

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

WRIT PETITION NO. 12915 OF 2017

Samsher Sureshrao Vadpurkar .. Petitioner

Versus

Vishnu Atmaramji Shahane and another .. Respondents

Shri S. G. Jadhavar, Advocate for the Petitioner.

Shri Shailendra S. Gangakhedkar, Advocate for the Respondent
No. 1.

CORAM : SHAILESH P. BRAHME, J.

DATE : 08TH NOVEMBER, 2023.

FINAL ORDER :

1. Heard learned counsel for the both sides finally at the admission stage.

2. The petitioner is aggrieved by the order dated 25.09.2017 passed below Exhibit 59 in R.C.S. No. 29 of 2016 by the learned Joint Civil Judge Senior Division, Parbhani thereby refusing to impound an agreement of sale.

3. The petitioner is the original defendant No. 2 a purchaser from the respondent No. 2/original defendant No. 1. The respondent No. 1 is the original plaintiff, who has filed suit for specific performance of contract as stated above. It is the case of the respondent No. 1 that there is unregistered agreement to sale executed by the respondent No. 2 in his favour on

19.07.2016. The consideration agreed between the parties is Rs. 1,15,00,101/-. He received part of consideration. The respondent No. 2 failed to perform his part of contract, which gave rise to the suit in the Court of law.

4. The petitioner filed an application below Exhibit 59 for impounding the agreement as no stamp duty is paid and it is unregistered. The application is opposed by the respondent No. 1. By order dated 25.09.2017, the application is rejected.

5. The learned counsel for the petitioner submits that the document is covered by Article 5(h)(A)(iii) of the Maharashtra Stamp Act, 1958 (for short 'Stamp Act'). The learned counsel submits that the consideration for purchasing the suit property is above Rs. One crores and, therefore, the stamp duty is payable. He would further submit that the document has not been registered as well as notarized. As such the document is inadmissible in evidence. He further submits that the learned Judge erred in treating the document to be covered by Article 5(h)(B) of the Stamp Act. The impugned order is patently illegal and perverse. The learned counsel for the petitioner relies on the following judgments.

- I. Shamal Kumar Roy Vs. Suhsil Kumar Agarwal reported in AIR 2007 SC 637.
- II. Balasaheb Sahebrao Jadhav Vs. Hanumant Bhaurao Deshmukh reported in 1995 (1) Mh.L.J. 473.
- III. Bhaurao Antuji Bhoyar Vs. Kesharao Rajaram Dangore

and another reported in AIR 1976 Bombay 302.

IV. H. K. Taneja and others Vs. Bipin Ganatra and Keshavrao J. Bhosle reported in 2009(2) Mh.L.J. 855.

6. The learned counsel for the respondent No. 1 supports the impugned order. He submits that the agreement is not a conveyance within the meaning of Article 25 Schedule-I Explanation I of the Stamp Act. He draws my attention to the prayers in the plaint as well as the terms and conditions of the agreement. He submits that as there is no recital of handing over of possession to his client, no stamp duty is payable. He seeks reliance upon the following judgments.

- i. M/s Z. Engineers Construction Pvt. Ltd. and another Vs. Bipin Bihari Behera and others reported in AIR 2020 SC 1140.
- ii Balwantgir Ganpatgir Giri Vs. Manasi Construction and Developers reported in 2006(5) Mh. L. J. 306.
- iii. Dharati Developers and another Vs. Madhukar Atmaram Patil and others reported in 2018(2) Mh.L.J. 525.
- iv. Judgment dated 10.04.2012 passed by this Court in Writ Petition No. 1841 of 2011 (Raosaheb Khandu Patil Vs. Rahimkhan Mehetabkha and other).
- v. Order dated 22.02.2019 in Review Application (Civil) No. 243 of 2018 in Writ Petition No. 6828 of 2014 (Jeevan Ramkisan Kabra and others Vs. Ashok Badrinarayan Bharadiya and another).

7. I have considered the submissions canvassed by learned counsel for both parties.

8. I have gone through the terms and conditions of the agreement between the parties, which is at Exhibit C. There is no recital of handing over of possession to the respondent No. 1. The prayer in the plaint is for execution of the sale deed and recovery of possession. The recitals regarding possession have significance in view of Article 25 Schedule – I Explanation I of the Stamp Act. Explanation – I provides for the category of the documents which can be termed as conveyance. The agreement involved in this petition does not fall in the category of conveyance. The stamp duty is not payable.

9. Though above referred aspect is not precisely considered by the learned Judge, the impugned order cannot be said to be illegal. Neither Article 5(h)(A)(iii) nor Article 5(h)(B) of the Stamp Act is attracted in the present case. The learned counsel for the respondent No. 1 has relied upon the **order dated 22.02.2019 passed by this Court in Review Application (Civil) No. 243 of 2018 in Writ Petition No. 6828 of 2014 (Jeevan Ramkisan Kabra and others Vs. Ashok Badrinarayan Bharadiya and another)** to support that Article 5(h)(A) of the Stamp Act covers different categories of agreements. The submission has merit.

10. The factum of recital about possession in the agreement is decisive. For that purpose the respondent has rightly placed reliance on the judgments in the matters of **Balwantgir**

Ganpatgir Giri Vs. Manasi Construction and Developers and **Dharati Developers and another Vs. Madhukar Atmaram Patil and others** (supra). I have therefore no hesitation to hold that the document is not liable to be impounded.

11. The reliance placed by the learned counsel for the petitioner on the judgments referred to above are not applicable to the present case. The facts of the present case are different.

12. I am further guided by the exposition by the Supreme Court in the matter of **M/s Z. Engineers Construction Pvt. Ltd. and another Vs. Bipin Bihari Behera and others**. A useful reference can be made to paragraph Nos. 08 and 12 of the said judgment.

13. In that view of the matter, I do not find any illegality or error of jurisdiction for interfering with the impugned order. The writ petition is dismissed. There shall be no order as to costs.

[SHAILESH P. BRAHME, J.]

bsb/Nov. 23