IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4702 OF 2017

Ashok Sheshmal Porwal .... Petitioner
V/s.
Kishore Sheshmal Porwal .... Respondent

Mr. Purushottam G. Chavan for the Petitioner.

Mr. Drupad S. Patil for the Respondent.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 12TH DECEMBER 2017.

P.C. :

1. Heard Mr. Chavan, learned counsel for the Petitioner, and Mr. Patil, learned counsel for the Respondent.

2. By this Writ Petition, filed under Articles 226 and 227 of the Constitution of India, the Petitioner is challenging the order dated 18th February 2014 passed by the 2nd Joint Civil Judge, Senior Division, Pune, below Exhibit-50 in S.C.S. No.2470 of 2010. By the said application, the Petitioner-Defendant has requested the Court to impound the Memorandum of Understanding *(MOU)* dated 25th July 2008, executed between the parties by contending, *inter alia*, that,

Respondent has filed a Suit for specific performance or enforcement of the alleged MOU. However, it was executed on the stamp paper of only Rs.100/- and hence, it cannot be read in evidence unless it is properly stamped. It was submitted that, by the said MOU, the rights of the Petitioner and Respondent have been defined and, therefore, it was required to be executed on proper stamp paper and as it was not done, there was necessity to impound the said MOU.

3. This application came to be resisted by the Respondent contending, *inter alia*, that, the MOU is executed on the proper stamp paper of Rs.100/-, as required under Article 5(B) of the Maharashtra Stamp Act. Moreover, it was submitted that the Respondent is not claiming ownership over the suit property on the basis of the said MOU, as he has already acquired ownership over the suit property on the basis of the Sale Deed executed on 30th June 2008.

4. The Trial Court accepted the contentions raised on behalf of the Respondent-Plaintiff and rejected Petitioner's application for impounding of the MOU.

5. While challenging this impugned order of the Trial Court, the submission of learned counsel for the Petitioner is that, the Suit of the Respondent is not based on the Sale Deed executed previously between

the parties on 30th June 2008, but, his Suit is based on the MOU executed on 25th July 2008. According to learned counsel for the Petitioner, therefore, the provisions of Article 5(g-a) of the Maharashtra Stamp Act become applicable to this MOU and hence, Respondent should have paid the proper stamp fee, which is equivalent to the market value of the suit property. According to learned counsel for the Petitioner, therefore, the impugned order passed by the Trial Court rejecting the Petitioner's application, cannot be called as just, legal and correct.

6. In order to understand the rival contentions raised between the parties, it is necessary to cite certain facts of the case, which are to the effect that, by virtue of a registered Sale Deed dated 30th June 2008, the Petitioner and Respondent have jointly purchased the suit property on 9th May 2008. Thereafter, they entered into the MOU dated 25th July 2008, thereby agreeing that 80% of the property will be to the share of the Respondent and 20% of the property will be to the share of the Petitioner. The Sale Deed also shows that the contribution for purchase of the said property was also made in the same proportion. Therefore, on the said date of execution of the Sale Deed itself, ownership of the respective parties was decided or transferred in the name of the Petitioner and Respondent. By virtue of the said MOU, this title to the property is not at all transferred, so that Respondent should pay the stamp duty thereon, which is equivalent to the stamp duty on market

value of the suit property. If the provisions of Article 5(g-a) to Schedule-I of the Maharashtra Stamp Act are perused, they provide as follows :-

> *“5(g-a). If the agreement or its record of MOU relates to giving authority or power to a 'Promoter' or a 'Developer', by whatever name called, for construction on, development of or, sale or transfer (in any manner whatsoever) of, any immovable property, then, the stamp duty is to be paid as is leviable on a Conveyance under clauses (b) or (c), as the case may be, of Article 25, on the market value of the property.”*

7. Therefore, perusal of this provision makes it clear that, only when the title to the property is transferred by any of the way, either by sale or by giving right of development, then, it is necessary to pay the stamp duty as is leviable on Conveyance, namely, *'on the market value of the property'*.

8. Here in the case, there is absolutely no question of the parties transferring their rights of ownership over the suit property by executing the MOU. Conversely, they have already acquired the ownership rights by virtue of registered Sale Deed on the basis of the payment of contribution in their proportion as “80%” and “20%”. By the MOU, they are only asking for separation of their shares in that way. On the Sale Deed, they have already paid the stamp duty. Therefore, now,

no question arises for further paying the stamp duty on this MOU. Therefore, here the provisions of Article 5(B) of the Maharashtra Stamp Act become applicable, which provide that, if the stamp duty is not otherwise provided for, then, the document can be executed on the stamp paper of Rs.100/-. Here in the case, the MOU is executed on the stamp paper of Rs.100/- and, therefore, the Trial Court has rightly considered that there is no need of impounding the MOU dated 25th July 2008. The impugned order passed by the Trial Court, therefore, being just, legal and correct, no interference is warranted therein.

9. Writ Petition stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]