MHKO070008942013

ORDER PASSED BELOW EXH. 208

1] By way of present application, defendant No.1 has prayed that, the agreement to sale dtd. 27/03/2013, in respect of suit property be sent to Collector of Stamps, Kolhapur for its impounding, collecting proper stamp duty on said instrument or conveyance on which such duty is payable as per provisions of Section 33 of The Bombay Stamp Act, 1958 (Now known as 'Maharashtra Stamp Act,1958').

2] According to defendant No.1, suit is for specific performance of said agreement dtd. 27/03/2019. It is executed on stamp of Rs. 100/-. Therefore, the said agreement be impounded by sending it to the concern authority for collecting deficit stamp duty as per provisions of Bombay Stamp Act.

3] Plaintiff on today has given no objection to grant defendant No.1's application.

4] Following points arose for my determination to which I have recorded my findings thereon are as under -

Sr. No	Points	Findings
1.	Whether defendant No.1 is entitled for relief as sought ?	**.. In the Affirmative.**
2.	What order?	**As per final order.**

REASONS

5] Suit is for specific performance of agreement dtd. 27/03/2013 The trial has already commenced. According to plaintiffs, they are entitled for specific performance on the basis of agreement in question.

6] It appears that, entire claim is based on said agreement, which is an instrument for purpose of Section 35. The 'instrument' is defined in Section 2(14) as every document by which any right or liability is, or purports to be created, transferred limited, extended, extinguished or recorded. Therefore, in view of provisions of The Bombay Stamp Act, the document is sought to be impounded.

7] It appears that, Chapter IV of Stamp Act deals with 'instrument not duly stamped'. Section 33 deals with examination and impounding of such instrument. The plaintiff himself in present case is ready to impound instrument by making appropriate payment of penalty. The Section 34 of Act, prohibits the admissibility of instruments or such document in evidence, which are not duly stamped, except payment of proper stamp duty and penalty specified thereto.

8] In above situation, the document which defendant No.1 is seeking to tender in evidence before court, is not sufficient stamped, it is duty of the court to impound it in accordance with Section 33 of Bombay Stamp Act, by sending true copy of it to Collector of Stamps. Because only after Collector of Stamps recover the deficit stamp duty and penalty, the document can be admitted in evidence if same is proved and if it is otherwise admissible in evidence.

9] For all above reasons I answer point No.1 in the affirmative and in answer to point No.2, proceed to pass following order.

O R D E R

(1) Application is allowed.

(2) Agreement to sale at Exh. 3/3 dtd. 27/03/2013 be sent to Collector of Stamps, Kolhapur for impounding the same as per rules.

(3) Defendant No.1 to bear all expenses of impounding and comply all directions for completion of work of impounding as and when directed by said Authority.

(4) Considering age of matter, the Collector of Stamps, Kolhapur is directed to send back this matter by completing all procedure of impounding within a period of three weeks from today.

Digitally signed by BIJESH ABASAHEB GAIKWAD
Date: 2023.05.06 13:13:22 +0530

(B.A. Gaikwad)
Civil Judge Senior Division,
Jaysingpur.

Dt.: 03/05/2023.