

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3246 OF 2016

Ramesh Mishrimal Jain ... Petitioner
Vs.
Avinash Vishwanath Patne and Anr. ... Respondents

Mr. P.D. Dalvi for the Petitioner.
Mr. Sumit S. Kothari for the Respondents.

CORAM : M. S. KARNIK, J.
DATE : 29th AUGUST, 2019.

P. C.:

1. Heard learned counsel for the petitioner.
2. The challenge in this Petition under Article 227 of the Constitution of India is to an order dated 3.8.2015 passed by the Trial Court below Exhibit 30 impounding the document which is an agreement to sale dated 3.9.2003. By the said order the Trial Court directed the agreement to be sent to the Registrar of Stamps for recovery of the stamp duty and penalty on it as per law.
3. The petitioner is the original plaintiff. The petitioner claims to be a tenant in respect of the suit property of which the

respondent is landlord. By an unregistered agreement of sale deed dated 3.9.2003, the landlord agreed to sell suit property to the petitioner.

4. The petitioner-original plaintiff therefore filed the suit for specific performance of the agreement of sale deed dated 3.9.2003. The defendant by the aforesaid application contended that as the petitioner has filed the suit for specific performance of the contract on the basis of the said agreement of sale and the subject matter of the suit is the property having value of about Rs.11,00,000/- and hence as per the Bombay Stamp Act, the plaintiff should pay the court fee stamp as per the provisions of Section 34 of the Bombay Stamp Act.

5. The Trial Court allowed the said application. Challenging the order, learned counsel for the petitioner would invite my attention to the relevant clauses in the agreement of sale dated 3.9.2003. He would submit that he is the tenant in respect of the suit property. Relying upon the relevant portion of the agreement which is quoted in the first para at page 35 of the

paper book, learned counsel would submit that merely because petitioner is in possession of the suit property as a tenant, will not mean that he is put in possession in terms of the agreement of sale, as it is only after the execution of the agreement that the possession will be legally handed over to the petitioner. The learned counsel for the petitioner therefore would submit that the Trial Court has committed an error in directing impounding of the document as the possession of the suit property is yet to be handed over in terms of the agreement. He submits that his possession in capacity as a tenant cannot be regarded as a possession in terms of agreement of sale, as lawful possession was to be handed over only on execution of sale deed. Learned counsel for the petitioner would invite my attention to the Explanation (1) to Article 25 of the Maharashtra Stamp Act. He would submit that in terms of explanation, possession of the suit property is yet to be transferred to him which is to take place at the time of execution of the agreement and therefore the document does not need to be impounded. In support of his submission he would rely upon decision of the case of this Court in **Jugalkishore Jiwandas Arora Vs. Sunil Vinayakrao Kokje**

reported in **2006(6) ALL MR 576**. He would submit that the facts in Jugalkishore's case are similar to the facts of the present case. Relying on para 5 of the said decision he would submit that the impugned order passed by the Trial Court warrants interference.

6. Learned counsel for the respondents on the other hand supported the order passed by the Trial Court. He would submit that the petitioner is in possession of the suit property in his capacity as a tenant. He further invited my attention to the clauses in the agreement of sale dated 3.9.2003. According to him as the suit is for specific performance of contract of agreement of sale that the order passed by the Trial Court does not warrant any interference. In support of his submission he would rely upon the decision of the Apex Court in the case of **Veena Hasmukh Jain and Another Vs. State of Maharashtra and Others** reported in **(1999) 5 Supreme Court Cases 725**.

7. Heard learned counsel for the parties. Under the agreement of sale the landlord agreed to sell the suit property to the petitioner. Admittedly the petitioner is in possession of the

suit property as a tenant. No doubt in the agreement there is a clause that possession would be handed over on the execution of the sale deed. When on the date of filing of the suit, factually the possession of the suit property is with the petitioner, it cannot be said that petitioner is not in possession only because the clause in the agreement states that possession will be handed over on execution of sale deed. The suit is filed for specific performance of an agreement. The possession of the suit property is already with the petitioner. In my opinion the present case would be squarely covered by the decision of the Hon'ble Apex Court in the **Veena's** (supra) case.

8. The decision in **Jugalkishore's** (supra) case according to me has no application in the facts of the present case as in the present case the possession of the suit property is already with the petitioner though in his capacity as a tenant. As on the date of agreement of sale the petitioner is already in possession, I see no reason to interfere with the order passed by the Trial Court impounding the document.

9. The Petition being devoid of any merits is rejected with no order as to costs.

(M. S. KARNIK, J.)