

Rajasthan High Court

CV
Dinesh V

RT-5

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**SB CIVIL WRIT PETITION NO.12071
(Dinesh Vs. Jai Singh & Ors.)**

Date of Order :: 2nd January 2012

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Dr.Sachin Acharya for the petitioner

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BY THE COURT:

After having heard the learned counsel for the plaintiff-petitioner and having perused the material placed on record, this Court is unable to find any reason to consider interference in this matter against the order dated 09.09.2011 as passed by the learned Trial Court.

With reference to Section 39 of the Rajasthan Stamps Act, 1998 the learned Trial Court has considered the alleged agreement to sell forming the subject of the suit for specific performance as filed by the plaintiff-petitioner; has referred to the specific recital in the agreement about the delivery of possession thereunder; and, with reference to the submissions of the parties, has found it just and proper to impound this document and to send the same for assessment of proper stamp duty to the Collector concerned.

The learned counsel for the petitioner vehemently contended that in the fact situation of the present case where the recital in the document is categorically denied by the defendants and delivery of possession is specifically a matter of dispute, at this stage, the petitioner cannot be called upon to pay the stamp duty as alleged by the defendants. The

learned counsel has referred to the decision of the Hon'ble Andhra Pradesh High Court in the case of B.Bhaskar Reddy Vs. Bommireddy Pattabhi Rami Reddy (died) Per L.Rs. and Ors.: 2011 (1) CCC 535 (A.P.)

The submissions have their own shortcomings when viewed in the light of the averments as taken in the plaint wherein the petitioner has, inter alia, averred (in paragraph-5) that,-

".....उक्त विक्रित काश्त भूमि की पैमाईश आदि करवाने की जिम्मेदारी प्रतिवादीगण द्वारा वहन करते हुये इकरारनामा में विक्रित भूमि का कब्जा वादी को करवा दिया गया।"

The case of the petitioner has specifically been in conformity with the recital in the agreement about delivery of possession. The fact that the defendants are putting such averments to contest has hardly any co-relation with the liability of stamp duty on the agreement in question per Section 39 *ibid*. In the given fact situation and particularly in view of the averments of the plaintiff-petitioner, the decision in B.Bhaskar Reddy (*supra*) has no application to this case.

The view as taken by the learned Trial Court does not appear suffering from any infirmity; and the order dated 09.09.2011 does not appear suffering from any jurisdictional error so as to call for interference.

The petition fails and is, therefore, dismissed.

(DINESH MAHESHWARI), J.