

**IN THE HIGH COURT OF JUDICATURE FOR MADHYA
PRADESH AT JABALPUR**

ON THE 11th of MARCH, 2022

BEFORE

HON'BLE SHRI JUSTICE PURUSHAINDR KUMAR KAURAV

WRIT PETITION No. 8631 of 2017

Between:-

**SURENDRA RAJAK SON OF LATE SHRI
MALAI RAJAK AGED ABOUT 45 YEARS,
OCCUPATION: JATIYA, R/O HOSPITAL,
KATRA ROAD, REWA, TEHSIL HUQR,
DISTT, REWA (M.P.).**

PETITIONER

(BY SHRI A.K. DWIVEDI -ADVOCATE)

AND

- 1. SMT. SHAHJAHAN BEGUM, W/O SHRI
MOHAMMAD TAHIR ANSARI R/O RANI
TALAB, BICHHIYA, REWA, TEHSIL
HUZU, DISTRICT REWA, (M.P.)**
- 2. HAJI ALI AHMED KHAN, S/O LATE HAJI
YAR MOHAMMAD AGED ABOUT 57
YEARS, R/P HAMEEDIYA COLONY,
DHEKAHA, REWA, TEHSIL HUZUR,
DISTRICT REWA (M.P.).**
- 3. TANUJA ANSARI, D/O LATE ABDUL
SHAKOOR ANSARI, R/O GHOGHAR**

**REWA, THE. HUZUR, DISTRICT REWA,
(M.P.)**

- 4. STATE OF M.P. THROUGH COLLECTOR,
REWA, DISTRICT REWA (M.P.).**

.....RESPONDENTS

(BY SHRI PIYUSAH BHATNAGAR - ADVOCATE)

*This petition coming on for admission this day, **Hon'ble Shri Justice Purushaindra Kumar Kaurav** passed the following:*

ORDER

The petitioner in the instant writ petition is challenging the order dated 25.04.2017 (Annexure-P-3), passed in Civil Suit No. 97-A/16 by Additional Civil Judge, Class-I to the Court of First Civil Judge, Class-1, Rewa (M.P.), whereby, the agreement to sale has been refused to be exhibited.

2. The case of the petitioner/plaintiff is that the respondent No. 1/defendant had executed an agreement to sale with respect to suit property in favour of the petitioner/plaintiff on 30.12.1999 (Annexure P-1). The respondent No. 1/defendant sold the suit property to defendant No. 2, therefore, the petitioner-/plaintiff filed a civil suit for declaration of

said sale deed dated 29.08.2011 as null and void. During the course of evidence of the plaintiff, the petitioner/plaintiff prayed to exhibit the agreement to sale dated 30.12.1999 which has been refused by the trial Court on the ground that the agreement to sale is insufficiently stamped and is not a registered document, therefore, the petitioner in the instant writ petition. This Court while issuing notice to the respondents on 12.07.2017, stayed the further proceedings of the trial Court and the said order remains in operation till date. The notices are served on the respondents, however, no one appears on their behalf.

3. Learned counsel appearing on behalf of the petitioner/plaintiff submits that the learned trial Court has committed an error while not directing impounding of the said document. According to him, if there was a violation of the provision of Section 17 of the Indian Registration Act, 1908, the appropriate recourse available to the learned trial Court was to direct for impounding of the said document in terms of the Section 35 of the Indian Stamps Act, 1899. He places reliance on a decision of the Hon'ble Supreme Court in the matter of *Avinas Kumar Chouhan V/s*

*Vijay Krishna Mishra*¹, *Omprakash V/s Laxmi Narayan and others*²

and the decision of this Court in the matter of *Satya Narayan V/s Ram Singh*³ and *Gajanand Awasthi Vs. Shareef Khan*⁴ and submits that the order passed by the trial Court should be set aside with further direction to pass appropriate order in terms of Section 35 of the Indian Stamp Act, 1899.

4. I have heard Shri A.K. Dwivedi learned counsel appearing on behalf of the petitioner and Shri Piyush Bhatnagar, learned counsel appearing on behalf of the respondent-State.

5. The facts of the case, as has been stated above, shows that the petitioner-plaintiff had filed the suit for declaration of the sale deed dated 29.08.2011 as null and void on the strength of the agreement to sale dated 30.12.1999. A perusal of the agreement to sale acknowledges entire payment of the sale consideration and further makes a recital of transfer of the physical possession to the petitioner-plaintiff. It is the recital of the document which is decisive for determination of the question of

¹ 2009 to SCC 532

² 2014 1 SCC 618

³ 2007 (3) M.P.L.J. 384

⁴ (2008) 2 MPWN 63

admissibility of a document whether the possession, in fact, was given or not in terms of the agreement to sale is a question of fact which requires adjudication but, at the time of considering the question of admissibility of document, it is the recital therein which shall govern the issue. The unregistered sale agreement, in the instant case, requires adequate payment of stamp duty applicable in accordance with law. The adequate stamp duty, admittedly, is not paid. The Court, therefore, is empowered to pass appropriate order in terms of Section 35 of the Indian Stamp Act 1899. In the instant case since such recourse has not been taken, therefore, the impugned order is set aside. The trial Court is directed to pass appropriate order in terms of Section 35 of Indian Stamp Act 1899 for impounding the sale agreement dated 30.12.1999.

6. The petition stands disposed of.

(PURUSHAINDRA KUMAR KAURAV)
JUDGE

Roshni