

ORDER BELOW EXH.21 IN R.C.S. NO.268/2020
(CNR NO.MHAH08-000515-2020)

This is an application filed by the plaintiff for impounding agreement-of-sale of dtd.25.02.2010.

02. According to the plaintiff, present suit is filed for the relief of specific performance. Suit is pending for filing list of witnesses. The defendant has executed agreement-of-sale in respect of suit property on 25.02.2010 on stamp paper of Rs.100/-. It is notarized document. In order to provide legal sanctity, it is necessary to verify how much stamp duty is payable on the document and direct the concern officer to fix it. The plaintiff is ready to pay necessary stamps.

03. The application is opposed by the defendant vide reply Exh.23. It is submitted that, the application is not maintainable. The agreement is against the law. It is unregistered and barred by the provisions of Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act. As submitted in the written-statement the alleged transaction is of security. The suit is pending for evidence of parties. At this stage application is not maintainable. Considering these grounds, application be rejected with costs.

04. Heard the learned advocates for the parties and gone through the alleged agreement-of-sale dtd.25.02.2010. Present suit is filed for the relief of specific performance of contract. The suit is pending for evidence of the plaintiff. At that time, present application is filed. Perusal of aforesaid agreement shows that, it is unregistered and written on Rs.100/- stamp paper. It is notarized. The consideration of Rs.2,40,000/- is shown in it. It is mentioned that, possession of suit property was allegedly delivered by said agreement. As per the provisions of Section 34 of The Maharashtra Stamp Act instrument not duly stamped are not admissible in

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evidence. The plaintiff wants to produce the documents in evidence and for that purpose ready to pay the necessary stamp duty. Till today the agreement is not admitted in evidence. The learned advocate for the defendant has relied on the decision in the case of **Rafique Barkatulla Khan V/s. Shahenshah Hussain Iqbal Munshi, 2011 (3) Mah. L. R. 732.** In said decision the trial court had refused to place reliance on the unregistered/insufficiently stamped document executed in favour of plaintiff for grant of temporary injunction. It is held that, the court was justified in refusing to place reliance on the unregistered/insufficiently stamped document even for the purpose of refusing to grant temporary injunction.

05. As stated above it is undisputed that, agreement is not exhibited for the purpose of evidence and even, the application is filed prior to beginning of the evidence of the plaintiff. The document i.e. agreement-of-sale of dtd.25.02.2010 will have to be sent to the Stamp Collector for the purpose of impounding same otherwise it can not be read in evidence. The plaintiff is ready to pay the deficit stamp. The plaintiff has to pay proper stamp along-with penalty if any before the Collector of Stamps and get the document impounded. Hence, the order :-

ORDER

- (01) The application is allowed.
- (02) Agreement-of-sale of dtd.25.02.2010 be sent to the Stamp Collector, Ahmednagar for impounding it.
- (03) The Stamp Collector, Ahmednagar may consider the provisions of the Maharashtra Stamp Act for purpose of determining penalty and deficit stamp.
- (04) The plaintiff shall approach office of the Stamp Collector, Ahmednagar in person for purpose of

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Exh.21.

calculating penalty with stamp fee and for payment
of same.

Date :- 04.12.2023.

Place :- Sangamner.

(M. M. Shaikh)
Civil Judge Senior Division,
Sangamner.