

**ORDER EXH NO.53 IN R.C.S. 140/2013**  
(Sanjay Wedne Vs. Sanjay Gangurde)

01. This is an application filed by the plaintiff for impounding agreement dtd. 16/06/1984. It is contended that agreement-to-sale was executed by the father of defendants in respect of suit property on 16/06/1984. It has been agreed to act as per the said agreement. The stamp duty has not been paid as per Maharashtra Stamp Act. Therefore, it is necessary to impound the said document. No prejudice will be caused to the defendants, if document is impounded. On the contrary, an irreparable loss will be caused to the plaintiff if prayer is not allowed.

02] Defendants no.1 to 3 have strongly opposed the application on the ground that the father of defendants had never executed agreement-to-sale, as alleged by the plaintiff. Hence, they have prayed to reject the application.

03] Perused the application and say. I have gone through the record. Heard advocate Shri. G.K. Jadhav for the plaintiff and advocate Shri. B.M.Pagar for defendants no. 1 to 3.

04] It has argued on behalf of the plaintiff that the agreement-to-sale is written on the insufficient stamp-paper. Therefore, to consider the agreement-to-sale in the evidence, it is necessary to impound the same. On the other hand, it is submitted that the father of defendants had never executed alleged agreement-to-sale.

05] I have considered the arguments advanced by both the side. This is a suit for specific performance of

contract. The plaintiff has filed on record original agreement-to-sale at which is marked as Exh. 41. It is unregistered document written on stamp-paper of Rs. 5/-. It is necessary to see whether possession was delivered through the agreement-to-sale dtd. 16/06/1984. It is settled law that agreement-to-sale can oral or written. However, if possession is delivered through it, then it must be registered and duly stamped. In this contest, judgment of Hon'ble Bombay High Court in "*Jayasingh Narayan Tupe Vs. Shri. Sambhaji Baburao Pawar 2013(3) Mh.L.J. 433*" assumes importance. In this case, Hon'ble Bombay High Court has held that, "If the possession of immovable property is handed over in the document styled as agreement to sell, then it requires requisite stamp as per the Act".

06] In the facts of present case, on perusal of agreement-to-sale dtd. 16/06/1984 filed by the plaintiff which is marked as Exh.41, it is mentioned that the possession has been handed-over on the date of execution of agreement-to-sell. Therefore, judgment of Hon'ble High Court in Jaysingh's case (supra) is squarely applicable to the fact of the case. The suit is for specific performance of contract. The suit of plaintiff mainly depends on the said agreement-to-sell. It cannot be read in evidence, unless requisite stamp duty is recovered. Therefore, agreement-to-sell needs to be impounded.

07] It is the contention of defendants no.1 to 3 that agreement was not executed by the father of defendants. It is pertinent to note that the proof of execution of agreement is not matter of consideration at this juncture. These

contention are to be decided at the conclusion of trial of the suit. At this juncture, it is only essential to see that plaintiff wants to adduce agreement-to-sell dtd. 16/06/1984 in the evidence and it is insufficiently stamped. Therefore, to render it in the evidence, same is required to be impounded. Accordingly, I pass following order.

**ORDER**

01. Application exh. 53 is allowed.
02. The agreement dtd. 16/06/1984 is hereby impounded and sent to Collector for the recovery of necessary stamp-duty.
03. Necessary endorsement about the impounding be made on the agreement.
04. The plaintiff is hereby directed to comply aforesaid order within two months and shall bring necessary certificate from the Stamp Collector.
05. Issue letter accordingly.

Date. 10/02/2023.

(P. K. Mutkule)  
Civil Judge, Jr.Dn.  
Kalwan.