

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.589/2021

IN

WRIT PETITION NO.851/2021

Atul Babu Shionde

..... Applicant

Mr. Rajendra Rasiklal Shah

..... Petitioner

Vs.

The Joint District Registrar

and District Collector of Stamps & Ors. Respondents

Mr. Rameshwar Totala a/w. Ashwin Poojari for the Applicant
Mr. R. D. Soni a/w Tushar R. Momaiyah I/b. Ram & Co. for
the Petitioner

Mrs. A. A. Purav, AGP for the State

Mr. P. B. Patil, Jt. Sub Registrar, Nashik-2

Mr. Kailas R. Davange, Jt. Dist. Registrar and Collector of
Stamps, Nashik

**CORAM: K.K.TATED &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : SEPTEMBER 2, 2021

P.C.

1 Heard.

2 The learned counsel for the Applicant has tendered an
additional affidavit in support of the application dated
02.09.2021. Same is taken on record.

3 By this application, the Applicant is seeking direction

against the Petitioner to join him as party in the present proceedings. The learned counsel for the Applicant submits that by the present Writ Petition, the Petitioner is challenging two notices issued by the Respondent State dated 26.08.2019 under section 33(a)(5) of the Maharashtra Stamp Act in respect of the sale deeds dated 30.04.2012 bearing sale deed No.4758/12 and 4759/2012 in respect of the agricultural land bearing Sy.No.41/5 of village Agar Takli within the Municipal Corporation limits of Nasik admeasuring 5H 35R equals to 53,500 sq.mtr. having land revenue of 12.25 paise out of which 15345 land to the extent of 28255.54 sq.mtrs. which is shown for residential purpose in Development Plan DP of Nasik Municipal Corporation which is in 2 parts.

4 The learned counsel for the Applicant submits that the Applicant has already filed Special Civil Suit No.217/2015 before the Civil Judge, Senior Division Nasik for declaration of both the sale deeds dated 30.04.2012 bearing sale deed No.4758/12 and 4759/12 are null and void and not binding on the Plaintiffs. Following are the prayers in the said suit :

“a) Suit of the plaintiffs be decreed with costs;

b) It be declared that sale deed no. 4758/12, 4759/12 both dt.30.04.2012 are null and void and not binding on the plaintiffs.

c) It be declared that Mortgage Deed bearing registration no.2733/2015 dated 07.04.2015 and mortgage deed no.12131/2013 dt. 29.10.2013 are null and void and not binding on the plaintiffs.

d) *It be declared that D.R.C. issued by Municipal Corporation in favour of defendants be declared as null and void.*

e) *Sale Deed No. 4758/2012 dated 30/4/2012 in respect of Suit Property A and Sale Deed No. 4759/2012 dated 30/4/2012 in respect of Suit Property B shall be cancelled.*

f) *Mortgage Deed bearing registration no. 2733/2015 dated 07.04.2015 and mortgage deed no. 12131/2013 dt. 29.10.2013 executed in favour of Kotak Mahindra Bank in respect of suit properties A & B be cancelled,*

g) *That mutation entries based on both the sale deeds and mortgage deed be directed to be cancelled as it is based on illegal and void sale deeds.*

h) *Any other suitable relief, may kindly be granted in favour of the Plaintiffs and oblige;"*

5 The learned counsel for the Applicant submits that in the said suit, they had filed application below Exhibit- 65 for impounding the documents filed by the Petitioner as Defendant in the suit in terms of the provisions of Section 33 and 34 of the Bombay Stamp Act. He submits that 4th Jt. Civil Judge, Senior Division, after hearing the parties, passed the following order:

"1. The document filed by defendant No. 1 to 28 at Exhibit-131/3 i.e. Visar Pavti dated 14.09.2007 and document at Exhibit-131/1 dated 31.03.2001 are hereby impounded as per law and is referred to the Collector of Stamps, Nashik for recovery of the deficit stamp duty and penalty as per rules.

2. The Collector of stamps, Nashik is hereby directed to return aforesaid documents after recovering the deficit stamps duty and penalty as per rules to this court as early as possible."

6 The learned counsel for the Applicant submits that the Respondent Government Authority has started taking action against the Petitioner on the basis of the application filed by the Applicant dated 21.05.2019. On the basis of these facts, the learned counsel for the Applicant submits that he is necessary party in the matter. Hence, the Applicant be permitted to join him as party Respondent in the matter.

7 The learned counsel for the Petitioner has vehemently opposed the application. He submits that the Applicant is not necessary party in the proceedings. He submits that the dispute is only between the Petitioner and the Respondent Authority. On the basis of these submissions, the learned counsel for the Petitioner submits that the present application is liable to be dismissed with costs.

8 It is to be noted that bare reading of the copy of the plaint in Special Civil Suit No.217/2015 and order dated 13.04.2017 passed by the Trial Court below Exhibit-65 in Special Civil Suit No.217/2015 and the application filed by the Applicant with the Stamp Duty Officer dated 21.05.2019 clearly shows that the Applicant is necessary party in the present proceedings because the dispute is in respect of the same plot of land. We are, therefore, satisfied that the Applicant has made out a case for allowing the Interim Application.

- 9 Hence, the following order is passed:
- a. Interim Application No.589/2021 is allowed.
 - b. The Petitioner to join the Applicant as party Respondent in the Writ Petition.
 - c. Amendment to be carried out within 2 weeks from today failing which the Writ Petition shall stand dismissed with costs.
 - d. If amendment is carried out within stipulated time as stated hereinabove, the Applicant is directed to serve the added Respondents along with entire proceedings, either by registered post AD and/ or by hand delivery and file an affidavit of service to that effect on or before 13.10.2021, with copy to other side.
 - e. The Writ Petition to appear on board on 18.10.2021, "for Directions".

(PRITHVIRAJ K. CHAVAN, J.)

(K.K.TATED, J.)