



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 4049 OF 2022

Wasudeo Vithobaji Khapre,
Age 76 Yrs., Occ.: Agriculturist,
R/o. Amdapur, Tq. Warud,
Dist. Amravati.

.... **PETITIONER.**

// VERSUS //

1. Vasantrao Ramchandraji Choudhari,
Aged 72 Yrs., Occ. Agriculture,
2. Sureshrao Ramchandraji Choudhari,
Age 60 Yrs., Occ. Agriculture,

Both R-1 & R-2, R/o. Rajura Naka,
Warud, Th. Warud, Dist. Amravati.
3. Sharadchandra Ramchandraji Choudhari,
(Dead) Through LRs.:
 - a. Smt. Shobha Sharadchandra Choudhari,
Aged 70 Yrs., Occ. Housewife.
 - b. Ku. Shilpa Sharadchandra Choudhari,
Aged 30 Yrs., Occ. Service,
 - c. Abhijit Sharadchandra Choudhari,
Aged 35 Yrs., Occ. Service

Respondent 3(a) to 3(c) R/o. Hanuman
Galli, Sitaburdi, Nagpur, Th. & Dist.
Nagpur.

.... **RESPONDENTS.**

Shri N.R.Saboo, Advocate for Petitioner.
Shri Shriram Deoras, Advocate for Respondent Nos.1 to 3.

CORAM : ANIL S. KILOR, J.
DATED : SEPTEMBER 26, 2023.

ORAL JUDGMENT :

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the learned counsel for the parties.
3. The order below Exh.48 dated 29/03/2022 passed by Joint Civil Judge Junior Division, Warud in Regular Civil Suit No.73 of 2012, rejecting the application preferred by the petitioner for impounding the document, is under challenge in this writ petition.
4. The respondents have filed a suit for possession and damages against the petitioners. In the suit there are pleadings about the agreement dated 29/01/1999 entered between the plaintiffs and the defendants and further extension of the date of execution of the Sale

Deed by subsequent agreements. There is also a mention in the suit that the petitioners forcibly took possession of the suit land from the respondents.

5. Whereas, it is the case of the petitioners that on 26/05/1999 an agreement was executed in continuation with the original agreement dated 29/01/1999 and thereby possession was handed over to the petitioners.

6. It is therefore, submitted that though the word 'temporary', is used in the said agreement dated 26/05/1999 it will amount to a conveyance under Article 25 and more particularly Explanation-I of Article 25 of the Maharashtra Stamps Act, 1958 and therefore, the agreement needs to be impounded. However, the application for impounding the document, filed by the petitioners came to be rejected on the ground that the word 'temporary' is used.

7. Thus, the whole controversy revolves around the Explanation-I to Article 25 of the Maharashtra Stamps Act, which reads thus :

“Explanation-I. - For the purposes of this article, where in the case of agreement to sell an immovable property, the possession of any 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 then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.”

8. The explanation sufficiently shows that in case the possession of any 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 then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.

9. In the present matter, though the respondents are disputing the execution of the agreement dated 26/05/1999, however, in subsequent agreement of extension of date of sale deed executed on 29/05/1999, there is a mention of agreement of handing over of possession dated 26/05/1999. There is nothing on record from which it can be gathered that there is a dispute in respect of execution of agreement dated 29/05/1999 wherein there is a specific mention of agreement dated 26/05/1999 relating to handing over the possession.

10. In that view of the matter, I am of the opinion that the learned trial Court has committed an error in rejecting the application preferred by the petitioners for impounding the document viz. Agreement dated 26/05/1999.

11. Accordingly I pass the following order:

- i) The writ petition is allowed.
- ii) The impugned order dated 19/03/2022 passed below Exh.48 by Joint Civil Judge Junior Division, Warud in R.C.S. No.73/2012, is hereby quashed and set aside and consequently, the application Exh.48 is allowed.

The Writ Petition is **disposed of** accordingly. No order as to costs.

JUDGE

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