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955-WP-5229-2009

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

955 WRIT PETITION NO. 5229 OF 2009

Village Development Officer Grampanchyat Kantur And Anr

VERSUS

Venkat Nagoji Adkine

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Mr. Upendra B. Bilolikar, Advocate for the Petitioner.

Mr. Girish N. Kulkarni, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 11th SEPTEMBER 2025.

PC :-

1. Heard Mr. Bilolikar, the learned Advocate for the petitioners and Mr. Kulkarni, the learned Advocate for Respondent.
2. The petitioner No.1 is the Village Development Officer and petitioner No.2 is the Gram Panchayat through its Sarpanch. The respondent is original plaintiff, who filed a suit for declaration of ownership, possession and injunction.
3. It is the case of the plaintiff that he is the owner of land Gut No. 247, admeasuring 66R, situated at village Kuntur. The said property is

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the ancestral property. The land was mutated in the name of brother of the plaintiff and in oral partition, the said land was allotted to the plaintiff. The defendants, without any rights and authority, started construction of building of health club and water tank on the suit land. It is in that view, the plaintiff was required to file suit. In the said suit, it is the stand of the defendant that there was an agreement for sale titled as 'Vikrinama' executed on 7th April 1971 and it is on that basis they came into possession.

4. Initially, injunction was granted by the trial Court. The said order was challenged by filing Misc. Civil Application before the learned Additional Sessions Judge, Biloli. In Misc. Civil Application, the learned District Judge remanded application to the trial Court for fresh order. It is thereafter, the trial court rejected the application for injunction. The matter was carried to this court.

5. This Court in Writ Petition No.1713/2009 held that the plaintiff failed to prove the possession. It is also observed that the plaintiff had not come with clean hands and had suppressed the material facts and

dismissed the writ petition. Thereafter, the suit proceeded further. Issues were framed. Evidence of the parties started. It is at that stage, the petitioner filed an application under Section 33 of the Bombay Stamp Act praying for impounding document titled as Vikrinama. The said application was opposed by the respondent stating that the document is 37 years old and is time barred. The document is only an agreement and not a sale-deed. The said document is never acted upon. On these grounds, the application came to be opposed.

6. The learned trial Judge, on hearing the parties, rejected the application stating that the application is filed at belated stage. The document is of 7th April 1971. The suit is filed in 2006. The application was filed only after the evidence started and rejected application by way of impugned order dated 22nd June 2009.

7. Mr. Bilolikar, the learned Advocate vehemently argued that though there is no recital or clause about handing over of the possession or any time fixed for handing over possession, from attending the circumstances, it is clear that the said document has been acted upon

and the gram panchayat is put in possession. He thus submits that the provisions of Section 33 of the Bombay Stamp Act is clearly attracted. He also invited attention to Section 2(g) of the Bombay Stamp Act which defines the conveyance. He relied upon the judgments in the cases of *Ashok Ganagsahai Singhal and Ors. Vs. Ramdhar Nankulal Yadav and Ors.*¹ and *Ramesh Mishrimal Jain Vs. Avinash Vishwanath Patne and Ors.*²

8. Mr. Kulkarni, the learned Advocate for the respondent, vehemently opposed the writ petition. He submits that it is specific case of the plaintiff that the document styled as Vikrinama is never acted upon. There is no recital about possession in the said document, and in view of that, the provision of Section 33 is not attracted. The said documents cannot be called as conveyance as stated in Article 25 of the Bombay Stamp Act.

9. The document styled as Vikrinama only states that the suit property is to be sold at the rate of Rs.2,000/- per Acre and award of

1 2014 (7) Bom CR 550

2 AIR 2025 SC 1143

Rs.1000/- is received. Even the area of the suit property is not mentioned in the said document. There is no recital or any clause showing that the possession is handed over or is to be handed over at a particular time.

10. In the judgment in the case of **Ramesh Jain** (supra), the Hon'ble Apex Court considered the provisions of Section 34 of the Bombay Stamp Act. The court also considered the explanation and what is deemed to be a conveyance. Paragraph No. 13 of the said judgment reads as under:

“13. Thus, it was a specific case where in so many words the explanation takes in all the situations i.e. delivery of possession before the execution or at the time of execution or after the execution of an agreement and such agreements are deemed to be conveyances for the purpose of imposing stamp duty. Thus, the Apex Court had approved the intention of the legislature in equalising an agreement on par with a conveyance in the circumstances contemplated thereunder, apparently, the object being to realise the revenue at the earliest point of time on the agreement akin to sale deeds. Though in different words, in the instant case, the amendment brought in tries to achieve a similar object.”

11. It is seen from the paragraph that the legislature in equalising an agreement on par with a conveyance in the circumstances contemplated

thereunder. It is further held that the object is to realize the revenue at the earliest point of time on the agreement akin to sale deeds. In the present case, this Court does not find that the Vikrinama can be considered as sale deed. There is no recital about the possession. In the case of *Ashok Ganagsahai Singhal* (supra), this Court held that the document in question was a conveyance. It was considered that the act of handing over possession was accepted that the parties in carrying out the limited object of said development agreement therein.

12. This Court thus finds that looking to it, it is clear that what needs to be seen is the element of handing over possession or the stipulation of particular time for handing over possession. Looking to the present document, both the things are absent. There is not a single word about the possession, not even impliedly. This court thus finds that the document cannot be termed as conveyance. This court cannot accept the submission of learned Advocate Mr. Bilolikar that the document is acted upon and the circumstances needs to be considered while considering document for the purpose of Section 33 of the Bombay Stamp Act. While

looking to the document, it is only the contents of document which needs to be seen. There is nothing in the Act requiring the court to see conduct of the parties.

13. Considering all above, this court finds that no case is made out to entertain the writ petition. The writ petition deserves to be dismissed.

14. It is submitted that the suit is pending since 2006. The trial court is therefore requested to expedite the suit and to decide the same within one year from today. Hence, the following order:

ORDER

- (i) Writ Petition stands dismissed. No order as to costs.
- (ii) The trial Court is requested to expedite the proceeding and decide the suit as early as possible and preferably within 18 months from today.
- (iii) With this, writ petition stands disposed off.

[KISHORE C. SANT, J.]