IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8892 OF 2017

Babu Sawliram Shinde & Ors. ... Petitioners
V/s.
Rajendra Rasiklal Shah & Ors. ... Respondents

- Mr.Rameshwar Totala a/w. Ms.Rashmi Patil i/b. Mr.Abhineet Pange for the Petitioners.
- Mr.R.D. Soni i/b. Ram & Company for Respondent Nos.1 to 6.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 6th MARCH, 2018.

P.C. :

1] Heard learned counsel for the Petitioners and the Respondents.

2] By this Writ Petition, filed under Article 227 of the Constitution of India, the Petitioners are challenging the order dated 13th April, 2017 passed by the 4th Jt. Civil Judge Senior Division, Nashik, below Exhibit-65 in Special Civil Suit No.217 of 2015.

3] The Application at Exhibit-65 was preferred by the Original Plaintiffs/Petitioners for impounding the documents filed by the Original Defendants/Respondents in terms of provision of Section

33 and 34 of the Maharashtra Stamp Act. The said application was strongly resisted by the Respondents and the trial Court has vide its order impounded the two documents mentioned therein. However, as regards the Sathekhat Kararnama i.e. Agreement of Sale dated 23th July 2007, the trial Court held that as per the recitals in the said document, the possession of the immovable property is to be delivered at the time of the sale-deed. Therefore, the said document would not be covered by the Explanation-I of Article-25 of the Maharashtra Stamp Act, 1958, hence the said document need not be impounded. This order of the trial Court is the subject matter of this Writ Petition.

4] If one considers the provisions of Explanation-I to Article-25 of the Maharashtra Stamp Act, 1958, it is apparent that the reasoning given by the trial Court for not impounding the document is not at all legal or correct. The provisions of Explanation-I Article-25 read as follows:

> ***"[Explanation-I]*** *- For the purpose of this article, where in the case of 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 execution of, such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:*

Provided that, the provisions of section 32A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section:

Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, already paid and recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.

[Provided also that where proper stamp duty is paid on a registered agreement to sell an immovable property, treating it as a deemed conveyance and subsequently a conveyance deed is executed without any modification then such a conveyance shall be treated as other instrument under section 4 and the duty of one hundred rupees shall be charged.]"

5] Therefore, it is not only that at the time of execution of the instrument the possession is to be given but even if there is an agreement that the possession will be given at the time of sale-deed, in that case also the agreement is liable for payment of stamp duty. Therefore, the reasoning given by the trial Court for not impounding the said agreement is not correct and legal and on this count itself the impugned order passed by the trial Court needs to be set-aside.

6] Now the question for consideration is whether the agreement of sale produced in this case needs to be impounded. Because as per learned counsel for the Respondents, the Respondents are not relying on this agreement of sale. The Respondents are also not party to the said agreement of sale. The agreement is executed between one Viraj Estates Private Limited and M/s.Rajesh Construction and M/s.Millenium Properties Private Limited. According to learned counsel for the Respondents therefore, if the Respondents are not a party to the agreement of sale, they cannot be held liable to pay any stamp duty thereon.

7] Learned counsel for the Petitioners, however, points out to the averments made in the written statement, which are to the effect that the Respondents are claiming that they got the development rights on the basis of this agreement of sale. Therefore, it is not that Respondents are not at all relying on this agreement of sale but the fact remains that the Respondents have got the sale-deed of the said property executed in their favour and at that time, they have paid the requisite stamp duty thereon. Therefore, in my considered opinion, at this stage, if the Respondents do not want to rely on this document then, as per the provisions of Section 34 of the Maharashtra Stamp Act, only at the stage of admission of such document in evidence, the

Court has to consider, whether it should be impounded or not. Hence, having regard to this material point that the Respondents are not party to the said agreement was not at all advanced by the Respondents before the trial Court, when this impugned order was passed, it would be legal, proper and justifiable to keep this question open to be decided as and when the Respondents try to rely upon this document and requests the Court for its admissibility and exhibit. The trial Court may consider the said question then independently, without being influenced by its earlier order or the order now passed by this Court.

8] Writ Petition is accordingly allowed and disposed of, keeping open the question, as to, whether the agreement dated 23rd July 2001 should be impounded or not? The trial Court to decide the said question, as and when, the Respondents rely upon it and requests the Court for its admissibility and exhibit.

9] All the contentions of the parties are kept open.

[DR.SHALINI PHANSALKAR-JOSHI, J.]