



2025:CGHC:13893

AFR

HIGH COURT of CHHATTISGARH AT BILASPUR

WP227 No. 810 of 2017

1- Shyamlal S/o Late Tulsiram Sahu, Aged About 52 Years Agriculturist, R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

2- Mannulal S/o Late Tulsiram Sahu, Aged About 50 Years Agriculturist, R/o Village Aamdi, Tahsil and District Dhamtari, ChhattisgarhPlaintiffs

... Petitioner(s)

versus

1 - Rambai Wd/o Gangaram Sahu, Aged About 45 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

2 - Dushyant Kumar S/o Gangaram Sahu, Aged About 21 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

3 - Kiran Kumar S/o Gangaram Sahu, Aged About 19 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

4 - Narayan S/o Sakharam Sahu, Aged About 45 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

5 - Rameshwar S/o Sakharam Sahu, Aged About 40 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

6 - Suresh S/o Sakharam Sahu, Aged About 38 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

7 - Chamarin Bai Wd/o Sakharam Sahu, Aged About 65 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

8 - Bisnin Bai Wd/o Anandram Sahu, Aged About 62 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

9 - Kedar S/o Anandram Sahu, Aged About 45 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

10 - Jageshwar S/o Anandram Sahu, Aged About 43 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

11 - Kriparam S/o Anandram Sahu, Aged About 36 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

12 - Naresh S/o Anandram Sahu, Aged About 34 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh.

13 - Mahesh Kumar (Died and Deleted) Through Legal Heirs In Compliance of Honble Court Order Dated 21-10-2024.

13.1 - (A) Biswa Bai, W/o Late Mahesh Kumar, Aged About 55 Years R/o Village and Post Aamdi Vedpara, Tahsil and District Dhamtari, Chhattisgarh.

13.2 - (B) Kiran Sahu D/o Late Mahesh Kumar Aged About 30 Years W/o Chandrahas Sahu, R/o Village Dhuma, Post Darri, Tahsil and District Dhamtari, Chhattisgarh.

13.3 - (C) Nutam Sahu D/o Late Mahesh Kumar Aged About 28 Years W/o Anil Mala, Village and Post Purur, Tahsil Gumar, District Balod, Chhattisgarh.

13.4 - (D) Huleshwari Sahu D/o Late Mahesh Kumar Aged About 26 Years W/o Jitendra Sahu, Village Pendri, Post Kalangpur, Tahsil Gunderdehi, District Balod, Chhattisgarh.

13.5 - (E) Gayatri Sahu D/o Late Mahesh Kumar Aged About 24 Years Villaage/p.O. Aamdi, Vedpara, Tahsil and District Dhamtari, Chhattisgarh.

14 - Ishwarlal S/o Late Falji Sahu, Aged About 45 Years R/o Village Aamdi, Tahsil and District Dhamtari, Chhattisgarh, District : Dhamtari, Chhattisgarh

15 - (Died) Uambai (Through Legal Heirs), As Per Hon'ble Court Order Dated. 05-09-2023.

15.1 - A. Bhagat Singh, S/o. Sudarshan Lal, Aged About 60 Years (Husband),

R/o. Village Bhatheli, Tahsil Kurud, District - Dhamtari, Chhattisgarh.

15.2 - B. Bhmeshwari Sahu, W/o. Shesh Narayan, Aged About 40 Years R/o. Village Belar, Tahsil - Abhanpur, District - Raipur, Chhattisgarh.

15.3 - C. Hemlata Sahu, W/o. Tameshwar Sahu, Aged About 36 Years R/o. Village Kanhera, Tahsil - Abhanpur, District - Raipur, Chhattisgarh.

15.4 - D. Digeshwari Sahu, W/o. Loknath Sahu, Aged About 32 Years R/o. Village - Kukradeeh, Tahsil and District - Mahasamund, Chhattisgarh.

15.5 - E. Digeshwar (Sunil), S/o. Bhagat Singh, Aged About 31 Years R/o. Village- Bhatheli, Tahsil - Kurud, District - Dhamtari, Chhattisgarh.

16 - Mahtaab Bai D/o Fulji Sahu, Aged About 49 Years R/o Village and Post Armarikala, Tahsil Gurur, District Balod, Chhattisgarh.

17 - Sakun Bai D/o Fulji Sahu, Aged About 47 Years R/o Village Banbagoud, Post Kukrel, Tahsil Nagri, District Dhamtari, Chhattisgarh.

18 - Rameshri Bai D/o Fulji Sahu, Aged About 41 Years R/o Village Kurra, Tahsil and District Dhamtari, Chhattisgarh.

19 - Nirmala Bai D/o Fulji Sahu, Aged About 38 Years R/o Village Kareli Chhote, Tahsil Kurud, District Dhamtari, Chhattisgarh.

