

Reg. Civil Suit No. 83/2013Order below Exh. 95

01 Perused application and say filed by defendant. Heard both sides. This application is filed by the plaintiff's for receiving the deficient stamp duty, penalty and impound the document.

02. It is the contention of plaintiff's that, Radhabai Sonurlekar agreed to sold the suit property to the plaintiff for the consideration of Rs. 10,800/-. Radhabai has received agreed amount of Rs. 5000/- on the same day i.e on 6/4/1991. However, the agreement has written only on the stamp paper of Rs. 10/- Now they are ready to deposit the deficient stamp duty and penalty amount on the amount mentioned in the agreement to sale. Therefore, they prayed to receive the stamp duty and penalty amount and impound the document. Defendant's have filed their say on the application itself and strongly objected the application. They have contended that, the plaintiff's have relied upon an agreement to sale dated 06/4/1991 but same is illegal, bogus and not binding on plaintiff. Defendant's have not signed on the agreement to sale. Therefore, they prayed to reject the application.

03. Perused plaint. It is noted that, the present suit has been filed by the plaintiff for Specific performance of Contract i.e. an agreement to sale between Radhabai Sonurlekar and plaintiff No.1 dated 06/04/1991. It is the contention of plaintiff's that, the suit property is owned by mother of defendant No. 1 to 3 i.e. Radhabai Atmaram Sonurlekar and she has entered into an agreement dated 6/4/1991 to sold the suit property to the plaintiff's. The price Rs. 10,800/- has fixed of the suit property and Rs. 7,000/- has been paid by the plaintiff to the Radhabai as an earnest money. Defendant Nos. 1 to 3 have sold out some property mentioned in the agreement to sale to the plaintiff by registered sale deed. However, they have refused to sold out remaining property to the plaintiff's Therefore, plaintiff's have filed this suit for Specific performance of Contract. In this suit, plaintiff No. 1 has filed his affidavit of Examination-in-chief and now the suit is fixed for cross- examination of plaintiff.

04. Perused record. It is important to mentioned here that, the document of agreement to sale in between the plaintiff and Radhabai Sonurlekar i.e. mother of defendant's 1 to 3 has been filed by the plaintiff on record at Exh. 8. As per the said agreement it appears that, it is not registered before the Sub Registrar, Sawantwadi and it is written on Non-Judicial Stamp paper of Rs.10/- . Moreover, as per the averments made in the plaint the valuation of the suit property is of Rs. 10,800/- . However, the document i.e. agreement to sale is only on the Stamp paper of Rs. 10/-. This shows that, plaintiff has not paid proper stamp duty for the document.

05. It is provided under Section 33 of the Maharashtra Stamp Act that-
"(1) [Subject to the provisions of section 32-A, every person] having by-law or consent to parties authority to receive evidence and every person in charge of a public office, except an officer of police [or any other officer, empowered by law to investigate offence under any law for the time being in force], before whom any instrument chargeable, in his opinion, with duty, is produced or comes in the performance of his functions shall if it appears to him that such instrument is not duly stamped, impound the same [irrespective whether the instrument is or is not valid in law.]"

It is provided under Sec. 34 of Maharashtra Stamp Act that-

"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 instrument is duly stamped [or if the instrument is written on a sheet of paper with impressed stamp] [such stamp paper is purchased in the name of one of the parties to the inst;].

06. It is noted from the averment and prayer in this suit that, the suit is for Specific performance of agreement and therefore, the whole claim of the plaintiff is depends on the agreement to sell dated 06/04/1991 and it is important evidence. However, an agreement in question is not duly stamped as per the

provision of the Maharashtra Stamp Act and as per sec. 34 it is inadmissible in evidence. Therefore, the document i.e. agreement to sell dated 06/04/1991 is required to be impounded. As per Sec. 37 of the Maharashtra Stamp Act " when the instrument is impounded such instrument is admitted in evidence upon payment of a penalty provided under section 34." Therefore, for admitting such instrument it requires to be sent to the Collector for ascertaining and recovering stamp duty and penalty of an instrument. Hence, considering the above facts and circumstances I pass following order.

ORDER

1. The document i.e. agreement to sell dated 06/04/1991 is hereby impounded.
2. True copy/ certified copy of the document be sent to the Collector Sindhudurg-Oros for ascertaining exact stamp duty and penalty and for receiving same as per Sec. 34 of the Maharashtra Stamp Act.
3. Plaintiff's have directed to remained present before the Collector Sindhudurg-Oros for payment of deficient portion of the Stamp duty and penalty on or before 03/07/2018.

Date:- 05/06/2018

Sd/-
(M.S.Budhwant)
Civil Judge (J.D.), Sawantwadi.