

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4825 OF 2019
AND
WRIT PETITION NO.4114 OF 2019

PRAKASH PANDURANG EKHANDE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioners : Shri Shinde B.B.
AGP for Respondents 1 & 2 : Shri Yadav S.R.
Advocate for Respondents 3 to 6 : Shri Shelke M.U.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 28, 2019

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PER COURT :-

1. The petitioners / defendants in RCS No.96 of 2011 pray for quashing the order dated 21.11.2018, passed by the trial Court, directing the impounding of a document. They also pray that the order dated 29.12.2018, passed by the Stamp Collector, Jalna be quashed and set aside.

2. I have heard the learned Advocates for the respective sides and the learned AGP on behalf of respondents 1 and 2.

3. At the very outset, I must record my displeasure as regards the conduct of the learned Advocate for the petitioners, who attempted to mislead the Court by stating that the Collector's order is without

notice of hearing to the petitioners. When preempted that I would verify the records and if it is noticed that the notice was issued, I would impose costs of Rs.1,00,000/-, that the said contention is retracted. So also, there is no pleading in the entire memo of the petition that the Collector did not issue any notice of hearing.

4. Be that as it may, it is undisputed that a General Power of Attorney (GPA) document was registered in favour of petitioner No.1 - Prakash by the father of the plaintiff Govindrao Ekhande on 24.5.2004. On the same date, the GPA got a Kharedi Khat / Kabja Pavati notarized on Rs.100/- non-judicial stamp paper showing Prakash as the purchaser. On 8.6.2004, the GPA Prakash executed a sale deed in favour of his two sons Shivaji and Yogesh, who are petitioner Nos.2 and 3. The sale deed indicates that the Government valuation of the property is Rs.4,90,000/- and Prakash sold the said land to his two sons at Rs.1,20,000/-.

5. By order dated 21.11.2018 allowing application Exhibit 108 filed by defendant No.1 Prakash, the Kharedi Khat / Kabja Pavati dated 24.5.2004 (wrongly mentioned as 2005) was directed to be sent to the Stamp Collector, Jalna. Learned Advocate for the petitioners now submits across the Bar, on instructions, that he does not pray that this order be quashed and set aside and further submits

that the Collector be directed to consider that Rs.34,300/- had been deposited in 2004 as stamp duty with regard to the Sale Deed dated 8.6.2004.

6. The other submission of the petitioners cannot be accepted for the reasons that the Collector Stamps was not dealing with the stamp duty on the registered sale deed. He was dealing with a specific document Kharedi Khat / Kabja Pavati dated 24.5.2004. Admittedly, the petitioners did not pay any stamp duty with regard to this document and are only attempting to mislead the Court by repeating that Rs.34,300/- were deposited as stamp duty and that should be considered.

7. I find from the impugned order of the Collector Stamps, that he has noticed the mischief played by Prakash on the Government by undervaluing the property at Rs.1,20,000/- being the consideration amount. This mischief is apparent since Prakash has sold the said land to his two sons, Shivaji and Yogesh, and therefore, has shown the consideration amount at Rs.1,20,000/-, thereby depriving the Government of the revenue over the market price of the land as in 2004 being Rs.5,86,000/-.

8. In view of the above, this petition, being devoid of merits, is

dismissed and since the mischief played by the petitioners is exposed, costs of Rs.5,000/- each on these two petitioners is imposed, which shall be deposited in this Court on/or before 20.9.2019, failing which the defense of the petitioners shall be struck off in the pending suit.

9. Learned Advocate for respondents 3 to 6 submits that the amount may be utilized for the treatment of poor patients. As such, the Registry of this Court shall transmit the said amount to the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, by cheque or Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad**”).

10. In view of the above order, learned Advocate appearing on behalf of the defendants / petitioners in Writ Petition No.4114 of 2019 submits that this petition may be disposed off. As such this petition stands disposed off.

(RAVINDRA V. GHUGE, J.)

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