



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 1833 OF 2024

Dilip Sampatrao Baraskar, Proprietor Mayur
Scooter repairing centre, aged 55, Occupation :
Business Resident of : Plot No. 178,
Nandanwan Layout, Nagpur

...Petitioner

// VERSUS //

1. Chandrabhagabai Bhoyar,
Aged: about 76 years, Occupation: Household
2. Bhaskar S/o Baburao Bhoyar,
Aged: About 55 years, Occupation : Business
Both resident of Plot No. 178, House No.
1263/A, Nandanvan Layout, Nagpur
3. Dnyaneshwar S/o Baburao Bhoyar,
Aged: about 32 years, Occupation : Business,
Resident: Kuhi, District Nagpur

... Respondents

Shri U.A.Gosavi, Advocate for the petitioner.

Shri P.W.Jasutkar, Advocate for the respondent nos. 1 to 3.

CORAM : ANIL S. KILOR, J.
DATED : 15th APRIL, 2024.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally by
consent of the parties.

2. The application under Section 33 of the Maharashtra Stamp
Act, 1958 for impounding of agreement to sell dated 11th February, 2022

moved by the petitioner, the original defendant, came to be rejected by the learned Additional Judge, Small Causes Court, Nagpur vide order below Exhibit 52 dated 1st March, 2024 in Regular Civil Suit No. 164 of 2016, which is the subject matter of the present writ petition.

3. The respondents herein are the plaintiffs who filed a suit for eviction. However, it is the case of the petitioner-defendant that the landlord entered into an agreement to sale dated 11th February, 2000 for sale of the suit shop, with the petitioner. It is thus submitted that therefore there is no relation of landlord tenant between plaintiffs and defendant.

4. In view of the defence, the petitioner produced the document namely the agreement to sale dated 11th February, 2000. While exhibiting the same, it was objected by the plaintiffs on the ground that it is insufficiently stamped and it is irrelevant and inadmissible.

5. In view of the said objection, the petitioner moved an application Exhibit 52 for impounding of the said agreement to sale dated 11th February, 2000.

6. The learned trial Court rejected the application vide order dated 1st March, 2024 on the ground that the said document is irrelevant. The Court observed that in a dispute between the landlord and the tenant, the Small Causes Court can take cognizance of the dispute of landlord and tenant only and it cannot take cognizance of any other suit which are mentioned in the schedule of the Act.

7. However, while pointing out that such finding is erroneous, the learned counsel for the petitioner has submitted that while deciding the substantial question involved in the suit before the Small Causes Court, the Court can also go into the collateral and incidental issue. For this purpose, he has placed reliance of the Coordinate Bench of this Court in the case of Orbit Super Market Pvt Limited, Nagpur and others Vs. Mukta Arvind Bobde and others¹

8. The Coordinate Bench of this Court in the said decision has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of Shamim Akhtar Vs. Iqbal Ahmad and another² and Gangabai Vs. Chhabubar³. This Court has held that while deciding the substantial issue, the Small Causes Court could certainly go into collateral and incidental issue and render a finding thereon and in such a situation the power exercised by the Small Causes Court could not be said to be without jurisdiction.

9. In the above referred backdrop, I have gone through the agreement to sale dated 1st February, 2000 which is signed by the respondents/plaintiffs.

10. Though, it is the case of the respondents that Chandrabhaga is illiterate lady therefore, she cannot sign the said agreement to sale, from the agreement to sale, it is apparent that there is signature of Chandrabhaga.

1 2019(6) Mh.L.J 614

2 AIR 2001 SC 1

3 (1982) 1 SCC 4

11. As far as the dispute as to whether said signature is of Chandrabhaga or not, is the question of evidence. Hence, *prima facie*, it appears that the said agreement is relating to the suit shop. In the circumstances, *prima facie* said agreement to sale relates to the suit shop and therefore the question raised by the petitioner in a suit for eviction is incidental or collateral issue which can be tried by the Small Causes Court in view of the judgment in the *Orbit Super Market Pvt Limited, Nagpur and others Vs. Mukta Arvind Bobde and others* (supra). In the circumstances, it cannot be said that the said document is not relevant as observed by the learned trial Court.

12. After going through the language of Section 33 of the Maharashtra Stamp Act, 1958 and as held by the Hon'ble Supreme Court of India in the case of *Avinash Kumar Chauhan Vs. Vijay Krishna Mishra*⁴ that Section 33 of the Maharashtra Stamp Act, 1958 casts a statutory obligation on all the authorities to impound a document. It is further observed that, the court being an authority to receive a document in evidence is bound to give effect thereto. The unregistered deed of sale was an instrument which required payment of the stamp duty applicable to a deed of conveyance. The court, therefore, was empowered to pass an order in terms of Section 35 of the Maharashtra Stamp Act, 1958.

13. In the circumstances, for the reasons recorded herein above, I have no hesitation to hold that the learned Small Courts Court has

4 (2009) 2 SCC 532

committed error in rejecting the application Exhibit 52. Hence, I pass the following order.

- i. The writ petition is allowed;
- ii. The Order Below Exhibit 52 dated 1st March, 2024 passed by the learned Additional Judge, Small Causes Court, Nagpur in Regular Civil Suit No. 164 of 2016 is hereby quashed and consequently the application Exhibit 52 is allowed.

[ANIL S. KILOR, J.]