IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION 9761 OF 2021

Jayprakash s/o Changdev Ingale & Ors. .. Petitioners.
V/s.
Sambhaji s/o Bhagwat Bhopale & Ors. .. Respondents.

Mr.S.P. Rajepandhare for the Petitioners.
Mr.Ashok B. Tajane, for the Respondents.

CORAM : ROHIT B. DEO, J.

DATE : 26 JULY 2022.

P.C.

1. The question involved is whether the document dated 10.04.2015 which purports to be an Agreement of sale is insufficiently stamped as would obligate the trial Court to exercise power of impounding under Section 33 of the Bombay Stamp Act 1958 (Stamp Act).

2. The factual backdrop is that Special Civil Suit No.150/2017 is instituted by the petitioners-plaintiffs, seeking Decree of Specific Performance of an Agreement for Sale Deed dated 10.4.2015.

3. Deciding an application preferred by the defendants, the learned trial Judge passed an order impugned dated 06.01.2020 directing that the documents and the receipts of payments be impounded.

4. While the learned trial Judge reasoned that Article 5(iii) (b) of Schedule- I of the Stamp Act is applicable, in all fairness it is not even argued before me that the said Article has any application.

5. Learned Counsel for the defendants would however, argue that the reasons recorded by the learned trial Judge apart, the ultimate conclusion is right and the Agreement for Sale is insufficiently stamped. Learned Counsel for the defendants would invite my attention to **Article 25 of Schedule-I of the Bombay Stamp Act and particularly, to Explanation (1)** which reads thus:

> *"For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any immovable property, is transferred or agreed to be transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly."*

6. In view of fair stand of the learned Counsel, the only issue which needs an answer is whether the Agreement for sale is a deemed Conveyance.

7. Perusal of the Agreement reveals that possession is not delivered. Recital in the Agreement is that possession shall be delivered at the time of execution of the Sale Deed. It is well settled that if possession is to be delivered only at the stage of executing the Conveyance, explanation (1) to Article 25 of the

Stamps Act does not come into play. Suffice it to refer to the decision in the case of ***Balawanigir Ganpatgir Giri (Deceased through L.R.'s) Vs. Manasi Construction & Developers & Ors., 2006(6) ALL MR 109.*** I am respectfully bound by the view taken by the Division Bench.

8. The order impugned is unsustainable and is set aside to the extent of an Agreement for Sale dated 10.4.2015.

9. In so far as receipts of consideration are concerned, learned Counsel for the petitioner states that appropriate duty in accordance with law on the receipts shall be paid and hearing may not be delayed by compelling the plaintiff to wait till the process of impounding culminates in adjudication. Statement is accepted.

10. The petition is allowed in aforestated terms.

(ROHIT B. DEO, J.)