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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 649 OF 2020**

Pahlaj Bhajandas Bajaj and Anr. Petitioners.

V/s

Mahabir Prasad Golyan and Anr. Respondents.

Ms. Gauri Godse for the Petitioners.

Mr. S.C. Wakankar for Respondent No.1.

CORAM: NITIN W. SAMBRE, J.

Order reserved on 18/1/2021

Order pronounced on 27/1/2021

P.C.:-

1] The order passed below Exhibit-142 on 18th July, 2019 by the learned Civil Judge, Senior Division, Pune at Vadgaon Maval in a suit initiated against the Petitioners for setting aside Sale Deed and declaration is subject matter of challenge.

2] By the order impugned, the Court of Civil Judge, Senior Division has allowed Application-Exhibit-142 moved by the Defendants and has directed that the agreement dated 3rd May, 1996 be sent to Collector of Stamps for impounding as per the provisions of the Bombay Stamp Act.

3] The facts necessary for deciding the Petition are as under:-

4] Respondent No.1/Plaintiff filed Special Civil Suit No.101 of 2012 for declaration and setting aside of Sale Deed, partition and injunction to the extent of his 1/3rd share in the suit property. At the time of recording of evidence, it is discovered that Petitioner/Defendant No.1 moved an application Exhibit-142 under the provisions of Section 33 and 34 of the Maharashtra Stamp Act, alleging that the Petitioner/Defendant No.1 has filed his affidavit of evidence in which he has relied on the agreement dated 3rd May 1996. The said agreement is alleged to have been executed between the Petitioner/Defendant No.1(Purchaser), one Mr. Noshir Talathi (Vendor) and the Plaintiff confirming party. The said original agreement was produced on record by Defendant No.1 who has tried to prove the said document. The said document in the opinion of Respondent No.1/Plaintiff is conveyance within the meaning of sub-clause (g) of Section 2 and also an instrument within the meaning of sub-clause (l) of Section 2 of the Maharashtra Stamp Act (Hereinafter referred to as "the Act") and as the same was not properly stamped in accordance with Article 25 and Article 11 of the Maharashtra Stamp

Act, it was prayed that document be sent for impounding and for further action.

5] The said claim was resisted by the Petitioners and it is claimed that the rights are assigned by the agreement by Mr. Noshir Talathi in favour of the Petitioners. It is also claimed that the document under question is an agreement of sale executed between the parties whereby rights are assigned in favour of the Petitioner/Defendant No.1 and the same cannot fall within the meaning of aforesaid sections to mean conveyance. However, at the end of the reply to the said Application-Exhibit-42, it is claimed that if the Court is of the opinion that document i.e. agreement dated 3rd May 1996 is conveyance, the Petitioners are ready and willing to pay the stamp duty.

6] It appears that by cryptic order, the learned Court below has directed sending of the document to the Collector of Stamps for impounding as per the provisions of the Bombay Stamp Act.

7] The submissions of the learned Counsel for the Petitioner/original Defendant No.1 are, the document is neither

conveyance nor an instrument as only rights are assigned and no possession is handed over and as such very ingredients of sub-clause (g) of Section 2 of the Act are not satisfied. It is further claimed that the order impugned is passed without furnishing any reasons in support of the conclusion arrived at and as such the order itself is not sustainable.

8] Per contra, learned Counsel for the Respondent No.1/Plaintiff has supported the order impugned and submits that Collector of Stamps will look into the matter of impounding.

9] Considered rival submissions.

10] At the outset, it is required to be noted that before passing the order of referring the matter to Collector of Stamps for impounding, the least that was expected of the learned Court below to furnish reasons in support of such order of referring the document for impounding, as the reasons would have reflected the consideration which weighed with the Court below for reaching such conclusion.

11] Apart from above, whether document in question is an instrument of conveyance is also required to be prima facie looked into by the court below before referring the matter for impounding. The said aspect is not at all looked into by the learned court below.

12] In the aforesaid backdrop, order impugned dated 18th July, 2019 passed below Exhibit-142 in Special Civil Suit No.101 of 2012 is hereby quashed and set aside. Application-Exhibit-142 stands restored to the file of the Court of 8th Jt. Civil Judge, Senior Division & Addl. CJM, Pune at Vadgaon Maval. It is expected of the said court to consider the recitals in the agreement dated 3rd May 1996 as regards assignment of rights and claim of the Petitioners as that of tenants in common and also of the possession and execution of the said documents between the parties based on power of attorney alleged to have been executed by the Plaintiffs in favour of Defendant No.1. The court shall also have regard to the stand of the Petitioner/Defendant on the factum of possession.

13] With the above observations, Petition stands disposed of.

(NITIN W. SAMBRE, J.)