

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

WRIT PETITION NO.3670 OF 2015

(Mohd. Ataulla Mohd. Nurulla Nasim ..vs.. Mohd. Shakir s/o Mohd. Ishaque)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 03-07-2015

Heard Shri Ram Karode, learned Advocate holding for Shri Sudhir Moharir, Advocate for the petitioner.

2. The petitioner/defendant has challenged the interlocutory order passed by the trial Court, rejecting the objection taken by the petitioner/defendant for admitting the document on the ground that it is not registered.

3. After considering the provisions of Section 17 and Section 49 of the Registration Act, 1908 and Section 34 of the Maharashtra Stamp Act and the judgment cited before him, the learned trial Judge has recorded reasons in paragraph 12 of the impugned order as follows :

“12. Present case is different than other cases which are filed for specific performance of contract. In the present case in hand defendant was or is not owner of suit plot.

Defendant has no authority or right to sell the suit plot to plaintiff on the basis of agreement of sale. The transaction between plaintiff and defendant is not a conveyance. Agreement dated 29-05-2009 is filed only to prove that plaintiff paid Rs.1,40,000/- to the defendant. Specific performance of contract is not possible in the present case in hand. Defendant concealed from plaintiff that he is not owner of suit plot. At the time of execution of agreement of sale defendant must have brought into notice of plaintiff that he is not the owner of suit plot. The possession was also not delivered to plaintiff at the spot. The agreement dated 29-05-2009 is filed on record only to prove that plaintiff has paid Rs.1,40,000/- to defendant. After careful scrutiny of agreement of sale the Court has to decide whether plaintiff paid Rs.1,40,000/- to defendant or not. The law laid down in A.I.R. 2012 SC 206 by Hon'ble Apex Court is applicable in the present case in hand. The transaction between plaintiff and defendant does not come within the ambit of conveyance or transfer. The suit is filed for recovery of amount of Rs.1,40,000/- with interest. The plaintiff cannot become owner of suit property as specific performance of suit property is not possible. Possession, title ownership and interest is not transferred in favour of plaintiff. As such, the agreement dated 29-05-2009 is admissible in evidence for the aforesaid reason I proceed to pass following order."

4. Shri Ram Karode, learned Advocate for the petitioner has submitted that the learned trial Judge has committed an error of jurisdiction in the matter and as

the document is required to be registered and it is not registered, it is not admissible in evidence. In support of the submission, the learned Advocate has relied on the judgment given by the Hon'ble Supreme Court in the case of *K.B. Saha and Sons Private Limited vs. Development Consultant Limited* reported in (2008) 8 SCC 564, particularly on paragraph 34 of the above referred judgment.

5. However, the civil suit filed by the respondent in the present case is only for recovery of the amount and therefore, the submission made on behalf of the petitioner relying on the judgment given in the case of *K.B. Saha and Sons Private Limited* does not assist the petitioner.

6. The order passed by the learned trial Judge is proper. It does not require any interference. The writ petition is dismissed.

JUDGE