

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.243 OF 2024

IN

FIRST APPEAL NO.850 OF 2017

Jolene Antonella De Souza

Through C.A. James Eric De Souza & Anr. : Applicants

IN THE MATTER BETWEEN

Jude D'Souza (since deceased)

Through LR Jolene Antonella De Souza

Through C.A. James Eric De Souza & Anr. : Appellants

Vs.

Mr. Richanrd Rodriques & Ors. : Respondents

Adv. Pravin Desai a/w Adv. Hussain Dholkawala, for the Applicants.

Adv. Neela Anupam Dholakia for the Respondent No.2A.

CORAM : KISHORE C. SANT, J.

DATE : 29th JANUARY, 2024

PC. :

1. Heard the parties.
2. This Interim Application is filed seeking return of document i.e. Agreement of Sale dated 6th October, 1981 that is produced in evidence before the Trial Court, for the purpose of getting the same registered by taking benefit of Amnesty Scheme by the State of Maharashtra. The government has introduced the scheme wherein benefits such as waiver of

penalty amount etc. is extended till 31st January, 2024. It provides that if the document executed during the period of 1st January, 1980 till 31st December, 2000. The prayer of the present Applicant is that if the above document is returned only for that purpose, he will get the said document registered and would return it to the Court.

3. Learned Advocate for the Respondent has vehemently opposed the Application stating that in the judgment the learned Trial Court has specifically dealt with the issue and the effect of the document which is now sought to be registered. The Trial Court has already held the said document to be not valid on various grounds including non use of the stamp paper within six months in view of the Section 52 of the Bombay Stamp Act, 1958. Section 52 prohibits the use of Stamp paper after six months from its purchase. She thus submits that, now the Appellant cannot use this scheme and to get registered the document and thereby alter the position. She submits that when already there is a finding recorded by the Trial Court there is no question to get the document registered by taking benefit of this scheme.

4. Learned Advocate for the Applicant, however, fairly submits that, he would not take benefit or would not claim any equity even if the document is registered. This Court finds that the document can be

returned for the purpose of registration. However, it needs to be stated that the Appellant shall not claim any equity on the basis of such registration. Hence following order.

ORDER

- a) Interim Application stands allowed.
- b) Office is directed to return the Agreement of Sale dated 6th October, 1981 to the Appellant for the purpose of registration.
- c) The office shall take one authenticated copy of the said document on record from the Applicant.
- d) No party shall claim any equity in case the document is registered. This exercise will also not alter the position. The purposes the document will be treated as on the date on which it was produced on record in the evidence.
- e) Application stands disposed of.

5. Looking to the fact that scheme is only till 31st January, 2024 this exercise be done immediately parties to act on authenticated copy.

(KISHORE C. SANT, J.)