

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7448 OF 2015

RAMESH SHANKARLAL SAWAIWALA AND ANOTHER
VERSUS
VIJAYA LATE LAXMINARAYAN AND OTHERS

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Advocate for Petitioners : Shri Chhabda R.L.
i/b Legal United Law Firm
Advocate for Respondents : Shri Nikam P.K.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: December 10, 2018
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PER COURT :-

1. The petitioners / plaintiffs are aggrieved by the order below Exhibit 1, dated 4.2.2013 and below Exhibit 40, dated 13.2.2015. By the first impugned order the trial Court has directed that the agreement to sell deserves to be impounded and therefore, a letter was directed to be issued to the Stamps Collector, Collector Office, Aurangabad. The document was, therefore, impounded and sent for determination of the stamp duty. By the second impugned order dated 13.2.2015, delivered below Exhibit 40, the trial Court has rejected the said application, thereby, rejecting the contention of these petitioners that there is no need to send the documents to the Stamp Collector under Section 32 of the Maharashtra Stamps Act.

2. The agreement to sell dated 21.9.2010 is not placed on record

and is tendered across the Bar by the petitioners. Same is taken on record and marked as Exhibit "X" for identification.

3. Both the learned Advocates for the litigating sides have gone through Exhibit "X" and it is stated that Exhibit "X" does not lay down any condition that the possession of the immovable property would be handed over by the seller (defendant) to the purchasers (plaintiffs) before executing a registered sale deed.

4. The learned Division Bench of this Court has taken a view in Balwantgir Ganpatgir Giri Vs. Manasi Construction and Developers [2006 (5) Mah.L.J.306], in paragraph No.8 that explanation 1 to Article 25 of Schedule I of the Bombay Stamps Act, 1958 (presently the Maharashtra Stamps Act) would not be attracted if the agreement to sell an immovable property does not contain a stipulation as regards delivery of possession either before execution of the agreement or at the time of execution of the agreement or any time after execution of the agreement.

5. A Single Judge Bench of this Court at Nagpur has taken a similar stand in Jugalkishore Jiwandas Arora Vs Sunil Vinaykrao Kokje and another [2006 (6) All M.R. 576], that where an agreement to sell does not stipulate delivery of possession at any point of time, prior to

registration and execution of the sale deed, such an agreement to sell cannot be considered as a conveyance as contemplated by Article 25 of the said Act. Section 2(1) of the said Act defines an 'instrument' to mean, every document, by which, any right or liability is created or it purports to create. However, such an instrument would be covered by explanation (1) to Article 25 of Schedule I of the said Act, if it creates a right by which the possession of the immovable property is transferred or agreed to be transferred before the execution or at the time of the execution of such an agreement to sell which would then be deemed to be a conveyance. The issue of imposing stamp duty would then arise.

6. Considering the submissions of the learned Advocates for the rival sides, the document Exhibit "X" does not introduce a condition, by which, the possession of the property was to be handed over to the purchaser at the time of the signing of the agreement to sell or before a registered sale deed was executed. It would, therefore, not amount to being a conveyance.

7. In view of the above, this petition is allowed in terms of prayer clause (B). Orders below Exhibit 1 dated 4.2.2013 and below Exhibit 40 dated 30.2.2015 stand quashed and set aside. Needless to state, this order is restricted only to the extent of the order of impounding and is not an expression as regards, whether the said document was properly

stamped or not or whether it would be admissible in evidence or not.

8. Since these petitioners have assailed the order dated 4.2.2013 belatedly, this is a fit case for imposing costs of Rs.5,000/- each on the petitioners. Learned Advocate for the respondents fairly states that the amount may be donated for the treatment of poor patients.

9. As such, the total amount of Rs.10,000/- shall be deposited by the petitioners on/or before 21.12.2018, with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad**”), failing which this order shall stand recalled and the petition shall stand rejected on 22.12.2018. Copy of the receipt of deposit shall be produced before the trial Court on/or before 11.1.2019.

(RAVINDRA V. GHUGE, J.)

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