ORDER BELOW EXH. 21 IN R.C.S. NO. 179/2018

The defendant has made application for impounding the document dtd. 05/01/2007.

2. The defendant submitted that on 05/07/2005 plaintiffs executed agreement on Rs. 100/- stamp paper in presence of two witnesses in respect of portion of plot No. 24, admeasuring 257.93 sq.mtr. As per such agreement, plaintiffs accepted Rs. 1,79,000/- from the defendant and gave the property to the defendant. On 05/01/2007 plaintiffs admitted execution of agreement dtd. 05/07/2005 in presence of two witnesses and executed consent deed as to giving of possession. The suit is for declaration that the power of attorney executed by plaintiffs in favour of defendants is illegal. However, plaintiffs are in possession of the said disputed property as per these agreements since 2005 till date. He pays water charges, light bill etc. His name is also mutated on *Khand* register. He has filed the suit for specific performance by executing sale deed on the basis of these agreements. The disputed property is now *Gunthewari* property but it is necessary to impound the agreement to avoid technical problem in the interest of justice. He is ready to pay charges of impounding. He prayed for impounding of the document dtd. 05/07/2005 which is possession agreement. He has shown willingness to pay stamp and penalty.

3. Plaintiffs objected this application stating that application is not true. The alleged agreement is prima-facie illegal. Hence, defendant cannot file such type of application. The application is also affected by the law of limitation as the alleged agreement is dtd. 05/07/2005. On perusal of the said agreement, it is clear that it is not within the legal flame work. He has made this application only to prolong the matter and to retain his illegal possession. He prayed for rejection of the application

with costs.

4. Perused the record. The suit is for declaration and recovery of possession. The plaintiff himself stated that defendant carried out construction on the disputed property. Defendants produced original agreement dtd. 05/07/2005 and one consent deed dtd. 05/01/2007. According to the defendant, the document dtd. 05/01/2007 needs to be impounded. Advocate of plaintiffs argued that the document is not legal and it is not creating any right, title or interest. I think legality or illegality of this document is matter of evidence and will be decided later on after considering evidence on record. Aspect of *Gunthewari* and its relevant laws will be also considered. In this respect, in case of ***Santosh Anant Raut V/s. Pushkraj Chogmal Rathod & Anr., 2010(4) Mh.L.J. 22*** it was held that-

> Under section 31 of the said Act, a power is conferred on the Collector to make adjudication as regards proper stamp duty payable on an instrument. The power can be exercised by the Collector in respect of an instrument whether it is executed or not or whether it is previously stamped or not. Under section 32 of the said Act, the Collector is required to issue a certificate in accordance with the said section. If the Collector is of the opinion that the instrument is already fully stamped, or if the duty as determined by the Collector in accordance with section 31 of the said Act is already paid, a certificate is required to be endorsed on such an instrument that the full duty with which it is chargeable has been paid. If the Collector is of the opinion that the instrument is not chargeable with duty, certificate to that effect will have to be endorsed by the Collector.
>
> If the Civil Court finds that the document which is not duly

stamped is sought to be tendered in evidence, the power under section 33 of the said Act will have to be exercised and the document will have to be impounded. After impounding the document, the Court is under an obligation to send a true copy of the said document to the adjudication of the Collector in accordance with sub section (3) of section 32-A of the said Act. Only after adjudication is made by the Collector, the party relying upon the document will have to pay deficit stamp duty and penalty. After a certificate issued by the Collector regarding compliance with the requirement of payment of deficit stamp duty and penalty, Civil Court can exercise power under proviso (a) to section 34 of the said Act. Thereafter, the document can be admitted in evidence if the same is proved and if it is otherwise admissible in evidence. There is nothing wrong if a party relying upon a document applies for impounding enable the Court to exercise power under proviso (a) to his own document to section 34.

5. In this case, defendant has filed counter plaint for specific performance and alternatively for adverse possession. In the alleged document dtd. 05/01/2007, parties are plaintiff No. 1 and the defendant. The said document is on Rs. 100/- stamp paper. It bears four signatures alleging signature of executants and witnesses. Further it is mentioned in that document that agreement dtd. 05/07/2005 was executed and amount of Rs. 1,79,000/- was received. Further it is also mentioned that the consent is given to carry out construction on the property mentioned in the document. In view of the above citation, the Civil Court cannot decide as to payment of stamp duty and it is the Collector who is having power to decide about the stamp. Hence, it is proper to send the said document for impounding and its legality can be

decided afterwards on the basis of evidence on record. The aspect of limitation is also the matter of evidence as it is a mixed question of law and facts. Further whether such document confers any right, title and interest will also be considered after recording entire evidence. The objection in respect of limitation for filing counter claim is also matter of issue. Further sending of such document will not cause any harm to plaintiffs and true facts will come on record. It will help Court to decide the suit on merit. Hence, objections of advocate of the plaintiffs is not tenable at this stage. Therefore, following order is passed.

ORDER

1. The application is allowed.
2. The instrument/document dtd. 05/01/2007 is impounded as it is not duly stamped.
3. The instrument/document dtd. 05/01/2007 be send to the Collector for adjudication in accordance with Section 32(a)(3) of the Bombay Stamp Act to determine the stamp duty chargeable in respect of said instrument and penalty if any.
4. The defendant shall immediately file certified copy of the said document for sending it to the Collector.
5. Costs in cause.

Digitally signed by Rahul Sureshrao Dhadake
Date: 2021.02.25 12:12:07 +0530

Date:- 24/02/2021 (R.S. Dhadake)
2nd Jt. Civil Judge J.D., Barshi

CERTIFICATE

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

Name of Stenographer : Shaikh A.G. Steno Grade-III

Court	:	2^{nd} Jt. C.J.J.D., Court, Barshi
Judgment / Order date	:	24/02/2021
Judgment /order signed by the Presiding Officer on	:	24/02/2021
Judgment / order uploaded on	:	25/02/2021