

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5927 OF 2006

Nandkishore T. Jadhav .. Petitioner

vs.

Ankush D. Suryavanshi and ors. .. Respondents

Mr. Rahul S. Kate for the Petitioner.

Mr. Balasaheb Deshmukh for Respondent Nos.1 and 3.

CORAM : M. S. SONAK, J.

DATE : 7 May, 2015.

P.C. :-

1] This petition challenges the order dated 4 July 2006 made by the Civil Judge Senior Division, Baramati requiring the petitioner to pay stamp duty on the agreement dated 9 August 2000 on the basis that the same is a conveyance under Article 25 of the Schedule-1 of the Bombay Stamp Act 1958 (said Act).

2] In making the impugned order, the learned Civil Judge has placed reliance upon Explanation 1 to Article 25 of the Schedule-1 of the said Act, 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.

3] The learned Civil Judge has also placed reliance upon the decision of the learned Single Judge of this Court in case of *Sheshrao Kale Vs. Damodar Pandhare – 2004 (3) Mh.L.J. 357*.

4] If the agreement dated 9 August 2000 is perused, then it is clear that there is no transfer of possession of the suit property by the proposed vendor to the proposed purchaser. Besides, there is nothing in the agreement, which indicates an agreement to transfer possession to the purchaser, of the suit property, either before the execution or at the time of execution or after execution of such agreement. In fact, in the impugned order, learned Civil Judge at para '6' has observed that there is not a slightest whisper in the agreement under list Exh.3/2 as regards the delivery of possession.

5] The decision of learned Civil Judge of this Court, in case of *Seshrao Kale (supra)*, has been explained by the Division Bench of this Court in case of *Balwantgir Ganpatgir Giri through Lrs Nanibai sd/o Balwant Giri v.s Manasi Construction and Developers and ors.- 2006 (5) Mh.L.J.*, by noting that in case of *Seshrao Kale (supra)*, the agreement for sale dated 23 August 1999 contained a recital to the effect that the possession of property had been delivered. Clearly, therefore, learned Civil Judge has erred in placing reliance upon the decision in case of *Seshrao Kale (supra)*, which was distinguishable and did not apply to the facts of the present case.

6] In case of *Balwantgir Ganpatgir Giri (supra)*, the Division Bench of this Court has held that under Explanation-1 to Article 25 of Schedule-1 of the said Act, it is the delivery of possession which transposes an agreement into a conveyance and it is only in case of agreement to deliver the possession in the terms of agreement and not in terms of the sale deed agreed to be executed consequent to such agreement. In the said case, the agreement dated 3 March

2000, was found to be purely an agreement for sale, wherein, there was no recital for delivery of possession in terms of of the agreement. In such circumstances, the Division Bench of this Court held that an agreement of such nature cannot be construed as a conveyance within the meaning of the said expression under Explanation-I to Article 25 of the Schedule-I of the said Act.

7] Applying the ratio of the said decision of the Division Bench, impugned order will have to be said aside.

8] Accordingly, Rule is made absolute in terms of prayer clause (b). There shall be no order as to costs.

9] All concerned to act upon an authenticated copy of this order.

(M. S. SONAK, J.)

dinesh