

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

941 WRIT PETITION NO.10286 OF 2018

**TARABAI MOHANRAO KHARADKAR THROUGH GPA VINOD
MOHANRAOKHARADKAR
VERSUS
EKNATH RAMCHANDRA KHARADKAR AND ANOTHER**

...
Advocate for Petitioner : Mr.S.G.Thombre
...

**CORAM : SANDEEP V. MARNE, J.
DATE : 18.10.2022.**

PER COURT :

1. By this petition, the petitioner takes an exception to the order dated 15.02.2018 passed by the Joint Civil Judge, Junior Division, Paithan in R.C.S. No. 74 of 2012 below application Exh. 49. By that application the petitioner had prayed for impounding of the agreement to sale dated 03.02.2004 on the ground it being not sufficiently stamped.

2. Notices in the present petition were issued on 06.11.2019. It appears that respondent No. 1 is dead, therefore, by order dated 22nd August, 2022 the legal representatives of respondent No. 1 were brought on record and the notices were issued to them. Office note shows that notices issued to respondent No. 1-a and 1-c are served and respondent No. 2 is also served. However, none appears on behalf of the respondents.

3. I have perused the agreement to sale dated 03.02.2004. The agreement specifically records that the possession the upper floor, the common staircase and the vacant space was handed over along with the agreement. It is trite that if the possession is handed over with the agreement to sale, the document assumes the characteristics of a conveyance deed. This position is reiterated by this Court in **Sheshrao Bhikaji Kale Vs. Damodharkukaji Pandhare 2004 CJ(Bom.) 1291**. This aspect has not been taken into consideration by the trial Court while rejecting the petitioner's application.

4. Curiously the application for impounding of document is made by the plaintiff himself who is willing to pay deficient stamp duty of the same.

5. In view of the position emerging before me, the present petition succeeds. Order dated 15.02.2018 passed by the Civil Judge, Junior Division, Paithan, District; Aurangabad is set aside and the application filed by the petitioner/plaintiff at Exh. 49 stands allowed.

6. There shall be no order as to the costs.

(SANDEEP V. MARNE)
JUDGE

mahajansb/