IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2028 OF 1998

Hanuman Seva Mandal, Kalyan .. Petitioners
vs.
Kalyan Municipal Corporation,
Kalyan & Anr. .. Respondents

Ms S. D. Khot with Ms Amita Kuttikrishnan for Petitioners.
Mr. V. K. Pradhan for Respondents.

CORAM : M. S. SONAK, J.
Date of Reserving the Judgment : 24 February 2015
Date of Pronouncing the Judgment : 27 February 2015

JUDGMENT :-

1] This petition is directed against order dated 9 October 1997 under Exhibit '85' and order dated 15 January 1998 under Exhibit '89' made by the learned Joint Civil Judge, Junior Division, Kalyan in Regular Civil Suit No. 53 of 1988.

2] By order dated 9 October 1997, under Exhibit '85', the document dated 7 July 1988 was impounded and sent to the Sub Registrar, Kalyan for determining valuation and stamp duty. By order dated 15 January 1998 under Exhibit '89', the Petitioners were directed to pay stamp duty of 8% upon the value of the property determined at Rs.2,25,000/- and penalty at the rate of ten times. The impugned orders have determined the document dated 7 July

1988 to be a 'conveyance' under Article 25 of the 1st Schedule to the Maharashtra Stamp Act, 1958 (“said Act”).

3] The Petitioners, who are original plaintiffs in Regular Civil Suit No. 53 of 1988, by application dated 4 October 1997 applied to the Civil Court to admit document dated 7 July 1988 in evidence, after impounding the same and determining the stamp duty and penalty payable thereon. Although, such application was opposed by the respondent no. 1 – Municipal Corporation, the Civil Court made order dated 9 October 1997, impounding the said document and forwarding it to the Sub Registrar, Kalyan for determining valuation and stamp duty payable thereon. In the order dated 9 October 1997, the Civil Court rejected the Petitioners' contention that the document in question was not a '*conveyance*' under Article 25 of Schedule 1 to the said Act. The Sub Registrar, Kalyan by communication dated 31 October 1997, determined the valuation of the property which was the subject matter of the document at Rs.2,25,000/- and opined that the stamp duty payable would be 8% of the market value, as provided under Article 25 of Schedule I to the said Act. The Petitioners have not challenged the valuation. However, by application dated 15 January 1998, the Petitioners objected to levy of stamp duty under Article 25, by urging that the document dated 7 July 1988 was not a *'conveyance'* but the same was only a *'paper agreement'* leviable to stamp duty under Article 5(h) of Schedule I to the said Act. It is upon this application (Exhibit 89) that the Civil Court has made the second order dated 15 January 1998, accepting valuation of the property at Rs.2,25,000/- and determining stamp duty payable at 8% and penalty at ten times of the deficient portion thereof.

4] Ms Khot, the learned counsel for the Petitioners submitted that the document dated 7 July 1988 was only a *'paper agreement'* leviable to stamp duty under Article 5(h) of Schedule I to the said Act. The impugned orders, to the extent they hold that the document dated 7 July 1988 is a *'conveyance'* under Article 25 of Schedule I to the said Act, are illegal and unsustainable.

5] In order to appreciate the aforesaid contention, reference shall have to be made to the document dated 7 July 1988 entered into between Ramakant Rameshwar Joshi (respondent no. 2 – original defendant no.2) and the Petitioners in relation to the suit property. The agreement, comprises, in all six clauses, the English translation of which, as provided by the Petitioners, reads thus :

> *(1) It has been decided to give to Hanuman Seva Mandal, the 1000 sq. feet (Built up) 'Jaga' (i.e. premises, land) from Plot No. 10, out of S.No.201 of the ownership of Shri*

Ramakant Joshi, situated at Kolsewadi, Taluka Kalyan at the rate as fixed by the Government Valuer. And we would not take any objection therefor (regarding construction).

(2) The shed erected by Shri Hanuman Seva Mandal, on the said 'Jaga' shall be removed two days before the actual commencement of the work on the said 'Jaga' and we shall remove the same. We shall abide by the condition.

(3) While commencing the work Shri Hanuman Seva Mandal shall pay 10% of the total cost of the work to Shri Joshi (Rs) and three months later 25% of the mount shall be paid and balance payment shall be made as early as possible. It is necessary to pay the same at the most within 15 months. It has been agreed to pay the loan amount immediately, if the loan is sanctioned.

(4) The possession of the premises will be given / will be taken immediately after the completion of construction.

(5) Shri Joshi should comply with the documents required for loan as and when sought.

(6) If any complaint is made to Municipal Corporation, Charity Commissioner, Police Officer, Kolsewadi, Home Minister, Government of Maharashtra, Special Magistrate, Thane and to other authorities, then, Shri Joshi and Shri Hanuman Seva Mandal shall withdraw all such complaints, in view of this Agreement, unconditionally.

6] According to the Petitioners, the aforesaid agreement is nothing but a memorandum of an agreement or a paper agreement and therefore exigible to stamp duty under Article 5(h) of Schedule I to the said Act. The relevant portion of the said Article, reads thus:

"5. agreement or its records or memorandum of an agreement,-

(a) …

(b) ……

(c) ……

(d) ……..

