



R. C. S. No. 16/2010
Farukh Dhanani and Anr.1
-Vs.-
Gangubai and Ors.

ORDER BELOW EXH. 135

(Passed on this 13th day of February, 2024)

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This is an application on behalf of plaintiffs No. 2 for setting aside order of proceeding the suit without impounding of document passed on 05.07.2023.

2. Read the application and say thereon. Heard the Ld. Counsel for plaintiffs No. 2 and defendants No. 4 and 5 at considerable length.

3. The learned counsel for plaintiff No. 2 submitted that the matter was pending for impounding of the document dated 21.04.1989. But, plaintiff No. 1 and his wife expired and his cousin brother was serious and whole family was busy in look after him. Therefore, plaintiffs could not deposit stamp duty and penalty thereon as per the letter of Joint Registrar and Collector of Stamp, Palghar. On 30.07.2023, they have deposited amount of stamp duty and penalty as per the letter of Joint Registrar and Collector of stamp, Palghar. The delay is not caused deliberately. Hence, this application.

4. On the contrary, the learned counsel for defendants No. 4 and 5 submitted that plaintiffs did not pay stamp duty and penalty as per letter of Joint Registrar and Collector of Stamp, Palghar within stipulated time. They have deposited the amount of stamp duty and penalty after

passing of order below Exh. 1. They have failed to show just and proper reason for this application. Hence, submitted for rejection of this application.

5. Perused the record. In view of order below Exh. 103 passed on 21.09.2017, the agreement of sale executed in 21.09.1989 was sent for impounding to the Collector of Stamps. The Joint Registrar and Stamp Collector informed to plaintiff No. 2 to deposit stamp duty of Rs. 22,710/- and penalty under Section 39 of the Maharashtra Stamp Act of Rs. 90,840/- to plaintiff No. 2 on 11.0.2023. But, he did not deposit the amount of stamp duty and penalty as per letter of the Joint Registrar and Stamp Collector, Palghar till 05.07.2023. Therefore, the instant suit is proceeded without impounding of the document dated 21.04.1989. Plaintiff No. 2 has filed instant application on 06.09.2023 and sought relief for seeing aside the order passed below Exh. 1 on 05.07.2023. He has also filed copy of challans alongwith list of documents (Exh. 138) on record. Perusal of those challans, reveals that plaintiff No. 2 has deposited amount of Rs. 22,710/- and Rs. 90,840/- on 25.07.2023. It shows that plaintiff No. 2 has deposited the amount of stamp duty and penalty on own accord without seeking permission from this Court. No doubt, the plaintiff is master of his suit. But, he cannot proceed the suit as per his wish and whims. In the present suit, plaintiff No. 2 has tried to proceed with this suit on own accord by depositing amount of stamp duty and penalty as directed by the Joint Registrar and Stamp Collector, Palghar after laps of time granted and without seeking permission from this Court. He has failed to show any reason for his such act.

6. Plaintiff No. 2 has given reason of death of plaintiff No. 1

and his wife and busy in hospitalization of his cousin brother. But, the reason given for this application is vague. He did not suggest any date of death of plaintiff No. 1 and his wife and cause of their death. He has also failed to suggest illness of his cousin brother, his name and duration of his illness. Therefore, the reason given for this application is not just and proper. There is delay of five months and fourteen days for depositing of amount of stamp duty and penalty as per the direction of Joint Registrar and Collector of Stamp, Palghar. The delay is not properly explained by plaintiff No. 2. However, for just decision of the suit on merit and in interest of justice, one more chance needs to be given to plaintiff No. 2 for impounding the document dated 21.04.1989. If this application is allowed, no prejudice will cause to other side. The contesting defendant Nos. 4 and 5 also failed to show that as to how they will prejudice with the order of allowing this application. In such facts and circumstances, the instant application needs to be allowed. But, at the same time, some costs needs to be imposed on plaintiff No. 2 for sufferance of contesting defendants No. 4 and 5 and for consumption of valuable judicial hours. Hence, I pass the following order :-

ORDER

1. The application is allowed subject to costs of Rs. 500/- (Rupees Five Hundred only) payable to contesting defendants No. 4 and 5 and Taluka Legal Services Authority, Palghar each.
2. Order below Exh. 1 passed on 05.07.2023 is hereby set aside.
3. Short time is granted to plaintiff No. 2 to comply this order.
4. Plaintiff No. 2 is directed to deposit the penalty, if any for the period from 11.02.2023 till re valuation by the Joint Registrar and Collector of Stamp, Palghar.

5. Copy of this order be sent to the Joint Registrar and Collector of Stamp, Palghar for information and necessary action after compliance of this order.
6. If plaintiff No. 2 failed to deposit the amount of costs on or before next date, the instant application shall stand rejected.

(Dictated and pronounced in open Court.)

Palghar.

Date :- 13.02.2024

Sd/-

(Mahendra K. Sorte)
Jt. Civil Judge, Jr. Dn.,
Palghar.