

AGK

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

WRIT PETITION NO.5266 OF 2019

Balaso Ganapati Varekar ... Petitioner

V/s.

Savkar Raoso Magdum & Ors. ... Respondents

WITH

WRIT PETITION NO.5267 OF 2019

Balaso Ganapati Varekar ... Petitioner

V/s.

Dada Alias Anna Bharama
Magdum & Anr. ... Respondents

WITH

WRIT PETITION NO.5268 OF 2019

Balaso Ganapati Varekar ... Petitioner

V/s.

Neminath Tatoba Magdum & Ors. ... Respondents

WITH

WRIT PETITION NO.5269 OF 2019

Balaso Ganapati Varekar ... Petitioner

V/s.

Indumati Appaso Magdum & Ors. ... Respondents

Mr. Prasad B. Kulkarni for the petitioner.

Mr. Akshay A. Kulkarni for respondent Nos.1 to 4 in all
the writ petitions.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 5, 2023

P.C.:

- 1.** The petitioner/original plaintiff is challenging order passed by the Trial Court impounding agreement dated 13 December 2006 produced by the petitioner before the Trial Court.
- 2.** The petitioner is original plaintiff who filed suit for specific performance. For seeking such relief, the petitioner relied on the agreement to sell. On perusal of the clauses 14, 15 and 19, it appears that the document in question is agreement to sell. Under clause (1) of the said document, the defendant has handed over possession of the suit property to the plaintiff.
- 3.** According to the learned advocate for the petitioner, the document in question is development agreement. On overall reading of the document, and in particular clauses 14, 15 and 19, it appears that the document contains a specific clause that on property being converted into non-agricultural property, the defendant agreed to execute sell deed in favour of the petitioner or the person as indicated by the petitioner. In view of such clause, the document in question is agreement to sell and, therefore, in view of Explanation (i) of Article 25 it is to be treated as conveyance.
- 4.** Explanation (I) to Article 25 states that for the purpose of said Article, where in case of agreement to sell and immovable property the possession of any immovable agreement is transferred, then such agreement to sell shall be deemed to be conveyance and stamp duty thereon shall be levied accordingly. On consideration of the agreement, in my opinion, the Explanation (i)

to Article 25 is attracted. Therefore, the Trial Court has rightly issued a direction for impounding the document. Hence, no interference under Article 227 of the Constitution of India is called for.

5. All four writ petitions accordingly stand dismissed. No costs.

(AMIT BORKAR, J.)