

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2376 OF 2014

Jijabai w/o Nana Pagore

Petitioner

Versus

Rajendrakkumar s/o Madanlal Kala
& others

Respondents

Mr. R.S. Deshmukh, Advocate for the petitioner.
Mr. S.V. Adwant, Advocate for respondents no. 1 and 2.
Mr. G.A. Kulkarni, Advocate for respondents no. 4 to 6.

CORAM : M.S. KARNIK, J.
DATE : 14th August, 2019.

PER COURT :

1. Heard learned counsel for the petitioner.
2. By this petition under Article 227 of the Constitution of India, the petitioner has challenged the order dated 04.01.2014 directing the plaintiff to impound the document and pay stamp duty and penalty on valuation of Rs. 44,00,115/- and take necessary steps to get the document impounded from the concerned authority.
3. Petitioner is the original defendant no. 1. It is pointed out that respondents no. 1 and 2 - original plaintiffs had filed a suit for specific performance. By order dated 12.12.2013, the trial court allowed the application Exhibit 61 for impounding the document and directed the plaintiffs to pay deficit stamp duty and penalty and get the documents impounded as per explanation to Article 25

of Schedule I of the Bombay Stamp Act, 1958. The plaintiffs were directed to pay the deficit stamp duty and penalty thereof for impounding the document as the suit property was purchased by them on stamp paper of Rs. 125/- for consideration of Rs. 86,58,000/-.

4. After the order was passed, it was pointed out by learned counsel for the plaintiffs before the trial Court that defendant no. 1 conceded and confirmed that defendant no. 1 was in possession of the suit land to the extent of 9 acres and 15 gunthas and not 18 acres and had put the plaintiffs in possession of the suit land to the extent of 9 acres and 15 gunthas only. Plaintiffs on their own relinquished the remaining portion of the land described in the document of agreement of sale and restricted their claim to the extent of 9 acres and 15 gunthas and not entire 18 acres though the entire 18 acres land is mentioned in the agreement of sale. It was then pointed out that plaintiffs need not impound the documents for entire 18 acres as they have restricted their claim to the extent of 9 acres and 15 gunthas. The trial Court allowed this contention of plaintiffs and the plaintiffs were directed to impound the document and pay stamp duty and penalty for valuation of Rs. 44,00,115/- as per their own case. They were directed to take necessary steps and get the document impounded from the concerned authority. This order of the trial Court is impugned in this petition.

5. Learned counsel for the petitioner, assailing this order, contends that the trial Court had already by order dated 12.12.2013, directed the plaintiffs to pay the deficit stamp duty and

get the document impounded as per Article 25 of the Act. He would further submit that the trial Court, by the impugned order, has virtually reviewed the order dated 12.12.2013 passed on the earlier occasion. He would submit that the trial Court has no such power and then only remedy for the plaintiffs is to challenge the order dated 12.12.2013 before the appropriate forum. He would further submit that once the trial Court has directed the document to be impounded, it is only the Collector who can conduct an enquiry under Section 31 of the Act and determine the stamp duty payable. Learned counsel would further urge that the language of Section 31 is very clear in as much as the plaintiffs had to pay the stamp duty for the valuation as mentioned in the agreement and it is not permissible for the Court to allow the plaintiff to relinquish part of the claim for the purpose of stamp duty. He would therefore submit that even if the plaintiffs have relinquished part of the claim, still then the impounding of document is to be made on the basis of the valuation mentioned in the agreement of sale. By the impugned order, the trial Court has virtually exercised the jurisdiction of the Collector under Section 31 of the Act. In any case, he would submit that once the Court has passed the order directing impounding of document, the trial Court then should not have virtually reopened the issue in the manner it has done.

6. Learned counsel for respondents, on the other hand, supported the impugned order. He would submit that he has relinquished part of his claim and restricted the claim only to the extent of 9 acres and 15 gunthas. Infact, he would point out that paragraph no. 11 of the plaint is very specific. Necessary averments were there in paragraph no. 11, which could not be

pointed to the trial Court where order dated 12.12.2013 was passed. These facts were therefore brought to the notice of the trial court.

7. No doubt, the order dated 12.12.2013 is not challenged by the plaintiffs. However, when it was realised that in terms of paragraph no. 11 in the plaint, the plaintiffs on their own relinquished their claim and restricted the same to the extent of 9 acres and 15 gunthas, this aspect was brought to the notice of the trial Court. In terms of the agreement, valuation to the extent of 9 acres and 15 gunthas comes to Rs. 44,00,115/-.

8. As the plaintiffs have relinquished their claim and restricted the same to the extent of 9 acres and 15 gunthas, I do not find any error in the approach of the trial court directing impounding of document and to pay stamp duty based on valuation to the extent of 9 acres and 15 gunthas. Section 31 of the Act provides for adjudication as to proper stamps.

9. The argument of learned counsel for the petitioner is that section 31 mentions about the instrument on which stamp duty is to be paid meaning thereby, the agreement of sale as it stands is to be considered, and there is no question or any scope for reduction in payment of stamp duty on account of relinquishment of part of the claim. There is no dispute with the submission of learned counsel for the petitioner that it is the power of the Collector to determine the duty with which the instrument is chargeable as per section 31 of the Act. However, if plaintiffs are relinquishing part of their claim, then, in my opinion, I do not find any reason to

interfere with the order of the trial Court especially in view of the observations that plaintiffs cannot be penalised by directing to impound the document and pay penalty on the entire amount mentioned in the document of agreement of sale.

10. I have gone through the order passed by the trial Court. Having regard to the averments made in paragraph no. 11 of the plaint, the trial Court has directed impounding of the document and pay stamp duty based valuation to the extent of 9 acres and 15 gunthas. I see no reason to interfere with the said order in the exercise of writ jurisdiction as the view of the trial Court is not perverse. Petition stands dismissed.

(M.S. KARNIK, J.)

dyb/