



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 14 OF 2020

Shrihari Kishanrao Patil

VERSUS

Gopal Kishanrao Patil

...

WITH

CIVIL APPLICATION NO. 425 OF 2020 WITH

CIVIL APPLICATION NO. 424 OF 2020

IN SA/14/2020

...

Advocate for Appellant : Mr. A. R. Rathod

AGP for R|2 : Mr. S. S. Dande

Advocate for R|1 : Mr. D. P. Deshpande

...

CORUM : ROHIT W. JOSHI, J.

DATED : 7th MARCH, 2025

PER COURT :

1. Concurrent decrees in a suit for specific performance of contract filed by the plaintiff/respondent for enforcement agreement of sale dated 22.05.2006 are under challenge in the present Second Appeal. The learned advocate for the appellant defendant has raised three contentions as under:

(i) The suit property was jointly owned by the defendant along with his mother and therefore, the defendant alone was not competent to execute the agreement.

(ii) The agreement in question records that possession of the suit property was delivered by the defendant vendor to the plaintiff vendee and yet the document was not adequately stamped as provided under entry 25 in the schedule appended to the Maharashtra Stamps Act, 1958.

(iii) Although it is recorded that the vendee plaintiff was placed in possession over the suit property, actual physical possession of the suit property is with the vendor defendant.

2. As regards the first contention, categorical admissions have come on record from the defendant and his witnesses with respect to partition in the family on 24.03.2001. The document of partition is exhibited vide 'Exhibit 49'. The mother is given a sum of Rs. 1,00,000/- in this partition. She was not allotted any share in any immovable property. The contention of the appellant defendant that mother was co-owner of the property along with him is therefore, liable to be rejected.

3. As regards in adequate stamp duty, admittedly this objection was not raised while the agreement was proved and marked as exhibit during the course of evidence. Objection with respect to deficit stamp duty cannot be raised in a civil suit once it is marked as exhibit. The objection in this regard is also rejected in view of the above and legal position.

4. As regards the physical possession of the suit property, the appellants i.e. defendants witnesses have categorically admitted that the plaintiff respondent was in possession of the suit property. There is nothing to infer that the findings recorded on the basis of such admissions are erroneous or incorrect.

5. In that view of the matter, no substantial question of law arises for consideration in the present second appeal. The second appeal is therefore, **dismissed** with no order as to costs.

[ROHIT W. JOSHI]
JUDGE