

Ramesh Mishrimal Jain Vs Avinash Vishwanath Patne & Anr

Court: Supreme Court Of India

Date of Decision: Feb. 14, 2025

Acts Referred: Bombay Stamp Act, 1958 " Article 25Bombay Stamp Act, 1958 " Section 34
 Transfer of Property Act 1882 " Section 53A

Hon'ble Judges: J.B. Pardiwala, J; R. Mahadevan, J

Bench: Division Bench

Advocate: Rooh e hina Dua, Harshit Khanduja, Awantika Manohar, Dhawesh Pahuja, Nilesh Sharma, Parul Dhurvey,
 P Mohit Krishna

Final Decision: Dismissed

Judgement

R. Mahadevan, J

1. Leave granted.

2. The challenge made in this appeal is to the order dated 29.08.2019, by which the High Court of Judicature at Bombay "the High Court" dismissed

Writ Petition No.3246 of 2016. As a consequence thereof, the order dated 03.08.2015 passed by the Court of Civil Judge (Senior Division), Ratnagiri

"the trial Court", was upheld. The trial Court in its order dated 03.08.2015 had allowed the application filed by the respondents and, impounded

the document (Exhibit 30) i.e., agreement to sell dated 03.09.2003 in respect of the property comprising House No.78/B/8 (18 x 9 feet) and an

adjoining room (9 x 3 feet) situated at Paiki Village Kasaba Khed, Khed Taluk, and directed the same to be sent to the Registrar of Stamps for

recovery of deficit stamp duty and penalty on it, as per law.

3. The appellant, originally, preferred a suit being Special Civil Suit No.65 of 2012 before the Court of Civil Judge, Senior Division, Ratnagiri, for

specific performance of the agreement to sell deed dated 03.09.2003 and other reliefs. Repudiating the same, the Respondent Nos.1 and 2 filed their

written statement. Pending the suit, the respondents filed an application under section 34 of the Bombay Stamp Act, 1958, for impounding the

document stating that the agreement in question was executed on a stamp paper of Rs.50 /- and the suit property was situated within the limits of

Khed Municipal Council and hence, stamp duty of Rs.44,000/- was required to be paid, besides penalty of Rs.1,31,850/-. The said application was

resisted by the appellant by stating that the agreement of sale was not an agreement of conveyance and hence, no stamp duty was payable on the

same. However, by order dated 03.08.2015, the trial Court allowed the said application, impounded the sale agreement dated 03.09.2003 and directed

the document to be sent to the Registrar of Stamps for recovery of the stamp duty and penalty on it as per law. Challenging the same, the appellant

preferred W.P.No.3246 of 2016, which was dismissed by the High Court, by the order impugned in this appeal.

4. According to the learned counsel for the appellant, Explanation I to Article 25 of the Bombay Stamp Act, 1958, applies only in cases, where there is

either an actual transfer of possession or an agreement to transfer possession pursuant to the agreement to sell; and it does not apply to cases where

the transfer of possession is explicitly contingent upon the execution of a subsequent document, such as, sale deed or conveyance deed. Further,

Explanation I presupposes an immediate or agreed transfer of possession under the agreement to sell itself. When the transfer of possession is linked

to a future event, such as the execution of a sale deed, the agreement cannot be deemed to be a conveyance for the purposes of stamp duty under

Explanation I; and in cases, where possession remains with the seller until the sale deed is executed, the agreement to sell cannot be equated with a

conveyance, and no stamp duty can be levied as such. Therefore, Explanation I does not apply to agreements where the transfer of possession is to

occur subsequently on the execution of a sale deed or conveyance deed and such agreements remain liable for stamp duty only at the stage of

execution of the final conveyance.

