



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

7 WRIT PETITION NO. 2526 OF 2019

PRAKASH BALRAJ GHODKE
VERSUS
SURESH BALRAJ GHODKE AND OTHERS

...
Mr. S. S. Dixit, Advocate for the Petitioner
Mr. A. N. Nagargoje, Advocate for Respondent No. 1

CORAM : R. M. JOSHI, J.
DATE : 13th OCTOBER, 2025

P.C. :-

1. By consent of both sides, heard finally at the stage of admission.
2. This Petition takes exception to the order dated 22/11/2018 passed below Exhibit 77 in R.C.S. No. 59/2012 (Old Spl.C.S. No. 70/2011) whereby, the Application filed by the Plaintiff for impounding of the document and de-exhibition thereof came to be rejected.
3. There is no dispute about the fact that Petitioner/Plaintiff filed suit against the Defendants for recovery of money so also possession of the suit property. Defendants resisted the said claim by filing written statement and also filed counter claim for specific performance of the contract on the basis of agreement to sale in respect of the suit property.

4. After framing of the issues, evidence was led before the Trial Court and after closer of evidence by both sides and when the matter was fixed for final hearing an Application was moved vide Exhibit 77 by the Plaintiff with a prayer of de-exhibition of the document i.e. Exhibit 38 and not to read the same in evidence. This Application was opposed by the Defendants. Learned Trial Court rejected the said Application by passing impugned order. Hence, this Petition.

5. Learned Counsel for the Petitioner submits that the document (Exhibit 38) though is an agreement to sale, since it is coupled with handing over of the possession of the suit property, it becomes conveyance and which requires registration so also stamp duty in terms of Article 25 of the Maharashtra Stamp Act. According to him in absence payment of requisite stamp duty and registration of document, it could not be read in evidence. To support his submission, he placed reliance on the following judgments;

(i) Ramesh Mishrimal Jain Vs. Avinash Vsihwanath Patne and ors., MANU/SC/0218/2025,

(ii) Shyamsundar Radheshyam Agrawal and Ors. Vs. Pushpabai Nilkanth Patil and Ors., MANU/SC/1056/2024.

6. Learned Counsel for the Respondents/original Defendants resisted the Petition on the ground that the Petitioner/Plaintiff had not raised objection to the exhibition of the document and since it was exhibited without any challenge, now the Plaintiff is precluded from

raising objection thereto. It is his submission that this issue is squarely covered by the judgment of the Hon'ble Supreme Court in case of *Javer Chand and Others Vs. Pukhraj Surana, AIR 1961, SC 1655*.

7. On going through the judgments cited supra in case of *Ramesh Mishrimal Jain and Shyamsundar Radheshyam Agrawal*, though it cannot be disputed that in a case where there is a clause of conveyance along with the possession, the provisions of Section 17 of the Registration Act would apply and that stamp duty would attract in accordance with Article 25 of the Maharashtra Stamp Act. Herein this case, however, there is no conveyance clause and the parties have agreed for agreement to sale the suit property. For this reason, counter claim is required to be filed by the Defendants seeking specific performance of the contract. The document in question there cannot be said to have required registration under Section 17 of the Registration Act.

8. Though there cannot be any dispute made with regard to the proposition sought to be canvassed by the learned Counsel for the Petitioner/Plaintiff that in case of a deficit stamp duty being paid on a document, such document requires impounding and unless the stamp duty is paid in full, the document cannot be read in evidence. It is, however, necessary to take note of the fact as to the stage at which such objection is raised.

9. Admittedly, Exhibit 38 has been exhibited by the Trial Court when the document was tendered in evidence before the Court. No objection of whatsoever nature has been raised by the Plaintiff for exhibition of the said document. Thus, in such situation the judgment in case of *Javer Chand* (supra) would become applicable. The Hon'ble Supreme Court in the said judgment after taking into consideration the provisions of Sections 35 and 36 of the relevant Stamp Act has held that Section 35 is in the nature of a penal provision and has far reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter as soon as the document is tendered in evidence and before it is marked as an exhibit in the case. It is held therein that only in case a document has been inadvertently admitted without applying its mind to the question of its admissibility, it would be open to raise the said objection at subsequent stage. However, once a document has been marked as an exhibit in the case and the trial has proceeded all along on the footing that the document was an exhibit in the case and has been used by the parties in examination and cross-examination of their witnesses. Section 36 of the Stamp Act comes into operation. Once a document has been admitted in the evidence as aforesaid, it is not open for the trial Court itself or to the Court of Appeal or revision to

go behind that order. Such order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or a Court of superior jurisdiction.

10. In the present case, provisions of Maharashtra Stamp Act more particularly Section 35 of the Act makes identical provision as it was in the case before the Hon'ble Supreme Court. This Court has therefore has no hesitation to hold that the said judgment has complete Application to the present case. Having regard to the law laid down by the Hon'ble Supreme Court it was not open for the trial Court to de-exhibit the document or not to read the same in evidence once it was exhibited without any resistance. The order impugned therefore does not suffer from perversity.

11. Petition thus has no merit and hence stands dismissed.

(R. M. JOSHI, J.)

ssp