It has to be seen that the plaintiff has filed the suit for specific performance of contract on the basis of agreement to sell dated 21.05.2015. The recital about handing over of possession as stated in the said document is reproduced below:-

“वरील चतुर्भिमेव्या आतील प्लॉट नंबर ३३ याचा पूर्ण हिस्सा तुम्हाला नेहमीकरीता विकण्याचा करार केला आहे. सदरहु प्लॉटचा ताबा/कब्जा सुद्धा आज येजी देण्यात आला.”

10. In the suit, the plaintiff had filed evidence on affidavit and also filed on record the original agreement to sell dated 21.05.2015 alongwith list of documents at Exhibit 30. Since the document was insufficiently stamped, an objection was raised by the defendant no.1 while exhibiting the said document. In view of the objection, the trial Court had adjourned the matter for allowing the plaintiff to take necessary steps for getting the document impounded. Under these circumstances, the plaintiff filed the application at Exhibit 37 on 25.06.2024 for seeking the impounding of the document.

11. Pertinent to note, the plaintiff has specifically mentioned in the application that the Government of Maharashtra has floated an amnesty scheme i.e. Abhay Yojana with respect to impounding of documents which was in force till 28.06.2024 and therefore, prayed for sending the document for impounding. Since the application was not immediately decided, the plaintiff had filed pursis at Exhibit 40 by which he placed on record the document of amnesty scheme demonstrating the urgency for deciding the application. Crucial to note, in the suit filed by the plaintiff seeking specific performance of contract, admissibility of the agreement to sell is vital. The agreement contains a recital with respect to delivery of possession. In response to the plaintiff's application dated 25.06.2024 for impounding, the Collector of Stamps issued a demand notice dated 04.07.2024 calling upon the plaintiff to pay deficit stamp duty and penalty which is deposited by him during the pendency of the application.

12. For dealing with the controversy further, it is relevant to take note of Explanation I to Article 25 of Schedule-I of the Act, which is reproduced below:-

“[Explanation I].— For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred [or agreed to be transferred] to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly”

13. It is also relevant to note that in view of provisions of Section 34 of the Act, an insufficiently stamped document is not admissible in evidence. In view of the position of law governing the situation, it was imperative for the plaintiff to get the document impounded. As such, in view of the amnesty scheme, the steps taken by the plaintiff for getting the document impounded appear to be genuine and bonafide conduct on his part.

14. While considering the controversy involved, a quick reference is needed to the judgments relied upon by the counsel for the respective parties. While dealing with the provisions of Sections 33 and 34 of the Act, the Coordinate Bench of this Court in ***Santosh Anant Raut*** (supra) has held that an insufficiently stamped document cannot be made admissible in evidence and further that there is nothing wrong that if a party relying on a document applies for impounding of any document to enable the Court to exercise powers under Proviso a to Section 34 of the Act. As such, the conduct on the part of the plaintiff in the instant case in submitting the application for taking benefit of the amnesty scheme cannot at all be considered to be lacking in bonafides.

15. As regards the legal position about necessity of getting the document impounded in view of recitals about possession in the document, the Coordinate Bench of this Court has clarified the position in paragraph 6 of the judgment in ***Bhupendrabhai Rambhai Patel*** (supra), which is reproduced as under:-

