

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

REVIEW APPLICATION (CIVIL) NO. 243 OF 2018
IN
WRIT PETITION NO. 6828 OF 2014

JEEVAN RAMKISAN KABRA AND OTHERS
VERSUS
ASHOK BADRINARAYAN BHARADIYA AND ANOTHER

Advocate for Petitioner : Mr. A.B. Kale.
Advocate for Respondent Nos. 1 & 2 : Mr. P.K. Lakhotiya.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 22.02.2019

PER COURT :

1. I have heard the learned advocates for the respective sides.
2. It is undisputed that the document Exhibit 35/1, which is at page No. 49 of the petition paper book, is the agreement to sell and does not contain the clause as regards transfer of or handing over of the possession of the property by the seller to the buyer. The said document, therefore, would not amount to a conveyance in the light of the view taken by this Court in the matter of Balawanigir Ganpatgir Giri (Deceased through L.Rs.) Vs. Manasi Construction & Developers & Others [2006 (6) ALL MR 109]. A similar view is taken by this Court in the order dated 20.09.2017, delivered in Second Appeal No. 541/2017, Kumudini Atyanand Dhilpe Vs. Ramprasad Lalitprasad Jaiswal.

3. Insofar as the amendment introduced to the Bombay Stamp Act, 1958 (presently the Maharashtra Stamp Act), is concerned, Article 5 under Schedule I appears to be in relation to the instruments like contract for advertisement, sale of a bill of exchange, purchase or sell of security, purchase or sell of shares, scrips, stocks, bonds, etc. or memorandum of agreement with regard to the stock exchange or such cases, which would not apply to the facts of this case. Even clause 5 (h) (A) relates to similar such instruments which would not cover the agreement to sell Exhibit 35/1. If the said document had incorporated a condition for transferring and handing of possession, the said issue would have been taken care of by Section 32 A of the Maharashtra Stamp Act.

4. Even the judgment cited by the applicant in the matter of Sheshrao Bhikaji Kale Vs. Damodhar Kukaji Pandhare, [2004 (2) ALL MR 880], indicates that the agreement for sale must contain the condition of transferring possession in order to make the said agreement to be a conveyance.

5. In view of the above, this Review Application is devoid of merits and therefore, stands rejected.

(RAVINDRA V. GHUGE, J.)