4.1. Continuing further, the learned counsel submitted that in the present case, the agreement to sell dated 03.09.2003 explicitly states that the suit

property is in the possession of the appellant in the capacity as tenant, and this possession is independent of the sale transaction. The agreement

further clarifies that possession on ownership basis will only be handed over to the appellant, after the execution of the sale deed. The extension

agreement dated 28.07.2004 entered into between the parties, also reiterates the same position and it expressly states that the appellant

possession will continue to be on a monthly tenancy basis until the execution of the sale deed. On the basis of the specific clauses contained in the said

agreements, the appellant sought the relief of specific performance in the following terms:

“The suit of the Plaintiff is, to be allowed with costs and the Defendant No. 1 be directed to register the Sale Deed in respect of the suit property in the name of

the Plaintiff after receiving the balance consideration amount as mentioned in the Agreement for Sale and to pass an order to give the possession of the suit

property on the ownership basis to the Plaintiff. The Court Commissioner will be appointed to register the Sale Deed in the name of the Plaintiff if the Defendant

No. 1 failed to do so.

Thus, according to the learned counsel, Explanation I to Article 25 of Schedule I of the Bombay Stamp Act, 1958, does not apply to the facts of the

present case, wherein, the conditions necessary for its application are not satisfied viz., (i) no possession was transferred under the agreement to sell;

(ii) no agreement to transfer possession exists until the sale deed is executed; and (iii) the possession of the appellant remains that of a tenant, which is

legally distinct and independent; and hence, no stamp duty can be levied on the agreement to sell dated 03.09.2003. However, the trial Court erred in

holding that Explanation I applies to the present case and directed the document to be sent to the Registrar of Stamps for recovery of stamp duty and

penalty from the appellant; and the same was also affirmed by the High Court by the order impugned herein. Therefore, the learned counsel prayed to

allow this appeal by setting aside the order of the High Court.

5. On the contrary, the learned counsel appearing for the respondents submitted that the subject property was jointly owned by the Respondent No.1

and his mother and after her demise, the Respondent No.1 became the absolute owner of the same. The Respondent No.1 stoutly denied the

execution of the agreement to sell dated 03.09.2003 between the appellant (tenant) and his mother (landlord) for a consideration of Rs.11,00,000/- out

of which, an advance payment of Rs.1,00,000/- was made by the appellant, and the timeline provided in the agreement for execution of the sale deed

and also handing over the possession. However, the appellant filed a suit for specific performance of the alleged agreement to sell and the same is at

the stage of recording of evidence.

5.1. It is further submitted that in terms of Article 25 of Schedule I of the Bombay Stamp Act, agreement to sell is to be treated as a

“conveyance” if possession is (i) handed over immediately; or (ii) agreed to be transferred without mentioning any particular time. In the present

case, the appellant was already in possession as a tenant and in terms of agreement to sell, it was agreed to transfer possession within 11 months

thereto or extended time, and therefore the said agreement to sell will be a “deemed” conveyance within the meaning of explanation I to Article

25 of Schedule I of Bombay Stamp Act and stamp duty as provided thereunder is leviable. In support of his contention, the learned counsel placed

reliance on the decisions of this court in *Veena Hasmukh Jain and another v. State of Maharashtra and Others* (1999) 5 SCC 725 and

Shyamsundar Radheshyam Agrawal v. Pushpabai Nilkanth Pati I(2024) 10 SCC 324, wherein, it was categorically held that stamp duty is levied

only on the document and not on the transaction.

5.2. The learned counsel also submitted that though the appellant stated that no possession was given to him under agreement to sell, he retained

possession as a tenant, and till date, he is continuing in possession of the suit property. Taking note of the same, the Courts below opined that there

was a need to pay stamp duty on the consideration amount of the agreement to sell as per the Bombay Stamp Act, and accordingly, directed

impounding of the document and send it to the Registrar of Stamps for recovery of stamp duty and penalty, as per law, from the appellant.

5.3. It is also submitted that in 2013, Respondent No. 1 filed a civil suit titled *Avinash Vishwas Patne v. Ramesh Mishrilal Jain*, seeking

eviction and possession of the suit premises, which is now pending before the Jt. Civil Judge Junior Division and JMFC Khed.

