IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1) LPAST NO.13950/2012

943 LETTERS PATENT APPEAL STAMP NO.13950/2012

THE STATE OF MAHARASHTRA AND ORS
VERSUS
SANJEEV KUMAR HARAKCHAND KANKARIYA AND ORS
...
Advocate for Applicant State: Mrs. M.A.Deshpande
...
CORAM : R. M. BORDE & P.R. BORA, JJ.
Dated: July 03, 2015
...

PER COURT :-

1. Heard. The Letters Patent Appeal presented by the State challenges the order passed by the learned Single Judge in Writ Petition No.7211/2011, decided on 26th September, 2011. According to the appellant State, stamp duty is payable by the plaintiff together with penalty in respect of a document of agreement of sale which has been produced before the Civil Court in a suit claiming relief of specific performance of contract.

2. The learned Civil Judge, Senior Division, directed the plaintiff to comply with the order of Collector of Stamps in respect of imposition of the liability in respect of payment of stamp duty and penalty as stated above.

3. On consideration of the provisions of Explanation (I) to Article 25 of Schedule I of Bombay Stamps Act, 1958, the learned Single Judge of this Court has set aside the order and allowed the writ petition.

4. We have perused the document i.e. the agreement of sale and it is noticed by us that there is no recital in respect of delivery of possession. The inference drawn by the trial Judge, placing reliance on the recital in respect of liability, to pay taxes, is erroneous. Explanation (I) to Article 25 of Schedule I of Bombay Stamps Act, 1958, provides that, for the purposes of this Article, where in the case of an agreement to sell an immoveable property, the possession of any property is transferred (or agreed to be transferred) to the purchaser before execution, or at the time of execution, or after execution of such agreement, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.

5. In the instant matter, as noticed by us, there is no recital in respect of delivery of possession recorded in the agreement of sale and, as such, the view taken by the learned Single Judge cannot be said to be erroneous.

The Letters Patent Appeal is devoid of substance, and hence stands dismissed.

(P.R. BORA, J.) (R. M. BORDE, J.)

...

agp/-