20 - (Deleted) Smt. Rajbai In Compliance of Honble Court Order Dated 21-10-2024., District : Dhamtari, Chhattisgarh

21 - Smt. Jayant W/o Bhupatsingh Sahu, Aged About 47 Years R/o Village Chharwahi, Tahsil and District Balod, Chhattisgarh.

22 - Smt. Meenabai W/o Shrawan Kumar Sahu, Aged About 45 Years R/o Village Markatola, Tahsil and District Kanker, Chhattisgarh.

23 - Smt. Sunita W/o Manharan Sahu, Aged About 40 Years R/o Village Belargondi, Tahsil Chhuriya, District Rajnandgaon, Chhattisgarh.

24 - Smt. Harin Bai W/o Hosram Sahu, Aged About 32 Years R/o Village Arkar, Tahsil Gurur, District Balod, Chhattisgarh.

25 - Yashwant S/o Kishan Lal Sahu, R/o Village Arkar, Tahsil Gurur, District Balod, Chhattisgarh, District : Balod, Chhattisgarh

26 - Lokesh S/o Kishanlal Sahu, R/o Village Arkar, Tahsil Gurur, District Balod, Chhattisgarh, District : Balod, Chhattisgarh

27 - Sheetal S/o Kishranlal Sahu, R/o Village Arkar, Tahsil Gurur, District Balod, Chhattisgarh Respondent No. 21 To 27 Are Lrs of Hemabai Defendant No.14, District : Balod, Chhattisgarh

28 - Rambha Bai W/o Dularsingh Sahu, Aged About 50 Years R/o Village Parsahi, Post Khapri, Tahsil Balod, District Durg, Chhattisgarh, District : Durg, Chhattisgarh

29 - The State of Chhattisgarh, Through The Collector, Dhamtari, District Dhamtari, ChhattisgarhDefendants, District : Dhamtari, Chhattisgarh.

... Respondent(s)

(Cause Title is taken from Case Information System)

For Petitioners	: Mr. Somnath Verma, Advocate
For Respondent No.1 to 11 & 14	: Mr. P. R. Patankar, Advocate
For State/Respondent No.29	: Mr. Shubham Bajpai, Panel Lawyer

Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

22.03.2025

1) The petitioners/plaintiffs have challenged the order passed by the Ist Civil Judge Class-I, Dhamtari, in Civil Suit No. 158A/2013 dated 23.08.2017, whereby an application moved by the plaintiffs under Section 151 of the CPC for impounding of the document was rejected.

2) The facts of the present case are as under:-

A. The plaintiffs filed a suit for declaration of title and possession over the suit property on the basis of a registered sale deed on 30.01.2002. They also

sought relief for permanent injunction and damages to the tune of Rs.23,000/- against the defendants.

- B. The plaintiffs further pleaded that the suit property was partitioned between the plaintiffs and an agreement was entered into between the parties on 12.03.1966; stipulation of conditional deed was also executed on 12.03.1966 and the partition deed was executed on 15.07.1973.
- C. The defendants filed their written statement and denied the plaint averments. They admitted the fact of partition but denied the date of its execution.
- D. The petitioners moved an application for impounding of the unregistered stipulation of conditional agreement and the agreement dated 12.03.1966.
- E. The defendants filed their reply to the said application.
- F. The learned trial Court on 14.12.2010 referred the documents to the Collector (Stamps) to ascertain deficit stamp duty.
- G. The Collector (Stamp) vide memo dated 15.02.2013 (Ex.P/8) communicated to the learned trial Court that the documents were executed 5 years prior to the date of their presentation, therefore, according to the provisions of Section 48B of the Indian Stamp Act, 1899 (for short, the Stamp Act), the recovery of deficit stamp duty would not be appropriate.
- H. The petitioners moved an application under Section 151 of the CPC on 25.04.2016 for the impounding of documents.
- I. The defendants filed a reply to the application and pleaded that the

Collector (Stamp) has already refused to impound the documents and the application has been moved after 03 years without assigning reasons for the delay, therefore, the application may be rejected.

J. The learned trial Court vide order dated 23.08.2017 rejected the application on the ground that the documents were returned by the Collector (Stamp) and no steps were taken by the petitioners for long 3 years.

K. The petitioners have challenged the said order by filing this petition.

3) Mr. Somnath Verma, would argue that the application for impounding of the documents was moved before the concerned Court and the course available to the said Court was to impound the document after adjudicating the deficit stamp duty and thereafter to send the document to the Collector (Stamp) to recover the deficit stamp duty. He would contend that the power of the Collector (Stamp) under Section 48B of the Stamp Act is entirely different from the power of the Court under Section 33 of the Stamp Act. He would further submit that the Collector (Stamp) refused to pass any order for recovery of deficit stamp duty referring to the bar contained in the Section itself, but there is no such bar in Section 33 of the Stamp Act and still the Court can exercise the power to impound the documents. To buttress his arguments, he has placed reliance on the judgment passed by the Hon'ble Supreme Court in the matter of ***Black Pearl Hotels Private Limited v/s Planet M Retail Limited***, reported in ***(2017) 4 SCC 498***.

