

MHSN050018822022



**Order below Exh.76 in**  
**Spl.C.S. No.54/2025**  
(Old R.C.S. No.299/2022)  
(Dt. January 06, 2026)

1. The present application has been filed by the plaintiff seeking for impounding of the agreement of sale.

2.1 It is claimed that the present suit has been filed seeking for the decree for specific performance of contract as per the agreement of sale dt. 5/4/2021.

2.2 It is further claimed that in the said agreement dt. 5/4/2021, there is a reference of the possession handed over prior to the execution of the agreement. The suit is standing upon this agreement of sale. The defendants denied and disputed the said agreement of sale. The defendants are disputing the agreement of sale to be illegal one.

2.3 It is claimed that at the time of evidence the deficit stamp will be an issue and the plaintiff cannot lead his evidence in terms of such agreement of sale. Therefore, it is necessary to send the said agreement of sale for impounding to the Stamp Collector, Sangli. The plaintiff is ready and willing to pay the necessary

stamp. Therefore, this application is set out under the provisions of Sections 33 and 34 of the Bombay Stamp Act. As per the amendment in the Bombay Stamp Act, there is a provision of paying the additional stamp in respect of the possession of the property.

Accordingly this application is set out for impounding the agreement of sale dt. 5/4/2021 to the Stamp Collector, Sangli.

3.1 The reply to this application is recorded at Exh.79 for the defendants. The application is opposed.

3.2 It is contended that the said agreement of sale was executed upon the stamp of Rs.100/-. The document is recorded before the Notary. But, for the purpose of handing over the possession. Such document is necessary to be registered. However, for non-compliance to this record the said document is illegal.

3.3 It is further contended that the suit property was allotted to the defendants as the flood affected person. The said survey number of such property is contended as survey No.215. The said property is standing in the name of the State of Maharashtra. Therefore, the defendants have no right or authority to execute any sale deed.

3.4 It is also disputed that the suit property is described in the plaint according to the 7/12 record. But, no 7/12 extract is filed along with this suit. The plaintiff set out Form No.8A of Grampanchayat record. The plaintiff did not file any extract of the suit property. The suit property is described as the open plot. No such 7/12 extract is produced on record. It was necessary for the plaintiff to show existence of such 7/12 extract. Without such compliance the document need not be impounded.

3.5 It is further contended that the stamp for the notary agreement was purchased on 30/3/2021 at Sangli on behalf of the plaintiff. The reason recorded therefor as for the consent deed. Therefore, the fraud practiced enough is surfaced therefrom. As such, that illegal document cannot be forwarded for the purpose of impounding. It is also disputed that the defendant did not have any right or authority to alienate the suit property. Therefore, the agreement of sale cannot be impounded.

Accordingly, the present application is contended to be liable to be dismissed with costs.

4. Heard the Ld. Advocate for the plaintiff as well as the Ld. Advocate for the defendants. They wrangled according to respective application and reply.

5. Considered the record before the Court.

6. The word 'Impound', in law means 'to keep in custody of the law'. It is used to denote the legal action taken by the Courts and other officials when an unstamped or insufficiently stamped document is produced before it.

7. It is the duty of the Court to impound unstamped or insufficiently stamped document. It is emphatically pointed out in case of the celebrated judgment in **Shri. Jayasingh Narayan Tupe Vs. Shri. Sambhaji Baburao Pawar, 2013(3) MhLJ 433.**

8. Admittedly, the issues are yet to be framed. Therefore, there is no question of producing or tendering the unstamped or insufficiently stamped agreement to sale before this Court. At this place, this Court has the honour to refer the celebrated judgment of the Hon'ble High Court of Punjab and Haryana as cited in the case of **Yogesh Kumar Sikka Vs. Monika, AIR Online (2019), P. & H., 1475.** In this case, the Hon'ble high Court observed in respect of time of impounding as very next..

"12. Court cannot say that it would impound the document only when the document is tendered in evidence for marking. There may be instances where duty and penalty payable may be very high and the party may not choose to rely upon such insufficiently stamped document in order to avoid stamp duty

and penalty. In such circumstances, it would result in loss of revenue to the exchequer. The power of impounding a document is to collect stamp duty and penalty whenever there is an escape of duty. Therefore, when it is brought to the notice of the Court that a document is insufficiently stamped, the Court exercising its power under Section 33 of the Act has to pass an order at the first instance for impounding the document. Though there is a discretion vested in the Court to exercise powers under Section 33 and 34 of the Act, no Court can hold that it would wait till the document is tendered in evidence. In such circumstances, there may be chances of loss of revenue to the exchequer”.

9. The relevant provisions under the Maharashtra Stamp Act, 1958 are reproduced hereinunder for the ready reference as hereinnext ..

**33. Examination and impounding of instruments.**

(1) 1 [Subject to the provisions of section 32-A, every person] having by law or consent of 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 offences 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.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him in order to ascertain whether it is stamped with a stamp of the value and description required by the law for the time being in force in the State when such instrument was executed or first executed:

Provided that, —

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do any instrument coming before him in the course of any proceeding other than a proceeding under Chapter IX or Part D of Chapter X of the Code of Criminal Procedure, 1973;

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court may appoint in this behalf.

(3) For the purposes of this section, in cases of doubt, —

(a) the State Government may determine what offices shall be deemed to be public offices; and

(b) the State Government may determine who shall be deemed to be persons in charge of public offices.

