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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL WRIT PETITION NO. 12275 OF 2017

SANJAY RAMCHANDRA SHINDE

....PETITIONER

V/s.

**GANESH NAMDEO GAWATE
(SINCE DECEASED THROUGH
LR'S) AND ORS**

.....RESPONDENTS

Mr. Pramod R. Arjunwadkar advocate for the Petitioner
Advocate Miheer S. Jayakar i/b Kedar R. Seludkar for Respondent
no. 6

CORAM : NITIN W. SAMBRE, J.

DATE: JANUARY 31, 2022.

P.C.:

1) In a Suit for specific performance being Special Civil Suit No. 352/2005, Petitioner-Plaintiff suffered an Order below Exhibit 143 at the behest of Respondent-Defendant no. 6 whereby Agreement of Sale dated 04/11/1995 at Exhibit 117 was ordered to be impounded and sent to the Collector, Thane for the purpose of proper valuation and recovery of deficit stamp duty and penalty as per law.

2) Mr. Arjunwadkar, learned counsel for the Petitioner would invite

attention of this Court to the recitals in Agreement Exhibit 117 so also pleadings in the Plaint in Special Civil Suit No. 352/2005 so as to claim that Petitioner never alleged that he is in possession of the Suit property. According to him, Petitioner-Plaintiff has come out with a specific case by way of a prayer clause in the Plaint seeking possession of the Suit property with Decree for specific performance. In the aforesaid background, according to him, findings recorded by the Court below that the Petitioner is in possession of the Suit property is without any basis.

3) The aforesaid submissions are not contested by the counsel for Respondent-Defendant no. 6, however, he would urge that rest of the order passed by the Court below is very much maintainable.

4) I have appreciated the submissions.

5) In view of provisions of Section 33 of the Maharashtra Stamp Act, Article 5 and Article 25 provides for valuation for the purpose of payment of stamp duty payable on a conveyance where the possession is handed over or wherein simplicitor Agreement of Sale is entered into.

6) Rightly so pointed out by the counsel for the Petitioner Mr.

Arjunwadkar that he has never claimed that he is in possession of the Suit property and that being so, he has sought relief of Decree for possession also.

7) In that view of the matter, findings recorded by the Court below on the issue of possession vide impugned order are without any basis. As such, findings to that extent are quashed and set aside. However, rest of the order passed by the Trial Court is maintained.

8) The claim of the Petitioner that he is not liable to pay any stamp duty on agreement for specific performance can be looked into by the adjudicating authority.

9) That being so, in my opinion, no further interference is called for.

10) Petition as such stands partly allowed. Impugned order stands modified in the above terms.

11) Needless to clarify that since the Suit is pending for last more than 10 years, hearing of the same is expedited.

[NITIN W. SAMBRE, J.]

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