RCS No. 21/2011
JaibaiVrs. Shriram
CNR NO. MHWS080001902011

<u>ORDER BELOW EXH.70</u>

This is an application moved by defendant to impound the document styled as possession receipt deed. The plaintiff filed his say on overleaf to application.

02. Read application and say. Heard both sides. Ld. Advocate of defendant submitted that the possession receipt is not registered, Therefore it can not be admissible in evidence. Further, upon the contents in deed, it reveal that the defendant paid consideration amount Rs. 2,00,000/- and got possession of suit property. The plaintiff objected to exhibit the document during evidence on the ground that, the same is not a registered document. Advocate for defendant argued that, documents may be impounded and defendants are ready to pay necessary stamp duty as per rules. He relied on **<u>Sitaram Bhama Vrs. Ramavtar Bhama 2018(6) ALL M.R 488 (S.C)</u>** in which Hon'ble Supreme Court of India has held that, an unstamped instrument is not admissible in evidence even for collateral purpose, until the same is impounded and said unregistered document can be used for collateral purpose only if said document is impounded bearing proper stamp duty.

03 Per contra, Ld. Advocate for plaintiff submitted that, the deed is not a agreement to sale. The suit is for permanent injection and possession of suit property is not deliver to defendant. The document produced by the defendant is not a registered document hence, it can not be impounded. He prayed for rejection of the application.

04 Present suit is permanent injection. Defendant did not admit the suit claim vide his written statement. Presently, the suit is fixed for evidence. The evidence is plaintiff side is closed and matter is pending for evidence of defendant side I.e D.W. 3 and his cross examination is yet be completed.

05 It appears that, advocate for defendant is proposing to exhibit the document so as to admit it in evidence. However, as this document is not a registered document permission was denied by this Court to exhibit it.

06 It has been contents in written statement that, the plaintiff entered with agreement to defendant and executed the agreement i.e possession receipt 07.03.2011 in favour of defendant on two stamp paper of Rs. 50/- and delivered possession of suit property i.e 1 Hector to the defendants. The defendant has paid Rs 2,00,000/- to the plaintiff. Prima facie It also reflect that, the document is pertaining to agreement.

07 The defense is based on agreement possession deed i.e ताबे पावती dated 07.03.2011, but the sale deed is neither properly stamped nor registered. It has been scribed on a stamp paper of Rs. 50 +50 =100. It discloses an agreement for sale of the suit property. It also prima facie discloses that possession of suit property has been delivered to plaintiff. Therefore, it is required to be stamped in accordance with the provisions of law comprised under Explanation –

I to Article 25 of Schedule-1 of the Bombay Stamp Act, 1958. In spite of being a conveyance in terms of explanation-I of article 25, Schedule_I of the Bombay stamp Act, the said deed i.e. ताबे पावती has not properly stamped, and therefore, it cannot be admitted in evidence and therefore it cannot be exhibited. Defendants are ready to bear the necessary stamp duty.

08 The deed of agreement of possession dated 07.03.2011 i.e. ताबे पावती is not properly stamped and therefore it is liable to be impounded of recovery of the deficit stamp duty with penalty. Hence the following order is passed.

ORDER

01. The application is allowed.

02. The possession receipt deed i.e ताबे पावती dated 07.03.2011 is produced by the defendant is impounded.

03. The office of this court is directed to forward an authenticated copy of possession receipt deed i.e ताबे पावती to the collector of stamps, district Washim for the recovery of proper stamp duty with which the same is chargeable and a penalty.

Sd/-

(Sharad N. Gavali)

Date: 28.06.2023 Jt. Civil Judge (Jr.Dn.) Risod.