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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10669 OF 2015

Sandhya Nageshchandra Parakhi (Since Deceased)
Through Legal Representative
Ashwini Mukesh Vinze … Petitioner

V/s.

Ravindra Manohar Wayangankar … Respondent

Mr. Rajesh S Datar a/w Ms. Druti R. Datar, for petitioners.

Ms. Prabha Badadare i/by Mr. Omkar Nagwekar, for respondent.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 17, 2023

P.C.:

1. The petitioner is challenging order dated 24 June 2015 passed by the 6th Joint Civil Judge, Senior Division, Thane below Exhibit 52 in Special Civil Suit No.266 of 1998 rejecting objection of petitioner regarding admissibility of agreement to sell in evidence.

2. The respondent filed Special Civil Suit No.266 of 1998 for declaration and mandatory injunction of specific performance of agreement to sell. It appears that the agreement to sell dated 22 January 1990 is the basis of suit.

3. The plaintiff during examination-in-chief tendered original agreement to sell dated 5 May 1991. Before admitting such agreement to sale in evidence, the defendant raised objection as regards admissibility of agreement to sell in evidence.

4. According to defendant, agreement to sell dated 5 May 1991 is conveyance within the meaning of Section 2(g) and stamp duty as payable under Article 25 of Maharashtra Stamp Act, 1958 is paid.

5. The Trial Court overruled the objection.

6. The defendant, therefore, challenged the order dated 24 June 2015 by present writ petition.

7. Mr. Rajesh Datar, learned Advocate for petitioner invited my attention to the agreement to sell in question. According to him, clause 3 of the agreement contents a recital that, the vendor shall hand over possession immediately on payment of balance amount of consideration.

8. *Per contra*, Ms. Prabha Badadare, learned Advocate for respondent submitted that despite averment, actual possession has contemplated by agreement to sell is not handed over and, therefore, the document cannot be termed as conveyance under Section 2(g) and stamp duty under Article 25 of the Maharashtra Stamp Act, 1958 need not be paid.

9. For adjudication of issue involved as to whether the agreement to sell dated 5 May 1991 is conveyance within the meaning of Section 2(g) of the Maharashtra Stamp Act, 1958, it is necessary to set out relevant provisions of the Maharashtra Stamp Act, 1958 as was in existence on the date of execution of agreement to sell. Section 2(g) as its stood in the year 1991 reads as under:

> [(g)"Conveyance" includes,—
>
> (i)a conveyance on sale,
>
> (ii)every instrument,
>
> (iii)every decree or final order of any Civil Court,
>
> (iv) every order made by the High Court under Section 394 of the Companies Act, 1956 or every order made by the National Company Law Tribunal under sections 230 to 234 of the Companies Act, 2013 or every confirmation issued by the Central Government under sub-section (3) of section 233 of the Companies Act, 2013, in respect of the amalgamation, mergerm demergerm arrangement or reconstruction of companies (including subsidiaries of parent company); and every order of the Reserve Bank of India under section 44A of the Banking Regulation Act, 1949, in respect of amalgamation or reconstruction of Banking Companies;
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> by which property, whether moveable or immoveable, or anyestate or interest in any property is transferred to, or vested in,any other person,inter vivos and which is not otherwise specifically provided for by Schedule I;
>
> *Explanation.*—An instrument whereby a co-owner of any property transfers his interest to another co-owner of the

property and which isnot an instrument of partition, shall, for the purposes of this clause, bedeemed to be an instrument by which property is transferred inter vivos ;]

10. Article 25 along with explanation 1 read as under:

25.CONVEYANCE (not being a transfer charged or exempted under Article 59)— On the1[true market value] of the property, which is the subject matter of Conveyance,—	
[(a) if relating to movable property, for every rupees 500 or part thereof;	Fifteen rupees.
(b)if relating to immovable property situated within the limits of:—	
(i) Any rural areas for every rupees 500 or part thereof.	Fifteen rupees.
(ii) 'C' Class Municipalities and Cantonments, if any, adjacent to them, for every rupees 500 or part thereof.	Seventeen rupees and fifty paise.
(iii) 'B' Class Municipalities and Cantonment of Kamptee, for every rupees 500 or part thereof.	Twenty-two rupees and fifty paise.
(iv) 'A' Class Municipalities and Cantonment of Ahmednagar, for every rupees 500 or part thereof.	Thirty rupees.
(v) Municipal Corporations other than those mentioned in clause (vi) and Cantonments of Deolali, Dhu Road and Aurangabad – for every rupees	Forty rupees.