- 4) On the other hand, Mr. P. R. Patankar, learned counsel appearing for respondents No. 1 to 11 & 14 would oppose the submissions made by Mr. Verma and submit that an application for impounding of the document was moved on 25.9.2008 and immediately thereafter, the documents were referred to the Collector (Stamp). He would contend that the Collector (Stamp) refused to pass any order as the documents were executed five years prior to the date of their presentation according to the provisions of 48B of the Stamp Act. He would further submit that the petitioners kept mum for a period of three years and thereafter an application under section 151 of the CPC was moved therefore, the learned trial Court rightly rejected the application on the ground that the same was moved with a delay of 03 years and the delay part was not properly explained.
- 5) Mr. Shubham Bajpai, learned panel lawyer appearing for the State would support the order passed by the learned trial Court.
- 6) I have heard learned counsel for the parties and perused the documents.
- 7) Section 33 of the Act, 1899 deals with the Examination and impounding of instruments. Section 33 is reproduced herein below:-

"33.Examination and impounding of instruments.

(1)Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in India when such instrument was executed or first executed:

Provided that

(a) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, if he does not think fit so to do, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the [Code of Criminal Procedure, 1898 (5 of 1898)] [Now see the Code of Criminal Procedure, 1973 (2 of 1974).];

(b) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf

(3) For the purposes of this section, in cases of doubt, (a) [the [State Government] [Substituted by A.O.1937, for "the Governor-General in Council" .]] may determine what offices shall be deemed to be public offices; and

(b) [the [State Government] [Substituted by A.O.1937, for "the Governor-General in Council" .]] may determine who shall be deemed to be persons in charge of public offices."

- 8) A bare reading of the above provisions would make it clear that if an instrument is produced before the authority or received as evidence and it appears to the Court or the authority that same is not duly stamped, the Court or Authority shall impound the same.
- 9) This section further says that for the purposes of impounding the document, such person or authority shall examine the instrument to determine whether it is stamped with the stamp of value and description required by law.
- 10) This section also makes it clear that no limitation is provided to adjudicate the

impounding of the document not duly stamped.

- 11) Section 48B of the Stamp Act, which is the State amendment, deals with the original instrument to be produced before the Collector in case of deficiency.

Section 48-B of the Indian Stamp Act reads as under:-

"48-B Original instrument to be produced before the Collector in case of deficiency.- Where the deficiency of stamp duty is noticed from a copy of any instrument, the Collector may, by order required the production of original instrument from a person in possession or in custody of the original instrument for the purpose of satisfying himself as to the adequacy of amount of duty paid thereon. If the original instrument is not produced before him within the period specified in the order it shall be presumed that the original document is not duly stamped and the Collector may proceed in the manner provided in this Chapter:

Provided that no action under this section shall be taken after a period of five years from the date of execution of such instrument."

- 12) This section makes it clear that if the original document is produced before the authority, the authority concerned may satisfy himself as to the adequacy of the amount of duty paid thereof. It is further provided that no action shall be taken after a period of five years from the date of execution of such instrument.

- 13) In the present case, the learned trial Court sent the documents along with the memo to the Collector (Stamp) to examine the adequacy of the stamp duty. It is not in dispute that the documents were executed in the years 1966 and 1973. Therefore, according to the proviso to Section 48B of the Stamp Act, the Collector (Stamp) refused to take any action.

- 14) The order passed by the Collector (Stamp) 15.02.2013 was duly communicated

to the petitioners but the petitioners kept mum for a period of three years and thereafter an application under Section 151 of the CPC was moved for impounding the documents, that has been rejected on technical grounds that the application was moved after three years.

- 15) The Hon'ble Supreme Court in the matter of ***Black Pearl Hotels Private Limited (supra)***, while dealing with the provisions of Section 33 held that Section 33 stipulates that for the purpose of finding out whether the instrument is "duly stamped" or not and consequently as to whether such instrument is liable to be impounded or not, the examination of the instrument is necessary. Thus, Section 33 fundamentally pertains to the examination and impounding of an instrument.

The relevant para 14 is reproduced herein below:-

"14. On a plain reading of the aforesaid provision, it is manifest that sub- section (1) of Section 33 stipulates that for the purpose of finding out as to whether the instrument is "duly stamped" or not and consequently as to whether such instrument is liable to be impounded or not, examination of the instrument is necessary. Thus, Section 33 fundamentally pertains to the examination and impounding of an instrument. To appreciate the sweep and purport of Section 33(2)(b), it is necessary to refer to the dictionary clause. The definition "duly stamped" as contained in Section 2(1)(e) of the 1957 Act postulates that unless the context otherwise requires "duly stamped" as applied to an instrument, means that the instrument bears an adhesive stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with law for the time being in force in the territories of the State of Karnataka. Thus, the "duly stamped" instrument should comply with three requirements, namely, (i) the stamp must be of a proper amount; (ii) should bear proper description of stamp; and (iii) the stamp must have been affixed and used according to law for the time being in force in the State of Karnataka."

