

MH LA050002482019



Spl.C.S. No.14/2019

Sayyad Mehboob Vs. Shivaji

:: ORDER BELOW EXH.92 ::

01. The application is submitted by the plaintiff under Order XIII Rule 8 of the Code of Civil Procedure. It is contended by the plaintiff that, the suit is filed for specific performance of the agreement and in the alternative for refund of the amount.

02. The plaintiff has paid Rs.4,00,000/- and got executed a document from the defendant. It is unregistered document. In order to adduce evidence upon it, the plaintiff want the document to be impounded and necessary deficit stamp be paid upon it. So, it is prayed that, the document may be impounded.

03. Say is filed by the defendant with a contention that, the plaintiff want to fill up the gaps in the cross-examination by seeking a prayer to impound a document. The document is examined by the expert and his evidence is adduced. So, now it is not necessary to sent the document for impounding. Therefore, the application may be rejected.

04. Heard Ld. Advocates for the parties. As per Order XIII Rule 1 of the Code of Civil Procedure, not with standing anything contained in Rule 5 Order VII or Order XIII or Rule 17 of Order VII of the Code of Civil Procedure, the Court has discretion if it sees sufficient cause to direct a document before it in a suit to be impounded and kept in the custody of the officer of the Court.

05. The Hon'ble Supreme Court in **Vijay Vs. Union of India, Civil Appeal No.4910/2023** has held that, "*To adjudicate this issue, it is pertinent to reproduce Section 35 of the Stamp Act:*

"Section 35- Instruments not duly stamped inadmissible in evidence, etc. - No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instruments are duly stamped: Provided that- (a) any such instrument (shall) be admitted in evidence on payment of the duty with which the same is chargeable or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion; xxxx.

It is evident from a bare perusal of the section that it prohibits admission in evidence of instruments that are chargeable with duty unless they are "duly stamped." Duly stamped as defined under Section 2(11) of the Stamp Act means that the instrument bears a stamp and that such stamp has been affixed or used in accordance with law for the time being in force in India.

Further, it is required to consider when the document becomes chargeable with duty—during its execution or when it is produced before the Court.

The word 'chargeable,' as defined under Section 2(6), means chargeable under the Act in force at the date of the execution of the instrument. The crucial date which determines the law in force is the date of execution of the instrument, and the stamp duty is to be charged with reference to the date of execution. For stamp duty, the relevant date is the date of execution and not the date of adjudication or the date of presentation and registration of the document."

The Hon'ble Supreme Court held *in Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana* in considering the scope of an agreement to sell observed thus:

It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title, or interest in an immovable property can be transferred.

Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the T.P. Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the T.P. Act). According to the T.P. Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the T.P. Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter

The decision stand considered in G.T. Girish v. Y. Subba Raju, and relied upon in Ghanshyam Sarada v. J.K. Jute Mills Co. Ltd., without any change. This principle was recently restated in Munishamappa v M.Rama Reddy & Ors..

It be observed that now, in many states, amendments were brought in whereby agreements of sale acknowledging delivery of possession are charged with the same duty as leviable on conveyance."

06. As per section 33 of the Indian Stamp Act, the document can be sent to the Collector of stamp deficit stamp duty is paid upon it. Further, the Collector has a right to impose fine upon the concerned document to levy fees of the stamp and to deliver it back to the Court.

07. The plaintiff has filed the document alongwith suit, the defendant has denied its execution. Issue is accordingly framed in the suit. It is a fact that as the signatures upon the document were challenged by the defendant, the document was sent to the expert to seek his opinion. The plaintiff has been examined below Exh.29. His witnesses are also been examined including the expert witness on the document. Similarly, evidence of defendant is also completed.

08. It is duty of the Court in initial level to peruse the documents, scrutinize them and to sent it to the Collector of the stamp by impounding it. Unless the document is impounded and deficit Court fees is paid upon it. It cannot be read it into evidence. It is ministerial act. The contents of the document its relevancy and admissibility is altogether different part and the Court cannot look into the evidence on such documents unless it is corrected by paying the Court fees. Therefore, the application is allowed. The document is impounded and sent to the Collector of Stamp at Ahmedpur to charge the require deficit Court fees and to return it back after completion of due process of law.

Sd/-

{ **S.N.Sarde** }

Civil Judge Senior Division,

A h m e d p u r

Date : 16/03/2026.