500 or part thereof.	
(vi)(a) Municipal Corporation of Greater Bombay, and (b) Municipal Corporation of the Cities of – (i) Pune, including the Cantonments of Pune and Kirkee, (ii) Thane, including that part of Thane taluka adjoining Greater Bombay which is encircled by Thane Bassein Creek; for every rupees 500 or part thereof;	Fifty rupees.
(c) if relating to both moveable and immoveable property.	The same duty as is payable under clauses (a) and (b).
(d)(1) if relating to residential premises consisting of building or unit – (A) by, or in favour of, a co-operative housing society registered or deemed to have been registered under the Maharashtra Co-operative Societies Act, 1960; or (B) to which the provisions of the Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963, or the provisions of the Maharashtra Apartment Ownership Act, 1970, apply; or (C) by such society in favour of its member (whether in	

consequence of purchase of its shares or not); or	
(D) by a member of such society in favour of another member (whether in consequence of transfer of its shares to another member or not);	
and the value of which –	
(i) does not exceed rupees 1,00,000.	One hundred rupees.
(ii) exceeds rupees 1,00,000 but does not exceed rupees 2,50,000.	One per cent of the value.
(iii) exceeds rupees 2,50,000 but does not exceed rupees 5,00,000.	2,500 rupees *plus* 4 per cent of the value above rupees 2,50,000.
(iv) exceeds rupees 5,00,000 but does not exceed rupees 7,50,000.	14,000 rupees *plus* 6 per cent of the value above rupees 5,00,000.
(v) exceeds rupees 7,50,000 but does not exceed rupees 10,00,000.	29,000 rupees *plus* 8 per cent of the value above rupees 7,50,000.
(vi) exceeds rupees 10,00,000.	49,000 rupees *plus* 10 per cent of the value above rupees 10,00,000;
(2) if relating to land for construction of residential premises and falling under the descriptions in items (A), (C) or (D) of sub-clause (1).	The same duty as is payable under sub-clause (1).];

Exemption
Assignment of copyright under the Copyright Act, 1957.

Explanation 1.— For the purposes of this article, where in the case of agreement to sell an immoveable property, the possession of any immoveable property is transferred to the purchaser before the execution, or at the time of execution, or after the execution of, such agreement without executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly:

Provided that, the provisions of section 32A shall apply *mutatis mutandis* to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a conveyance under that section:

Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale,the stamp duty, if any already paid and recovered on the agreement of sale which is deemed to be a conveyance,shall be adjusted towards the total duty leviable on the conveyance.

11. I have scrutinized the agreement to sell in question in the context of Section 2(g) read with Article 25 of the Maharashtra Stamp Act, 1958 as was in existence in 1991. Clause 3 of agreement to sell reads as under:

> 3. The Vendor has agreed to handover the possession immediately on payment of balance amount of consideration i.e. Rs.1,15,000/- (Rupees one lakh fifteen thousand only).

12. On consideration of explanation in Article 25, it appears that explanation gets attracted. It contemplates existence of averments regarding transfer of possession, such agreement to sell needs to be construed as conveyance. Such interpretation is appeared from the expression "where in the case of agreement to sell an immovable property" what is contemplated under Explanation 1 is recital in the agreement and not actual delivery of possession.

13. Clause 3 promises delivery of possession after payment of balance consideration, in my opinion, as per explanation 1, the document needs to be treated as conveyance under Section 2(g) read with Article 25 of the Maharashtra Stamp Act, 1958. Therefore, the Trial Court was not justified in overruled in objection. Hence, following order:

a) The application below Exhibit 52 in Special Suit No.266 of 1998 is allowed.

b) The Trial Court shall impound the document as per Section 33 of the Maharashtra Stamp Act, 1958. The copy of documents shall be kept with the Court and original copy shall be sent to the Collector for adjudication of deficit stamp duty and penalty as per provisions of Maharashtra Stamp Act, 1958.

c) If, the plaintiff paid deficit stamp duty along with penalty as directed by the Collector, admission in evidence of agreement to sell not be denied on the ground of insufficiency of stamp dues.

14. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)