IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12058 OF 2024

Smt. Sudha Pravin Shikhare
Age: 71 years, Occupation: Household
Through her General Power of Attorney holder
Shri Praveen Tukaram Shikhare
Age: 75 years, Occupation: Retired
Resident of : Ajinkyatara Housing Society,
Plot No.31, Shivsrushti, Kurla – E,
Mumbai – 24

…..**PETITIONER**
(Org. Defendant)

VERSUS

Shri Macchindra Sambhaji Kharat
Age: 61 years, Occupation: Agriculture
Resident of : Ghari (Hinganvedhe),
Taluka Kopargaon, District Ahmednagar.

…..**RESPONDENT**
(Org. Plaintiff)

Mr. U. G. Mitkari, Advocate for the Petitioner
Mr. V. H. Dighe, Advocate for Respondent

CORAM : ROHIT W. JOSHI, J.
DATED : 28TH JULY, 2025

ORAL JUDGMENT :-

. The petitioner who is original defendant in Regular Civil Suit No.79 of 2019 has filed the present petition challenging order dated 13.12.2023, passed by the learned Civil Judge, Senior Division, Kopargaon, rejecting the application filed by the petitioner/defendant for impounding of agreement of sale dated 13.12.2004.

2. The respondent, who is the original defendant has filed a suit for specific performance of contract with respect to agreement dated 13.12.2004. There is a covenant in the agreement which speaks about delivery of possession by the defendant/vendor to the prospective purchaser/plaintiff. The issues in the matter are yet to be framed. However, the petitioner/defendant has filed application at Exhibit 10 for impounding the agreement dated 13.12.2015 on the ground that it is a 'conveyance' within the meaning of Article 25(b) of the Maharashtra Stamp Act, 1958.

3. The learned Trial Court has rejected the application on the ground that in the event the document is not impounded, the plaintiff who has filed the suit for specific performance of contract will suffer.

4. Learned Counsel for the petitioner contends that in view of Section 33 of the Stamp Act, it is a duty of the Court before whom an inadequately stamped document is brought to impound the same. He contends that the learned Trial Court

has committed an error of law in not discharging the said statutory obligation.

5. Per contra, the learned Advocate for the respondent/original plaintiff contends that the stage for impounding of the document will come only during the course of trial when the plaintiff would want the learned Trial Court to exhibit the document. He further justifies the order in view of reasons mentioned by the learned Trial Court that in the event document is not impounded, the plaintiff will suffer the consequences.

6. Perusal of the document indicates that there is an averment in the document regarding delivery of possession by the defendant to the plaintiff. The document certainly falls within the definition of conveyance under Article 25(b) in Schedule-I of the Stamp Act. Needless to mention that while considering the issue of impounding, genuineness or otherwise of the document as well as correctness or otherwise of the statement therein regarding delivery of possession cannot be seen. For the purposes of impounding a document, the contents of the document themselves are relevant. Perusal

of Section 33 will demonstrate that the learned Trial Court is under a statutory obligation to impound the document if it finds that the document is not adequately stamped. Section 34 provides that a document not adequately stamped, cannot be read in evidence for any purpose. Section 34 has to be read in conjunction with Section 35, which provides that where a document which is not adequately stamped is admitted in evidence without any objection, then the same cannot be called in question at any stage of the suit and proceedings on the ground that it is not adequately stamped. Whereas, Section 34 and 35 deal with *inter se* rights between the parties regarding reading the document in evidence, Section 33 intends to safeguard the interest of revenue. As is apparent from reading of Section 33, the provision is certainly mandatory in nature.

7. It appears from perusal of paragraph 4 of the impugned order that the learned Trial Court has mixed up issue of court fee with the issue of stamp duty. It has observed in paragraph 4 that total sale consideration mentioned in the agreement is Rs.1,41,000/- and the plaintiff has paid appropriate stamp duty on the said amount. The document is written on stamp

of Rs.100/-(Rs.20X5). The observations appear to be made with respect to court fees paid by the plaintiff in the suit which is valued at Rs.1,41,000/-. This is, so because court fee of Rs.8430/- is paid by valuing the suit for specific performance at Rs.1,41,000/- and relief of intervention at Rs.1,000/-. The learned Trial Court has further observed that the suit is not for declaration and therefore, the stamp duty paid by the plaintiff is valid, which further indicates confusion between stamp duty and court fees.

8. The learned Trial Court is co-relating stamp duty with prayers in the plaint.

9. The learned Trial Court has not adverted the definition of term, 'conveyance' as per Explanation 1 appended to Article 25(b) in Schedule-I of the Stamp Act.

10. In view of the above, order dated 13.12.2023 is quashed and set aside. The learned Trial Court is directed to decide the application at Exhibit 10 in Regular Civil Suit No.79 of 2018 afresh in the light of statutory provisions of the Maharashtra Stamp Act bearing in mind that obligation under Section 33 arises independently on Section 34 and 35 of the

Stamp Act. It is clarified that the observations in the order pertaining to the agreement and conveyance thereof are only for the purpose of deciding the present petition and merits of the rival claims as regards the genuineness of the agreement or veracity of contents thereof are not dealt with.

11. Writ Petition is **disposed** of.

12. Civil Application, if any, stands **disposed** of.

(ROHIT W. JOSHI, J.)

Rushikesh/2025