IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12742 OF 2016

ASEFKHAN S/O. MEHATABKHAN PATHAN
AND ANOTHER
VERSUS
WAHEDKHAN S/O. CHANDKHAN

Advocate for Petitioners : Shri K.A. Ingle.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 21st June, 2017

PER COURT :-

1. The petitioners are aggrieved by the order dated 20/09/2016, by which, application Exhibit No. 57, filed by the petitioners / plaintiffs in Special Civil Suit No. 173/2013, has been rejected.

2. There is no dispute that the document which is a possession cum earnest money receipt, is based on the agreement to sell which contains the specific contingency of handing over the possession on the payment of the earnest amount. Rs. 16,00,000/- (Rupees Sixteen Lakhs only) were

paid by the plaintiffs in cash to the defendant based on the agreement to sell which grants possession under the said agreement to the plaintiffs. The document was submitted to the Collector of Stamps for impounding and to submit its report. The Collector of Stamps has directed to deposit the stamp duty plus fine, since it came to a conclusion that an attempt was made to evade the stamp duty. The report of the Collector of Stamps (Exhibit 54), dated 28/04/2015, has not been called in question and has not been challenged before any Court or authority.

3. Learned counsel for the petitioners strenuously submits that earnest amount was mentioned and a receipt was executed. The earnest amount of Rs. 16,00,000/- (Rupees Sixteen Lakhs only), was paid by the plaintiffs to the defendant in cash. The Collector of Stamps has wrongly calculated the total amount and based on the entire land at issue, has assessed the stamp duty. He, further, submits that he is willing to pay the stamp duty on the earnest amount and the impugned order be quashed and set aside.

4. He relies upon the judgment of the learned Full Bench of this Court in the matter of Chief Controlling Revenue Authority and another Versus Reliance Industries Limited, Mumbai and another [2016 (3) Mh.L.J. 436], to support his contention that the stamp duty is to be levied only on the instrument and not on the contingency and transactions mentioned therein.

5. It is trite law that when the agreement to sell contains the condition of handing over the possession, the said document deserves to be impounded and proper stamp duty has to be paid, failing which it would not be admitted in evidence. The stamp duty is, therefore, to be calculated on the whole transaction since the possession has been delivered by virtue of the agreement to sell.

6. In the Reliance Industries judgment (Supra), the amalgamation of companies under an industrial amalgamation scheme was approved. This Court has passed an order on 07/02/2002, sanctioning the said scheme and the Gujrat High Court has passed an order on 30/09/2002, to that effect. It is

in this backdrop that the learned Full Bench concluded that the stamp duty has to be paid on the instrument, which has been drawn on the basis of the amalgamation scheme. I find that the said judgment would not be of any assistance to the petitioners.

7. The Trial Court has observed that the report of the Collector of Stamps (Exhibit 54), is pending compliance and the suit is also pending on account of the acts of the plaintiffs. Earlier, application Exhibit 55, was disposed of and costs were imposed on plaintiffs. Yet a second application Exhibit 57, was filed, which has been rejected by the impugned order.

8. Considering the above, I do not find any reason to consider this petition and issue notice to the respondent. This petition being devoid of merit is, therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.