- 16) In the matter of ***Peteti Subba Rao v. Anumala S. Narendra (2002) 10 SCC 427,***

the Hon'ble Supreme Court has held that chapter IV of the Indian Stamp Act contains provisions regarding 'instruments not duly stamped'. It is Section 35 which falls under the said chapter which empowers the trial court to direct the party (who wants the document to be acted upon) to pay the stamp duty (or the deficient portion) together with a penalty of rupees fifteen, or ten times the amount of the proper duty or deficient portion thereof exceeds fifteen rupees, of a sum equal to ten times of such duty or portion. This is for the purpose of enabling the document to be admitted in evidence. In such a situation, the document would be admitted only on payment of the aforesaid sum. The relevant para 5 is reproduced herein below:-

"5. Chapter IV of the Indian Stamp Act contains provisions regarding 'instruments not duly stamped'. It is Section 35 which falls under the said chapter which empowered the trial court to direct the party (who wants the document to be acted upon) to pay the stamp duty (or the deficient portion) together with a penalty of rupees fifteen, or, when ten times the amount of the proper duty or deficient portion thereof exceeds fifteen rupees, of a sum equal to ten times such duty or portion. This is for the purpose of enabling the document to be admitted in evidence. In such a situation the document would be admitted only on payment of the aforesaid sum. In a case where the party is not willing or he cannot afford to pay the said sum the court has to adopt the procedure envisaged in Section 38(2) of the Act. That sub-section is with reference to the action which the trial court is, perforce to adopt under Section 33(1) of the Act."

17) In the matter of **Umesh Kumar Prakashchandra Sharma v. Rajaram Ramchandra Jat and another** reported in **AIR 2010 MP 158**, the High Court of Madhya Pradesh while dealing with Section 33 of the Stamp Act held that when the document is produced before the Court, and the Court impounds the same,

the Collector (Stamp) would have no jurisdiction to impound the document under Section 33 of the Stamp Act but the Collector will have to receive the document from a Court then proceed in accordance with law. Once the matter is referred to the Collector under Section 38(2) of the Stamp Act, then he has to decide whether the said instrument is duly stamped or not. Once he decides that the document is duly stamped, then he shall certify by the endorsement thereon that the document is duly stamped or that it is not so chargeable with the stamp duty. However, if the Collector comes to the conclusion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or amount required to make up the same, together with a penalty of five rupees.

18) The provisions of Section 33 Stamp Act and the law laid down by the Hon'ble Supreme Court and the High Court of Madhya Pradesh would make it clear that the documents can be referred to the Collector (Stamps) to decide the issue as to whether the document is duly stamped or not.

19) In the present case, the documents were referred to the Collector (Stamps) by the learned Trial Court and he declined to exercise his power according to the proviso to Section 48B of the Stamp Act, but the decision taken by the Collector (Stamps) would not curtail the power of the Court to impound the document according to the Section 33 of the Stamp Act. The legislature has conferred the power to the Court to adjudicate proper stamp duty and penalty, if any, while impounding the document and thereafter for recovery proceedings, the

documents can be referred to the Collector (Stamps).

20) With regard to the objection raised by Mr. Patankar that the application under Section 151 CPC was moved by the petitioners after a lapse of three years, in the opinion of this Court, the technicalities should not defeat the justice. The petitioners produced the original document along with an application for impounding the document, the learned trial Court ought to have exercised the power under Section 33 of the Stamp Act and after impounding the documents, the documents could have been referred to the Collector (Stamps) for assessing the deficit stamp duty.

21) Taking into consideration the above-discussed facts and law, in the opinion of this Court, the order passed by the learned trial Court is not sustainable in the eyes of the law, therefore, the same is hereby set aside. The learned trial Court is directed to decide the application moved by the petitioner for impounding the documents afresh in the light of observations made herein above. Interim order, if any, granted by this Court is hereby vacated.

22. As a result, the petition is hereby **allowed**. No cost(s).

Sd/-
(Rakesh Mohan Pandey)
Judge

WP227 No. 810 of 2017

HEAD NOTE

The Court while exercising power under Section 33 of the Indian Stamp Act, 1899 may refer the document to decide the issue as to whether the document is duly stamped or not. The legislature has conferred the power to the Court to adjudicate proper stamp duty and penalty while impounding the document & bar of Limitation contemplated in Section 48 B of the Act, 1899 would not attract.