

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11078 OF 2018

Ambadas Narsingh Guttikonda

..Petitioner

Versus

Shobhana Dasharath Burgul and Ors.

..Respondents

Mr. Surel S. Shah, for the Petitioner.

Mr. Mohansigh U. Rajput, for the Respondent Nos.1 to 6.

CORAM : NITIN W. SAMBRE, J.

DATE : 21st FEBRUARY, 2022

PC.

1. Vide order passed below Exh.1 on 26th August, 2016, the document viz. Agreement of sale based on which the suit in question brought in action by the petitioner/plaintiff for specific performance was ordered to be impounded. Vide application No.51, review of the said order is sought which is rejected by the Court below vide order dated 1st August, 2017. As such, this petition by the plaintiff questioning the legality of the order dated 26th August, 2016 passed below Exh.1 and the order dated 1st August, 2017 passed below Exh.51.

2. The contention of Mr. Surel Shah, learned counsel appearing for the petitioner/plaintiff is the agreement of sale is not a registered document as the possession of the same is not inferred rather the recitals therein speaks of handing over of part possession.

Thus, claim of the actual possession of the property was not inferred. That being so, prayer for grant of possession is made out.

3. He would claim that the aforesaid aspect is failed to be considered by the Court below while passing order impugned. According to him, even presuming what has been stated in the recitals thereby handing over part possession of the suit property to the petitioner is correct, still the document is not liable for impounding.

4. Mr. Mohansingh Rajput, learned counsel for the respondents would support the order impugned as according to the recitals in the agreement of sale specifically speaks of handing over of part possession. He sought dismissal of the petition.

5. I have appreciated the submission of Mr. Surel Shah, learned counsel for the petitioner that document in question cannot be termed as conveyance within the mean of the Maharashtra Stamp Act. While dealing with the issue of impounding of document in specific performance, what is required to be considered is whether the document can be termed as conveyance. Admittedly, recitals speaks of handing over of part possession. That being so, Court below was justified in recording a finding that the document can be termed as conveyance. The document in question has to be termed as having received part possession. This court is required to be sensitive to the explanation one brought into force to the

provisions of Section 32A of the Maharashtra Stamp Act. In case, if an agreement to sale of immovable property, the possession of 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, such agreement to sale has to be deemed to be a conveyance and stamp duty accordingly is leviable. Since there is an expression of conveyance about of the possession, the Court below was justified in recording a finding that stamp duty is liable to be impounded.

6. In that view of the matter, no error could be noticed which warrants interference in the order impugned.

7. The petition as such fails, dismissed.

[NITIN W. SAMBRE, J.]