IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11355 OF 2014

Bhagiratibai W/o Wamanrao Chidrawar
Age: 93 years, Occu: Household,
R/o Mali Galli, Near Maroti Temple,
Parbhani, Tq. & Dist. Parbhani. ...PETITIONER

versus

Sudhakar S/o Bapurao Tak,
Age: 73 years, Occu.:Pensioner,
R/o: Parbhani, Tq. & Dist. Parbhani,
Ward No. 31 Behind Vandana Dresses
& M.C. House No. 486, Parbhani. ...RESPONDENT

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Mr. S.K. Chavan, Advocate for Petitioner
Mr. M.M. Patil, Beedkar, Advocate for respondent

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CORAM : SUNIL P. DESHMUKH, J.

DATED : 15th APRIL, 2015

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

2. Petitioner - original defendant purports to have been aggrieved by order dated 08-11-2014 on application Exhibit-50 in Special Civil Suit No. 40 of 2012 passed by the Civil Judge, Senior Division, Parbhani, whereunder request of the petitioner for impounding the documents – agreements to sell has been rejected.

3. Application Exhibit-50 had been moved seeking impounding of three agreements of sales, contending that unless those are properly stamped as required, having regard to Explanation-I of Article 25 of Schedule I of the Bombay Stamp Act (for short "the Act") and alternatively having regard to sub-article (h) (A) (iii) of Article 5 of the Act, those cannot be read in evidence.

4. Mr. Chavan, learned counsel appearing for petitioner submits that in the present case possession was agreed to be delivered, under the agreements and as such transactions are covered by Explanation - I of Article 25 of Schedule I of the Act, which reads thus:

> *"[Explanation I]- For the purpose of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property is transferred[or agreed to be transferred] to the purchaser before the execution, or at the time of execution or after the execution of, such agreement [***] then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.*
>
> *Provided that, the provisions of section 32A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section:*
>
> *Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.]*

Provided also that where proper stamp duty is paid on a registered agreement to sell an immovable property treating it is a deemed conveyance and subsequently a conveyance deed is executed without any modification then such a conveyance shall be treated as other instrument under section 4 and the duty of one hundred rupees shall be charged.

5. Mr. Chavan, learned counsel further alternatively submits, relying on sub-article (h) (A) (iii) of Article 5 of the Act, which reads thus:

"5. Agreement or tis records or memorandum of an agreement.

[(h)(A)] If relating to....

(iii) specific performance by any person or a group persons where the value of contract exceed rupees 1,00,000/-

(a) if the amount agreed does exceeds rupees ten lakhs:	*Two rupees and fifty pais for every rupees 1,000 or part thereof on the amount agreed in the contract subject to minimum of rupees 100.*
(b) in any other case	*Five rupees for every rupees 1,000 or part thereof on the amount agreed in the contract.",*

that taking into account underlying intention of Article 5, the documents ought to have been impounded and sent for payments of proper stamp duty.

6. Mr. Patil, learned counsel appearing for respondent-original plaintiff, however, submits that from plain reading of Explanation I of Article 25, it is evident that the same has no application in the present matter, for, it speaks of the documents of agreement of sale whereas the case as has been put up by the plaintiff is about delivery of possession at the time of execution of sale-deed or at the most after execution of sale-deed, and as such, said explanation does not cover present case.

7. Mr. Patil, further submits that since the documents concerned are referable to Article 25, Article 5 hardly had relevance in the present matter. Simultaneously, both articles would not be applicable to said transactions and as Article 25 is specific speaking about agreement to sale, Article 5 will have no application. He further submits that it is at the time of cross-examination that application has been moved in order to procrastinate the proceedings, which is on the verge of its completion. He, therefore, submits that no indulgence be shown in extraordinary powers of this court.

8. Perusal of impugned order shows that the documents have been executed on stamp papers of Rs.10/-, 50/- and 100/- and the plaintiff has adduced evidence. Taking into account purport underlying explanation I of Article 25 of the Bombay Stamp Act, and all along agreements speaking of delivery of possession at

the time of execution of sale deed, it can hardly be said that objection as had been raised under Exhibit-50 is sustainable. Alternate argument with reference to Article 5 is also not sustainable, case being apparently governed by Article 25. No fault can be found with the impugned order.

9. In view of aforesaid, I am not inclined to interfere with order impugned.

10. Writ petition, as such, stands dismissed. Rule stands discharged.

Sd/-

(SUNIL P. DESHMUKH, J.)

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