

Kamlakar Salunkhe V/s. Baburao Javalekar
Special Civil Suit No.129/2011
CNR NO.MHSO06-0004602011

ORDER BELOW EXH.32

1. Present application has been filed by defendant No.1 to 3 for impounding the document i.e. agreement of sale as it is insufficient stamp. Furthermore in the same application the prayer for rejection of plaint U/o. 7 R 11 of C.P.C. has been made as suit is not tenable in the present form. Gone through the say filed by the plaintiff containing that the application is incorrect, illegal and improper. Furthermore issues have been framed vide Exh.99. Whereas defendants have filed present application agitating the same points again and again therefore, it is not tenable. Furthermore evidence of plaintiff by way of affidavit is on record since 17/12/2011. Furthermore plaintiff is ready for paying the depreciate stamp duty on sale agreement as per direction of court. Therefore, considering the application is not tenable, it be rejected. Plaintiff has also filed say to same application vide Exh.60.

2. I have gone through the written argument filed on record by the defendant No.1 to 3. The same has been adopted by defendant No.4 to 6. Defendant No.1 to 3 have further relied on following citations.

1. The Church of Christ Charitable Vs. M/s. Ponniamman Educational Trust delivered by Hon'ble Supreme Court on 3rd July, 2012.
2. N.V. Srinivasa Murthy V/s. Mariyamma decided by Hon'ble Supreme Court on 11/7/2005.
3. N. Ravindran V/s. V. Ramchandran decided by Hon'ble Madras High Court on 14/3/2011.

3. Heard plaintiffs counsel Shri. D.J. Bhosale. On the other hand counsel for defendant No.1 to 3 though filed written argument vide Exh.127 did not argue the application before the court.

4. Gone through the application and say, the primary objection which appears to be taken by the defendant No.1 to 3 that, the document has been insufficiently stamped and xerox has been filed on record by the plaintiff. As per the plaintiff the sale agreement dt.16/12/2001 was executed and insufficiently stamped. In such circumstances, by calling

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such document, it be impounded for sufficient stamp duty. Furthermore the application contents regarding form of suit because of which it is not maintainable.

5. In written argument of defendant No.1 to 3 O 7 R 11 (d) and O 8 R 14(2) C.P.C. O 2 R 2 has been claimed, but application does not contain any of the ground mentioned in the written argument. I have gone through the written argument filed on record also the citations in support of it, the citations filed, are not applicable to the case in hand as facts and circumstances defer. Therefore, the contentions in the application itself does not contend the ingredients under which O 7 R 11 can be attracted so that, it can be made applicable to the application.

6. Now coming towards the prayer of impounding of document, I have gone through the document filed on record by the plaintiff i.e. agreement of sale dt.16/12/2001 in xerox. In said sale agreement there is utterance about the possession. Resultantly the conveyance deed means the agreement of sale requires to be registered and sufficiently stamped. In such circumstances as per O 11 R 14 the alleged document i.e. sale agreement dt.16/12/2011 can be called from the plaintiff for paying sufficient stamp duty thereon, considering the contention of the plaintiff in the say. Resultantly in the light of above discussion this court proceed to pass following order.

ORDER

1. The Exh.32 application stands partly allowed.
2. Exh.32 application stands allowed regarding calling of document i.e. sale agreement dt.16/12/2001 for impounding.
3. Exh.32 application regarding O 7 R 11 of C.P.C. Stands rejected.
4. Plaintiff is directed to submit on record original sale agreement dt.16/12/2001, so that it can be impounded and sent to Sub Registrar Officer for payment of sufficient stamp duty.
5. Parties to note.
6. Cost on applicant.

Dt.12/10/2018

(B. A. Kaduskar)
2nd Civil Judge, Senior Division,
Pandharpur.

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CERTIFICATE

I, affirm that the contents of this PDF file Order/Judgment are same word to word, as per the original order/Judgment.

Name of Employee : Y. V. Sital (Jr. Clerk)
Court : 2nd Jt. C.J.S.D. Pandharpur
Date : 12/10/2018
Judgment/order signed by
the Presiding Officer on : 12/10/2018
Judgment/Order uploaded on: 12/10/2018