**33A. Impounding of Instruments after registration.**

When through mistake or otherwise any instrument which is not duly stamped is registered under the Registration Act, 1908, the registering officer may call for the original instrument from the party and, after giving the party an opportunity of being heard and recording the reasons in writing and furnishing a copy thereof to the party, impound it. On failure to produce such original instrument by the party, a true copy of such instrument taken out from the registration record shall, for the purposes of this section, be deemed to be the original of such instrument]:

**37. Instruments impounded how dealt with.**

(1) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section 34 or of duty as provided by section 36, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing stating the amount of duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

(2) In every other case, a person so impounding the original instrument shall prepare an authentic copy of such instrument and where it is a true copy or an abstract referred to in section 31 or true copy referred to in section 33A, he shall send such authentic copy or, true copy or, as the case may be, an abstract to the Collector, for the purpose of taking action on the authentic copy or a true copy or, as the case may be, an abstract as if it were the original instrument and endorsing thereon a certificate with reference to the instrument under clause (a) of sub-section (1) of section 39 or under sub-section (1) of section 41, as the case may be. On receipt of the authentic copy, the true copy or, as the case may be, an abstract with the certificate as aforesaid endorsed thereon, the person who had impounded the original instrument shall copy on the original instrument the certificate endorsed on the authentic copy and shall authenticate such certificate; and where it is a true copy or an abstract on which the certificate as aforesaid is. endorsed, the registering officer who had forwarded the true copy or an abstract shall make appropriate entries in respect of the instrument of which it was a true copy or an abstract, in the relevant register maintained by him and on an application made in this behalf issue under his signature a certificate to the effect that the proper duty or, as the case may be, the proper duty and penalty (stating the amount of each) have been levied in respect of that instrument, and the name and

residence of the person paying such duty and penalty.)

**39. Collector's power to stamp instruments impounded.**

(1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under sub-section (2) of section 37, not being an instrument chargeable with a duty of twenty naye paise, or less, he shall adopt the following procedure:

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case maybe;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of an amount equal to 2 per cent of the deficient portion of the stamp duty, for every month or part thereof from the date of execution of the instrument subject to the payment of a minimum penalty of rupees one hundred:

Provided that, duty for which reduction or remission is granted by the Government under clause (a) of section 9 under any prevailing policy shall not be treated as deficient portion of duty for the purposes of calculation of penalty, if the beneficiary of

such reduction or remission in duty surrenders or forgoes or has surrendered or forgone such benefit with prior approval or with no objection from the Government.

Provided further that, in no case, the amount of the penalty shall exceed 5 [four times the deficient portion of the stamp duty:

Provided also that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Subject to the provisions of section 53A, every certificate under clause (a), of subsection (1) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under sub-section (2) of section 37 the Collector shall, when he has dealt with it as provided by this section return it to the impounding officer.

10. The defendant resisted this application disputing the agreement of sale to be an illegal document. It is contended that the suit property is standing in the name of the State of Maharashtra. Therefore, the defendants have no right to execute any sale deed. The defendants also disputed the fraud practiced in execution of the agreement of sale. Therefore, this application is

countered with the merits of the suit to defeat this application for impounding.

11. The above cited judgment in case of **Yogesh Kumar Sikka** and **Jaysing Narayan Tupe** (cited supra) are speaking about the duty of the Court to impound unstamped or insufficiently stamp document. The relevant agreement of sale is on record before the Court. It is a document executed on stamp of Rs. 100/- before the Notary. This document is containing covenant about possession. Therefore, it is certainly were to be registered. The plaintiff is not disputing any liability to pay deficit stamp duty and penalty. The application is filed by the plaintiff himself anticipating to probable legal issue preventing him to prove his claim by relying upon the said agreement of sale. The application is disputed on merits by the defendants. For the purpose of impounding, merits of the suit have no place to stand in the way. The merits of the case are the matter of trial and adjudication. Accordingly, it is just and proper to consider this application for impounding as per the provisions under Sections 33, 33A and 37 of the Maharashtra Stamp Act, 1958. Ergo, the order follows in the interest of justice as..

	<b><u>ORDER</u></b>
01.	The present application is hereby allowed;

02.	The agreement to sale between the plaintiff and defendant No.1, namely, Balasaheb Anna Madhale and Vishal Dhondiram Madhale dated 5/4/2021 pertaining to property No.2248, property Sr. No.1675 in Namuna No.8, situated within the limits of Shigaon Grampanchayat, Tal. Walwa, Dist. Sangli is hereby impounded;
03.	The plaintiff is hereby directed to produce the copy of agreement to sale on record for sending the same to the Collector to collect the stamp duty as provided under Section 37(2) read with Section 39 of the Maharashtra Stamp Act, 1958 within 15 days from the date of this order;
04.	The Superintendent, Civil Court, Islampur is hereby directed to secure the forwarding of the true copy to the Collector of the abovesaid original agreement to sale as contemplated under section 37(2) of the Maharashtra Stamp Act, 1958.
05.	Parties to bear their own cost;
06.	Order be noted.
	(Dictated and pronounced in open court.).

Dt. January 06, 2026

**(Maneesh Nanabhau Phatangare)**  
Civil Judge Senior Division,  
Islampur

CNR No.MHSN050018822022  
Order Below Exh.76

Spl.C.S. No.54/2025  
Balasaheb Madhale vs. Vishal+1

C E R T I F I C A T E

I affirm that, the contents of this P.D.F. file judgment/order are same, word to word, as per the original judgment/order;

Name of the Stenographer : S. A. Desai (Grade-II)

Court Name : Civil Court Sr. Dn., Islampur

Date of judgment/order : 6/1/2026  
Judgment/Order signed by the

Presiding Officer on : 6/1/2026

Judgment/Order uploaded on : 6/1/2026