IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5493 OF 2021

Prabhu Gangaram Gade .. Petitioner

Versus

Kadaji Vishwanath Tuturwad .. Respondent

Shri Shailendra S. Gangakhedkar, Advocate for the Petitioner.
Shri A. R. Borulkar, Advocate for the Respondent.

CORAM : SANDEEP V. MARNE, J.
DATE : 30TH NOVEMBER, 2022.

FINAL ORDER :

. Petitioner assails order dated 11th September, 2019 passed by the Adhoc District Judge – 1, Bhokar thereby sending copy of agreement to sale dated 17.06.2010 under Section 37(1) of the Indian Stamp Act, 1899 for impounding, collecting the stamp duty and penalty with further direction to the plaintiff to pay the deficit stamp duty and penalty.

2. The petitioner is defendant in the suit. The suit is filed by the plaintiff for specific performance of agreement to sale dated 17.06.2010. The suit of the plaintiff came to be decreed by the Trial Court by judgment and order dated 18.08.2018. The petitioner has filed appeal against the decree. One of the contentions raised by the petitioner in his appeal is that the Trial Court ought to have taken cognizance of the agreement to sale which is insufficiently stamped and unregistered without

impounding the same. He has questioned correctness of findings of the Trial Court that the agreement to sale is not deed of title and, therefore, registration is not mandatory. It was submission of the petitioner before the Trial Court that the registration of that document was mandatory.

3. During the course of hearing of the appeal, the lower Appellate Court has arrived at conclusion that the agreement to sale being insufficiently stamped and unregistered needs to be impounded and has accordingly proceeded to pass order dated 11.09.2019.

4. Appearing for the petitioner Mr. Gangakhedkar, learned counsel would submit that passing of the impugned order by the lower Appellate Court has taken away important and favourable ground of challenge of the appeal. He would further submit that in the appeal if lower appellate Court was of the view that the document needed impounding, then the lower Appellate Court ought to have remanded the suit to the Trial Court for such impounding and for deciding the issue of admissibility of the agreement to sale in evidence. He would submit that the lower Appellate Court cannot undertake exercise of impounding the document. In support of his contention Mr. Gangakhedkar relies upon the judgment of the Apex Court in a case of **M/s Z. Engineers Construction Pvt. Ltd. and another Vs. Bipin Bihari Behera and others** reported in ***AIR 2020 SC 1140*** and in a case of ***Ameer Minhaj Vs. Dierdre Elizabeth (Wright) Issar and others*** reported in ***(2018) 7 SCC 639***.

5. Per contra, Mr. Borulkar, learned counsel appearing for the respondent opposes the petition and supports the order passed by the lower Appellate Court. He submits that, the order dated 11.09.2019 has already been acted upon and that in pursuance of the said order concerned officer has already determined deficit stamp duty and penalty and that the respondent has already paid the same. He would therefore submits that the process of impounding of the document and payment of deficit stamp duty and penalty is already complete and, therefore, present petition has become infructuous.

6. After having heard learned counsel for parties, it is apparent that the Trial Court proceeded to take into consideration and read the agreement to sale dated 17.06.2010 by recording following findings.

> "Only because scribe is not examined, will not create any doubt regarding execution of agreement to sell. Admittedly it is not registered document but it is not conveyance of title and therefore registration is also immaterial."

7. Thus, the Trial Court was of the opinion that the impounding of the agreement to sale was not necessary. In appeal, the petitioner has raised one of the grounds about admissibility of the said agreement to sale in absence of impounding. However, the lower Appellate Court during the course of hearing of the appeal has arrived at conclusion that the impounding of document was necessary. The lower Appellate

Court has in short attempted to cure the error committed by the Trial Court. This objection by Mr. Gangakhedkar is that same has taken away important and favourable ground of challenge of the petitioner before the lower Appellate Court, I am unable to agree. It was case of the petitioner himself before the Trial Court that the document needed impounding. The lower Appellate Court has done what was indeed demanded by the petitioner himself. In that process possibly one of the grounds of challenge raised by the petitioner in his appeal is taken away. However, it does not mean that the Appellate Court is powerless from undertaking exercise of impounding the document. It was of the opinion that the document is insufficiently stamped and unregistered.

8. Mr. Gangakhedkar has not been able to place on record any provision or judgment which prohibited the Appellate Court from undertaking process of impounding document, which has not been erroneously impounded by the Trial Court. The reliance of Mr. Gangakhedkar on the judgment of the Apex Court in ***Ameer Minhaj*** (supra) is misplaced. In that judgment, the issue involved was admissibility or otherwise of the document and the proceedings reached to Supreme Court from the stage of decision rendered by the Trial Court and the High Court on the issue of admissibility of the concerned document in application filed in pending suit by one of the parties. The issue of right of the Appellate Court in undertaking the process of impounding is not involved in that judgment.

9. So far as judgment in the case of **M/s Z. Engineers Construction Pvt. Ltd. and another** (supra) is concerned, that judgment also does not involve the issue of right of the Appellate Court to undertake the exercise of impounding of insufficiently stamped or unregistered document.

10. I am therefore of the view that the lower Appellate Court has not committed any error in passing the impugned order dated 11.09.2019. As pointed out by Mr. Borulkar, the document in question has already been impounded on payment of stamp duty and the plaintiff/respondent has already paid deficit amount of stamp duty. In this situation, no interference is warranted in the impugned order. The writ petition is devoid of any merits. Same is dismissed, however, without any orders as to costs.

[SANDEEP V. MARNE, J.]

bsb/Nov. 22