“6. The bare perusal of Exh.51 shows a recital that possession of suit filed as per measurement was given by defendant No.1 to plaintiff and the plaintiff has accepted it. The question is of said stipulation and whether that stipulation in agreement can be understood in the light of the pleadings of parties before the Court. Section 34 of Stamp Act specifically states that such an instrument chargeable with duty cannot be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence and it cannot be acted upon by such person. Its later part provides that this embargo applies till such document is duly stamped. It is, therefore, apparent that the embargo placed is upon the Court which is recording the evidence and in relation to instrument. Here, the instrument is dated 7-6-2002 (Exh.51). The arguments of learned counsel for the petitioner reproduced above clearly shows that there is no effort to demonstrate that it is not chargeable to stamp duty as explanation No. 1 to Article 25 of Stamp Act is not applicable. The effort is to show that said instrument cannot be taken at its face value and needs to be understood in the light of real facts or then pleadings of parties. Section 34 does not permit such an exercise. The instrument as drawn and as filed, needs to be looked into by the person before whom it is produced as evidence. It is, therefore, clear that the effort of the petitioner is to press into service the facts which show that said stipulation in the instrument is incorrect. **Even to appreciate that effort, the instrument needs to be looked into and therefore received in evidence. Section 34 of Stamp Act steps in here and prohibits its use for even such appreciation. Explanation – I to Article 25 gives importance to what Exh.51 discloses on its bare reading. It even cover cases where the possession is agreed to be transferred at a future date. Thus, refusal or failure to hand over such possession before agreed date is not an excuse thereunder. Existence of stipulation of handing over the possession in Exh.51 is not in dispute here. Hence circumstances in which the possession was not or could not be handed over are not relevant for the purposes of Section 34.”**

In view of the aforesaid position of law, it becomes clear that in the wake of recital about handing over of possession in the document, the said document can be treated to be a conveyance attracting Explanation I to Article 25 of Schedule I of the Act. It has to be seen that the provision of Explanation I to Article 25 of Schedule I of the Act also cover the cases where the possession is agreed to be transferred.

16. Despite this being the position, the trial Court has rejected the application by inferring that although there is recital of handing over of possession, there is nothing to indicate actual handing over of the same. The trial Court has opined that the provisions of Explanation I to Article 25 of Schedule I of the Act does not cover the case of notional possession and in view of the dispute raised by the parties, the provisions of Explanation I to Article 25 of Schedule I of the Act are not attracted. In this regard, it has to be noted that the inferences drawn by the trial Court are by appreciating the pleadings of the parties with respect to the dispute about handing over of the possession. This inference appears to have been drawn by the trial Court as if the Court was appreciating the evidence on record. It has to be noted that there is no dispute about existence of a recital about possession in the agreement to sell. The evidence in the suit is yet to be led and mere contentions about the dispute with respect to possession cannot be given much importance at this stage.

17. Apart from this, in view of provision of Explanation I to Article 25 of Schedule I of the Act, the cases in which the possession is agreed to be transferred are also covered in the category of a conveyance. As such, the approach adopted by the trial Court in treating the possession as notional possession only on the basis of rival pleadings is absolutely unsustainable.

18. The position of law as laid down by the Coordinate Bench of this Court in *Bhupendrabhai Rambhai Patel* (supra) as mentioned above is applicable in the instant case. The document of agreement to sell dated 21.01.2015 clearly contains a stipulation about handing over of possession and the document was required to be impounded. The act on the part of the plaintiff in submitting the application for impounding to avail the benefit of amnesty scheme i.e. Abhay Yojana demonstrated a reasonable conduct to seek directions of impounding of the document. The application filed by the plaintiff at Exhibit 37 was thus required to be allowed. The impugned order dated 17.08.2024 passed by the trial Court does not demonstrate sound reasoning and needs to be interfered with.

19. Having regard to the above mentioned factual and legal aspects, the impugned order is unsustainable warranting indulgence under Article 227 of the Constitution of India. Hence, the following order is passed:-

- I. The writ petition is allowed.
 - II. The order dated 17.08.2024 passed by the Court of 8th Joint Civil Judge (Senior Division), Nagpur on application at Exhibit 37 in Special Civil Suit No.362 of 2017 is quashed and set aside.
 - II. The application dated 26.06.2024 filed by the plaintiff at Exhibit 37 in Special Civil Suit No.362 of 2017 is allowed.
20. Rule is made absolute in aforesaid terms. No order as to costs.

(PRAFULLA S. KHUBALKAR, J.)