

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13240 OF 2019

Madhav S/o Tabaji Lalge

...Petitioner

VERSUS

Santosh Bhausahab Dalvi and others

...Respondents

Mr. N.N. Bhagwat, Advocate for the petitioner.

Mr. Shubham Jayabhar h/f. Mr. D.R. Jayabhar, Advocate for respondent Nos. 2 to 6.

[CORAM : NITIN B. SURYAWANSHI, J.]

RESERVED ON: 31st AUGUST, 2023

PRONOUNCED ON: 4th OCTOBER, 2023

ORDER :

1. This petition filed under Article 227 of the Constitution of India, challenges the order dated 20.08.2019, passed by learned 8th Joint Civil Judge, Senior Division, Ahmednagar, below Exhibit-88 in Regular Civil Suit No. 707/2014.

2. Petitioner/plaintiff filed suit for perpetual injunction and declaration that the sale deed executed on 12.12.2012 is without possession, nominal, sham and bogus and not binding on him. In fact, the same is a mortgage transaction and agreement of reconveyance of the same was executed on 12.02.2013.

3. Respondents/defendants appeared and opposed the suit contending that the suit land is purchased by defendant No. 1 from the plaintiff and no such reconveyance agreement is executed by the defendants on 12.02.2013 and said document is forged and bogus.

4. Plaintiff filed application Exhibit-88 with a prayer to impound the agreement of reconveyance dated 12.02.2013 and that he is ready to pay necessary stamp duty on the same. Defendant No. 1 resisted the application by filing say contending that the application is not maintainable and sale deed dated 12.12.2012 is registered document and on that basis mutation entry is effected and his name is entered on 7/12 extract. There was no agreement for reconveyance and agreement of reconveyance dated 12.02.2013 was never executed and it does not bear his signature. His signature on the said agreement is forged and he has filed criminal case against the plaintiff in that behalf. Said document is not admitted and it is not exhibited, therefore, it cannot be impounded.

5. Trial Court rejected the application holding that the document sought to be impounded by the plaintiff i.e. agreement to reconveyance is not described in Transfer of Property Act and

such document is also not mentioned in the Schedule-I of Maharashtra Stamp Act. Therefore, said document cannot be impounded. Petitioner is aggrieved by this order.

6. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the writ petition memo, annexures thereto and the impugned order.

7. Admittedly, the document in question is agreement of reconveyance of the immovable property. Trial Court has erred in holding that "*such type of document is not described in Transfer of Property Act neither such type of document is mentioned in Schedule I of Maharashtra Stamp Act and, Therefore, the document cannot be impounded.*" Since, the document in question is executed on stamp paper of Rs. 100/-, it is sufficiently stamped and there is no need to impound the said document.

Since, the document in question records mutual understanding between the parties by which they agreed for reconveyance of sale deed upon happening of certain contingency i.e. repayment of the loan amount within the agreed period, and as said agreement does not mention delivery of possession, therefore it is not required to be compulsorily

registered. In this view of the matter, the impugned order is not liable to be interfered with in the extra ordinary writ jurisdiction.

8. Learned advocate for the petitioner has relied on *Ramvilas (Dead) through Lrs., and another vs. Karim Khan and another*, 2017 (1) SCC 789, wherein sale deed, deed of reconveyance Exhibit-A-1 and rent note Exhibit-B-1 were undoubtedly held to be parts of the same transaction.

This decision is rendered in different facts and has no application to the facts of the present case.

9. In *Indira Kaur vs. Sheo Lal Kapoor*, 1988 (2) SCC 488, whether transaction therein of a mortgage or one of outright sale was considered by the Apex Court.

Said decision is also rendered in different facts and has no application to the facts of the present case.

10. For the aforesaid reasons, there is no merit in the writ petition. Writ petition is therefore dismissed.

[NITIN B. SURYAWANSHI, J.]