5.4. Stating so, the learned counsel submitted that the order impugned herein does not call for any interference at the hands of this court.

6. We have considered the rival submissions and also perused the documents placed before us.

7. The short question that arises for our consideration is, whether the appellant is liable to pay stamp duty and penalty on the agreement to sell dated

03.09.2003 allegedly executed between the appellant and the mother of Respondent No.1 in respect of the suit property.

8. It is the specific case of the appellant that the agreement to sell clearly states that the possession of the appellant is on a rental basis and the same

will not form part of the sale transaction; that, possession on ownership will be given only upon completion of the sale transaction and execution of the

sale deed; and therefore, the question of treating the agreement as a deemed conveyance does not arise. It is also stated that the decisions referred to

on the side of the respondents are not applicable to the present case as they are factually different and distinct.

9. However, the legal position is very clear that the stamp duty is on the instrument and not on the transaction. Furthermore, it is immaterial, whether

the possession of the property has been handed over at the time of execution of the agreement to sell or whether it has been agreed to transfer the

possession. In this regard, it will be useful to refer to Explanation 1 to Article 25 of Schedule I of the Bombay Stamp Act, which reads as under:

"Explanation I.—"For the purposes of this article, where in the case 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 without

executing the conveyance in respect thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable

accordingly:

Provided that, the provisions of Section 32-A shall apply mutatis mutandis to such agreement which is deemed to be a conveyance as aforesaid, as they apply to a

conveyance under that Section:

Provided further that, where subsequently a conveyance is executed in pursuance of such agreement of sale, the stamp duty, if any, 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.

10. Additionally, the following decisions are also relevant and they are reiterating the above stated legal position:

(i) In *Veena Hasmukh Jain v. State of Maharashtra* (1999) 5 SCC 725 : 1999 SCC Online SC 78, while dealing with the question as to whether the

agreement to sell can be treated as a document of conveyance, liable for levy of stamp duty, this Court held as follows:

“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. Now, in the present case, the agreement entered into clearly provides for sale of an

immovable property and there is also a specific time within which possession has to be delivered. Therefore, the document in question clearly falls within the

scope of Explanation I. It is open to the legislature to levy duty on different kinds of agreements at different rates. If the legislature thought that it would be

appropriate to collect duty at the stage of the agreement itself if it fulfils certain conditions instead of postponing the collection of such duty till the completion of

the transaction by execution of a conveyance deed inasmuch as all substantial conditions of a conveyance have already been fulfilled such as by passing of a

consideration and delivery of possession of the property and what remained to be done is a mere formality of execution of a sale deed, it would be necessary to

collect duty at a later (sic agreement) stage itself though right, title and interest may not have passed as such. Still, by reason of the fact that under the terms of

the agreement, there is an intention of sale and possession of the property has also been delivered, it is certainly open to the State to charge such instruments at

a particular rate which is akin to a conveyance and that is exactly what has been done in the present case. Therefore, it cannot be said that levy of duty is not

upon the instrument but on the transaction. Therefore, we reject the contention raised on behalf of the appellants in that regard.

9. The learned counsel for the appellants urged that the character of an instrument cannot be determined by reason of a subsequent event to take place such as

handing over of possession. But a close examination of the provisions of the Explanation will make it clear that in the case of an agreement to sell immovable

property possession is transferred at any time without executing the conveyance in respect thereof and such an instrument is deemed to be a "conveyance".

The object of the Explanation is clear that if an agreement is entered into and that agreement itself contemplates the delivery of possession of the property within

the stipulated time, then such an agreement should be deemed to be a conveyance for the purpose of duty leviable under the Bombay Stamp Act.