(e) …….

(f) ……

(g) …..

(h) if not otherwise provided for,"

7] The Civil Court, however, relying upon explanation I to Article 25 has held that the document in question is a '*conveyance*' for the purposes of Article 25. The Explanation, *inter alia* provides that for the purposes of Article 25, where in the case of an 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 time of execution of such agreement, then such agreement to sale shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.

8] In the present case, upon reading the clauses of the agreement dated 7 July 1988, it is clear that the same was an agreement for sale of the suit property. The suit property was very clearly identified in the document. The consideration payable as also the manner of payment was specified in the document. There is no substance in the contention of Ms Khot that no consideration was specified, because clause (1) of the agreement makes reference to the rate as fixed by government valuer. Clause (1), indeed provides that the suit property is agreed to be sold at the rate as fixed by government valuer and that the Petitioners would not take any objection therefor (regarding construction). This is a valid mode of indication of consideration. Further, clause (3) provides for the mode and manner of payment of consideration. The agreement, in clause (4) thereof, clearly records that the possession shall be given immediately after completion of the construction. All this, indicates that the document in question was indeed an agreement for sale of an immovable property and the possession of the immovable property was agreed to be transferred to the Petitioners purchaser after the execution of the agreement. Applying the Explanation I to the document in question, it is clear that the same was a deemed conveyance for the purposes of Article 25 to Schedule I of the said Act and stamp duty thereon was leviable accordingly. There was no question of the said agreement being some memorandum of understanding or paper agreement as urged by and on behalf of the Petitioners.

9] In fact, it is significant to note that the Petitioners themselves in their application dated 4 October 1997 styled the agreement dated 7 July 1988 as an agreement or contract and applied for its impoundment and consequent determination of stamp duty and penalty so that the same could be admitted in evidence. In paragraph 7 of the petition, the Petitioners have themselves averred that vide application dated 4 October 1997 (Exhibit 85), the Petitioners sought to exhibit '*an agreement of sale dated 7.7.1989 of gala adm. 1000 sq. feet to be constructed in the suit property, entered into between the Petitioners and the Defendant No. 2*.' In view of such position and pleadings, it is hardly open to the Petitioners to seriously contend that the document in question was not an agreement for sale as contemplated by Article 25, but was merely a memorandum of agreement or a paper agreement levialbe to stamp duty under Article 5 (h) of Schedule I to the said Act.

10] In the terms of the law as applicable when the impugned orders were made no instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer unless such instrument is duly stamped or if the instrument is written on a sheet of paper with impressed stamp of the executor or one of the executors is the person in whose name such stamp paper is produced, provided that any such instrument shall, subject to all just exceptions, be admitted in evidence on the payment of the duty with which the same is chargeable, or in the case of an instrument insufficiently stamped, the amount required to make up such duty and penalty of five rupees or ten times the amount thereof on deficient portions thereof, whichever is higher. This was contained in Section 34 of the said Act, as it then obtained.

11] Therefore, the impugned orders are entirely consistent with the provisions of law as they then obtained. There is neither any jurisdictional error nor any other legal infirmity in the making of the impugned orders.

12] Notice before admission was issued in this petition on 27 April 1998 and in the meantime further proceedings in Regular Civil Suit No. 53 of 1988, before the Civil Court were stayed. Thereafter, Rule was issued on 21 July 1998 and interim relief was confined only to th order below Exhibit '89' dated 15 January 1998.Directions were issued to the Civil Court to proceed with the suit. At the stage of final hearing, the learned counsel for the respondents however complained that the suit has not proceeded, on account of the interim orders or in any case the pendency of the present petition. The records would reveal that the suit was instituted by the Petitioners in order to injunct the respondent no. 1 i.e. Kalyan Municipal corporation from demolishing the suit structure put up by the Petitioners. As noted earlier, the impugned orders came to be made, virtually upon the invitation of the Petitioners by their application dated 4 October 1997. There is no legal infirmity or jurisdictional error in the making of the impugned orders. By instituting the present petition however, the Petitioners has virtually succeeded in protracting the Regular Civil Suit No. 53 of 1988 for over 28 years. In these circumstances, it is only appropriate that the Petitioners pay exemplary costs of Rs.25,000/- to the respondent no. 1 – Kalyan Municipal Corporation. Further, the Civil Court is directed to expedite the hearing in Regular Civil Suit No. 53 of 1988 and to dispose of the same within a period of one year from today.

13] Parties to appear before the Civil Court taking up Regular Civil Suit No. 53 of 1988 on 16 March 2015 at 10.30 a.m. and obtain directions with regard to the further proceedings in Regular Civil Suit No. 53 of 1988.

14] Rule is discharged. The Petitioners to pay costs of Rs.25,000/- to the respondent no. 1 – Kalyan Municipal Corporation. The Civil Court taking up Regular Civil Suit No. 53 of 1988 to ensure that such costs are indeed paid by the Petitioners to the respondent no. 1 – Kalyan Municipal Corporation.

(M. S. SONAK, J.)

Chandka