

ORDER BELOW EXH.107 IN REG. CIVIL SUIT NO. 88/2006

1. This is an application filed by the defendant No.5 to impound the document i.e agreement dated 04/03/2003 made between plaintiff and defendant No.6 with defendants No. 1 to 4.

2. According to the defendant the plaintiff has filed this suit for specific performance of above agreement. The defendant No.5 has denied the suit claim. The above agreement relating to the suit property has been produced by the plaintiff in the evidence and try to rely on it but the agreement is not registered and proper stamp is not given on it so it cannot be read in evidence. It is necessary to impound and do further requisite procedure for it as per the provision of Registration Act and Bombay Stamp Act so he prayed to allow the application.

3. Plaintiff filed his say and stated that the application of defendant is false. The prayer of Defendant is not according to the Provision of Maharashtra Stamp fee Act and unless procedure in other acts are complied the document cannot be sent to be impound hence the application be rejected.

4. Heard advocate of both parties. Perused matter on record. This is a suit for specific performance of contract of agreement date 04/03/2003 and other reliefs. The plaintiff has filed the original agreement at Exh.4/14. It is an unregistered document written on Rs 100/- stamp paper. It is necessary to see whether possession of the suit property was delivered through that agreement. It is well settled that agreement can be oral or in writing but if possession is delivered then it must be registered and duly stamped. It is well settled through various case law Hon'ble High Court that if the possession of immovable property is handed in the document styled as agreement then it requires requisite stamp as per the Act.

5. It is the objection of defendant that the prayer of Defendant is not according to the Provision of Maharashtra Stamp fee Act and unless

procedure in other acts are complied the document cannot be sent to be impound. The plaintiff has not specifically stated which act and compliance of which procedure is required.

6. Explanation appended to Art 25 of schedule of Bombay stamp Act provides that where possession at immovable property is transferred before the execution or at the time of execution or after execution of agreement to sell then agreement shall be deemed to be a conveyance and stamp duty is required to be levied there accordingly. In the facts of Present case on perusal of agreement to sale it is mentioned that possession is handed to defendant on the date of execution of agreement dated 04/03/2003. Therefore Act 25 of the Bombay Stamp Act applies in the present case as possession is transferred on the date of execution of agreement. Hence, it is necessary to impound it. Hence following order is passed.

-:- ORDER -:-

1. The agreement dated 04/03/2003 is ordered to be impounded and necessary endorsement about it be made on it.
2. Office is directed to send to the Collector, Sindhudurg an authenticated copy of the agreement for determination of true market value so also amount of deficit stamp duty and penalty which have to be levied in respect thereof.
3. The plaintiff is hereby direct to comply the aforesaid order and pay the necessary stamp duty and penalty in the office of collector and shall bring necessary certificate from him.

Date:-04/05/2021.

Sd/-
(S.H.Panhale)
Jt Civil Judge(J.D).,
Sawantwadi.