IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4695 OF 2017

Shri Shyamsundar Radheshyam Agrawal
and Anr. ...Petitioner(s)
V/s
Smt. Pushpabai Nilkanth Patil and Ors. ....Respondent(s)

Mr G.S. Godbole a/w Mr. Sandesh Patil a/w Mr. Pawan Patil i/b Anusha P. Amin for the Petitioners.
Mr. Ashutosh R. Gole for Respondent Nos. 1 to 46.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 3, 2021

P.C.:-

1] Special Civil Suit No.200 of 2008 came to be moved by the Petitioners/Plaintiffs, seeking various reliefs such as declaration and consequential relief of having right to develop the property and further declaration that Respondents have no right in the suit property. In the said proceedings, Defendant No.46 took out an application under the provisions of Sections 33, 34 and 37 of the Maharashtra Stamp Act, 1958 read with Section 17 of the Registration Act, 1908 praying therein impounding of the documents. Petitioners/Plaintiffs resisted the said application, as according to them, several documents are executed in relation to the said property and registration and payment of stamp duty on all the documents was not warranted in law.

2] The said application-Exhibit-148 came to be allowed vide impugned order dated 26/10/2016. As such, this Petition.

3] Heard Mr. Godbole, learned Counsel for the Petitioners. According to him, agreement for sale at Exh.143/3 dated 20/07/1994, agreement for sale at Exh.145/9 dated 20/07/1994, agreement for sale at Exh.145/15 dated 12/10/1994, agreement for sale at Exh. 145/19 dated 12/10/1994, agreement for sale at Exh.145/23 dated 27/04/2006, and agreement for sale at Exh.145/25 dated 19/09/2004 cannot be termed as conveyance deeds within the meaning of provisions of the Maharashtra Stamp Act and that being so, provision of Explanation-I to Article 25 of the Maharashtra Stamp Act is not attracted. He would then urge that deeds of conveyance dated 7/3/2008 and 18/2/2008 are registered documents and that being so, court below committed an error in directing impounding of the said documents by sending them for appropriate valuation for payment of stamp duty. According to him, court below has erred in holding that the documents are not duly stamped and adjudication for recovery of stamp duty is required to be made and as such impounding thereof is necessary. He would invite attention of this court so as to claim that there is no concluded contract which can be inferred from the aforesaid documents and as such registration of the agreements is not mandatory under the provisions of the Indian Registration Act.

4] In the aforesaid backdrop, submissions are, court below committed an error in allowing application-Exhibit-148.

5] He would then claim that powers under Section 4 of the Maharashtra Stamp Act are required to be exercised by the Collector of Stamps and not by the Court and as such, in the case in hand, court below has exceeded its jurisdiction in recording a finding that even the case under Section 4 for consideration is made out and that being so, according to him, order impugned is liable to be set aside.

6] Mr. Gole, learned Counsel for Respondent Nos. 1 to 46 would support the order impugned as, according to him, all these conveyances speak of handing over of possession. Not only possession is handed over, the said documents are between different parties to the suit proceedings and that being so, he claims that the order impugned passed by the court below is justified and seeks dismissal of the Petition.

7]	As far as agreement for sale-cum-development is concerned, same is dated 20/07/1994 and it is between vendors and Plaintiff Nos. 3 to 5 agreeing to transfer the shares to Plaintiff Nos. 3 to 5, agreement for sale-cum-development dated 12/10/1994 is between Plaintiff No.3 to 5 and Plaintiff No. 6, agreement for sale-cum-development dated 19/09/2004 is between Plaintiff No.7 and Plaintiff Nos. 1 and 2 and Deed of Conveyance dated 18/02/2008 is between vendors through Power of Attorney i.e. Plaintiff No.6 and Plaintiff Nos. 1 and 2. In the aforesaid four documents vendors Vinayak, Jagannath, Balaram Raghunath, Hiraji, Balaji, Padmibai and Minabai are in respect of old Survey No.558, New Survey No.208/5 and 208/6. As far as other land involved in the suit is concerned, same is having old Survey No.603, 604, 560, New Survey No.164/1/, 163/3. As far as these properties are concerned, there are in all four transactions i.e. sale-cum-development agreement dated 20/07/1994 between vendors to Plaintiff Nos. 3 to 5 and Shobhadevi Jain, sale-cum-development agreement dated 12/10/1994 between Plaintiff Nos. 3 to 5 and Shobhadevi and Plaintiff No.6, sale-cum-development agreement dated 27/04/2006 between Plaintiff No.7 and Plaintiff Nos. 1 and 2 in relation to part of the property i.e. new Survey No. 165/3 and Deed of

Conveyance dated 07/03/2008 between vendors through power of attorney and Plaintiff No.7 in relation to property being new Survey No.163/3.

8] As far these deeds are concerned, the Trial Court considered two deeds i.e. of 20/07/1994 and two deeds of 12/10/1994 and deeds dated 27/04/2006 and 19/09/2004 and found from the perusal of these deeds that there is specific clause regarding handing over possession of respective properties by the concerned vendors to the purchasers therein. Apart from above, all these documents which are conveyances are executed between different parties and as such are different transactions. That being so, six of them can be termed as deemed conveyances within the meaning of Explanation-I to Article 25 of Schedule-I of Maharashtra Stamp Act. It can be inferred that proper stamp duty on these instruments is not paid and that being so the court below was justified in allowing application-Exhibit-148 to that extent.

9] Mr. Godbole contended that in view of section 4 of the said Act principal instruments between vendors and purchasers are two deeds of conveyance produced along with list at Exhibit 145 and therefore benefit under Section 4 of the Maharashtra Stamp Act is required to be given to the Petitioner. In addition to above, it is also claimed that where Section 4 is attracted to any sale, mortgage by several instruments of very same property for completing transaction then only principal instrument is required to be charged for duty. The court below was sensitive to the very language of Section 4 and noted that each of the instruments creates independent sale and that being so, benefit under Section 4 cannot be passed on to the Petitioner. The court below considered each of the instruments/conveyances and noted that even benefit under Section 4 of the Act cannot be claimed by the Petitioner. Since the Trial Court has every right to look into the contents of conveyance deeds so as to prima faice satisfy itself about requirement of registration and payment of appropriate stamp duty, the Court is justified in making observations even under Section 4 of the Act.

10] In that view of the matter, no case for interference is made out in extraordinary jurisdiction. Petition fails and same stands dismissed.

(NITIN W. SAMBRE, J.)