



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

Writ Petition (WP) No. 5835 of 2023

Sau. Asha Sudhakar Gujar

Versus

Jayant Mehendra Sapkal

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri A.R.Deshpande, Advocate for the petitioner.

Shri P.S.Uparwat, Advocate for the respondent.

CORAM : ANIL S. KILOR, J.

DATED : 13th FEBRUARY, 2024.

Heard.

2. This writ petition takes exception to the order dated 6th March, 2023 passed by the 7th Joint Civil Judge, Senior Division, Akola in Regular Civil Suit No. 321 of 2019 rejecting the oral objection regarding exhibiting the agreement to sale on the ground that it was executed with insufficient stamp and it is not registered.

3. The objection as regards exhibiting the documents was raised in respect of an agreement to sale in which there is a mention of handing over of

possession and therefore the objection of the petitioner is that it needs compulsory registration.

4. The learned counsel for the respondent submits that he is not solely relying upon this document for the purpose of possession and the purpose of filing of the document i.e. agreement to sale, is for collateral purpose and not more than that.

5. This Court in the case of Naginbhai P. Desai Vs. Taraben A. Sheth,¹ has held thus:

As stated earlier, the agreement Exhibit-A which is an agreement to sell a residential flat by the owner (defendant to the plaintiffs, is written on the stamp paper of Rs. 5/-. Article 25 of the Bombay Stamp Act prescribes what is the stamp duty payable on a conveyance. Explanation 1 to Article 23 of the Schedule 1 to the Bombay Stamp Act, 1988, as it stood in the year 1988 reads as under :

"Explanation 1 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 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 :

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 :

1 2003(1) Mh.L.J 994

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.

In *Veena Hasmukh Jain and Anr. v. State of Maharashtra*, the Apex Court had an occasion to consider the true meaning of Explanation 1 to Article 25 of Schedule I to the Bombay Stamp Act. In that case, an agreement to sell a flat admeasuring about 473 sq.ft. was executed between parties on 8th October 1987 and the possession was to be handed over by 30th November 1987. The vendor was obliged to hand over possession even before the execution of conveyance. The Apex Court held that the agreement was "a conveyance" for the purposes of stamp duty under the Bombay Stamp Act. The object of the explanation is clear and that if an agreement is entered into which contemplates delivery of possession of the property before the execution of the conveyance then such an agreement shall be deemed to a conveyance for the purpose of stamp duty leviable under the Bombay Stamp Act.

6. It is a settled law that an agreement which contemplates delivery of possession of the property before the execution of the conveyance then such an agreement shall be deemed to a conveyance for the purposes of stamp duty under the Bombay Stamp Act.

7. Admittedly, the document in question is not a registered one and despite the same it has been held that it is admissible in evidence. It appears from the

impugned order that the learned trial Court has not considered the law in this regard while passing the impugned order.

8. In the circumstances, I am of the opinion that the matter needs to be remanded back to the learned trial Court to decide the objection afresh after hearing both the parties and taking into consideration the law in this regard. Accordingly, I pass the following order.

- i. The writ petition is partly allowed;
- ii. The order dated 6th March, 2023 passed by the 7th Joint Civil Judge, Senior Division, Akola in Regular Civil Suit No. 321 of 2019 is hereby quashed and set aside;
- iii. The matter is remanded back to the 7th Joint Civil Judge, Senior Division, Akola and the learned trial Court is directed to decide the objection raised by the petitioner as a fresh after hearing both the parties and taking into consideration the law in this regard.

[ANIL S. KILOR, J.]