2026:BHC-AS:2075

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12721 OF 2025

Ramniklal Shamji Patel and Ors. ... Petitioners
versus
Jiyauddin Suleman Pira (deceased) through legal heirs Suffyua Jiyauddin Pira and Ors. … Respondents

Mr. P.B.Shah with Mr. Kayval P. Shah, for Petitioners.

CORAM: N.J.JAMADAR, J.

DATE : 13 JANUARY 2026

P.C.

1. Heard the learned Counsel for the Petitioners.

2. The Petitioners – Plaintiffs assail the legality, propriety and correctness of the order dated 20 February 2025 in SCS No.102 of 2021, passed by the learned Civil Judge, Palghar, on an application below Exh.83 to impound the instrument i.e. Agreement for Sale dated 3 May 2007, as it was insufficiently stamped, though it amounted to a conveyance under Article 25 of the Maharashtra Stamp Act, 1958. By the said order, the learned Civil Judge was persuaded to impound the said Agreement for Sale and send it to the Collector of Stamps for determination of stamp duty and penalty thereon.

3. Mr. Shah, learned Counsel for the Petitioners, would urge that, the learned Civil Judge completely misconstrued the nature and character of the Agreement for Sale and passed an impounding order without considering

the pleadings of the parties. It was submitted that the learned Civil Judge failed to note that the possession of the property, which was agreed to be sold under the said Agreement for Sale, was never delivered to the Petitioners. Therefore, the Petitioners – Plaintiffs were constrained to institute a suit for specific performance of the contract and delivery of possession of the suit property. By a selective reading of the recitals in the said Agreement for Sale, the learned Civil Judge has recorded an erroneous finding that the said Agreement amounted to a conveyance within the meaning of Article 25 of the Stamp Act, 1958.

4. To lend support to this submission, Mr. Shah placed reliance on the decisions of the Supreme Court in the cases of **Shyamsundar Radheshyam Agrawal and Anr. V/s. Pushpabai Nilkanth Patil and Ors.**[1] and **Veena Hasmukh Jain and Anr. V/s. State of Maharashtra and Ors.**[2].

5. Under Article 25 of the Schedule I appended to the Maharashtra Stamp Act, 1958, for a Conveyance, not being a transfer charged or exempted under Article 59, if it relates to immovable property, situated within the limits of any Municipal Corporation, Municipal Council or Nagar Panchayat or Cantonment area, a stamp duty @ 5% of the market value of the property, which is the subject matter of the conveyance, is required to be paid. Explanation I to Article 25 provides that, for the purposes of the said Article, where in the case

1 (2024) 10 SCC 324
2 (1999) 5 SCC 725

of agreement to sell an immovable property, the possession of any immovable property is transferred or agreed to be transferred 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.

6. In view of the said Explanation, the agreement for sale is to be treated as conveyance, if possession is either handed over contemporaneous with the execution of the agreement for sale, or is agreed to be handed over within a particular period.

7. In the case of **Veena Hasmukh Jain and Anr. (supra)**, on which reliance was placed by Mr. Shah, the Supreme Court enunciated that the duty in respect of an agreement covered by the Explanation I is leviable as if it is a conveyance, if certain conditions are fulfilled. The relevant observations in paragraph No.8, read as under :

> "8. The duty in respect of an agreement covered by the Explanation is leviable as if it is a conveyance. The conditions to be fulfilled are that if there is an agreement to sell immovable property and possession of such property is transferred to the purchaser before the execution or at the time of execution or subsequently without executing any conveyance in respect thereof, such an agreement to sell is deemed to be a 'conveyance'. In the event a conveyance is executed in pursuance of such agreement subsequently, the stamp duty 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."

8. It is necessary to note that, the expression "without executing the conveyance in respect thereof", which was part of Explanation I, which was considered by the Supreme Court in the case of **Veena Jain (supra)**, came to be deleted by Act 38 of 1994, with effect from 17 August 1994.

9. The thrust of the submission of Mr. Shah was that the possession of the suit property was not handed over to the Plaintiffs under the said Instrument, and, therefore, it did not amount to conveyance.

10. I am afraid to accede to the broad proposition sought to be canvassed by Mr. Shah that the delivery of possession is a *sine qua non,* for an Agreement to sell to constitute a conveyance, within the meaning of Explanation I to Article 25 of the Stamp Act, 1958.

11. In the case of **Veer Kanth Raikar vs State of Maharashtra**[3], on which reliance was placed by the learned Civil Judge, construing express text of the Explanation I to Article 25, it was held that the agreement for sale shall be deemed to be a conveyance if the possession of immovable property is transferred or agreed to be transferred to the purchaser before execution or at the time of execution or after the execution of such agreement.

12. From the bare reading of the Agreement for Sale dated 3 May 2007,

3 2020 SCC Online Bom 392

especially clauses 10, 11, 13, 14, 15 and 16, it becomes abundantly clear that the intent of the parties was to execute a conveyance. Under the said clauses, the Plaintiffs were authorized to construct buildings in accordance with the plans and specifications, sell the flats, shops and other structure thereon to the prospective purchasers, amalgamate and/or sub-divide the property, prepare layout, sell any part of the said property to any third person and receive the consideration, and the vendors agreed and confirmed and gave irrevocable consent for the transfer of all rights, title and interest in the said property by the purchasers in favour of any third party.

13. Cumulatively, the Agreement for Sale has all the trappings of conveyance. The mere fact that it was not explicitly recorded in the said Agreement that the possession was delivered thereunder, does not denude the said agreement for sale the character of conveyance. The learned Civil Judge, thus, committed no error in impounding the said instrument as it amounted to a conveyance and, yet, scribed on a stamp paper of Rs.100/- denomination only.

14. The Writ Petition, thus, stands dismissed.

(N.J.JAMADAR, J.)