10. It is clear that the object of the Stamp Act is to levy stamp duty on different kinds of instruments. The legislature, in the present case, has chosen to levy a rate

of duty equivalent to conveyance in respect of an agreement though the transaction may not have been completed because of certain instruments arising out of

such agreement being executed and possession thereof being taken prior to or simultaneous with the document or subsequently. But in the Explanation, it is not

clear that if the document provides that possession has to be taken without execution of the conveyance, certainly it would attract the appropriate duty. If the

agreement provides that possession will be handed over on the execution of a conveyance as contemplated under Section 11 of the MOF Act, then the

Explanation shall not be attracted at all. In the present case, it is clear that in the terms of the agreement, there is no provision made at all for execution of the

conveyance. On the other hand, what is submitted is that the provisions of the MOF Act could be applied to the agreement and, therefore, a conveyance could be

executed subsequently when it is not clear as to when the conveyance is to be executed and the stipulated time within which the possession has to be handed over.

If that is so, it is clear that the document would attract duty as if it is a conveyance as provided in the Explanation. Thus we find no error in the view taken by the

High Court. It is not necessary to examine in these appeals as to whether the instrument in question itself conveys a title or not. Therefore, we uphold the decision

of the High Court made in this regard. The appeals are dismissed.

Â, (ii) Referring to the aforesaid judgment, this Court in *Shyamsundar Radheshyam Agrawal v. Pushpabai Nilkanth Pati* (2024) 10 SCC 324, held

that the object of the Explanation is clear that if an agreement is entered into and that agreement itself contemplates the delivery of possession of the

property within the stipulated time, then, such an agreement should be deemed to be a conveyance for the purpose of duty leviable under the Bombay

Stamp Act. The relevant paragraphs of the same read as under:

16. In the instant case, in the documents, though there was a clause for conveyance between the vendors and purchasers in relation to the respective

properties, the value of the properties were above Rs 100 and there was also a clause by which possession was admittedly handed over on the date of the

agreement, implying acquisition of possessory rights protected under Section 53-A of the Transfer of Property Act, which requires payment of proper stamp duty

and registration as mandated under Section 17 of the Registration Act. Further, as per Section 4(2) of the Maharashtra Stamp Act, the parties are at liberty to

determine as to which of the document shall be principal document.

17. As noted above, the agreement for sale consists of a clause whereby the possession was handed over to the purchaser satisfying the requirement to treat the

instrument as conveyance and what remained was only the formality of execution of the sale deed. Therefore, it can be safely concluded that the agreement for sale

was the principal document on which stamp duty was to be paid as per Article 25.

18. Even considering the contention of the appellant, that the sale agreements ultimately concluded in the sale deed on which stamp duty was paid, would not

ipso facto absolve the primary liability of paying the appropriate stamp duty at the time of execution of the sale agreement as it was the principal document.

Therefore, we are of the opinion that Section 4 of the Act cannot come to the aid of the appellants. Therefore, all these six documents ought to have been

necessarily stamped and registered.

(iii) In similar circumstances, the Andhra Pradesh High Court in B. Ratnamala v. G. Rudramma 1999 SCC OnLine AP 438, after interpreting the

relevant expressions, observed as follows:

9. While considering the provisions of the Indian Stamp Act, it has to be borne in mind that the said Act being a fiscal statute, plain language of the section as

per its natural meaning is the true guide. No inferences, analogies or any presumptions can have any place. As the incidence of duty is on the execution of the

deed, regard must, therefore, be had only to the terms of the document. Thus the main question that falls for consideration is the interpretation of the expressions

“followed by or evidencing delivery of possession”. These expressions cannot be read in isolation and one has to find the true meaning by reading the entire

Explanation and more so in conjunction with the earlier expression i.e., “agreement”. Even if these two expressions are looked independently, it means an

agreement to sell followed by delivery of possession and an agreement to sell evidencing delivery of possession. In the first case, i.e., “followed by delivery”,

possession cannot be disjuncted from the basic source i.e., agreement to sell. Therefore, the expression followed by delivery of possession should have a direct

nexus to the agreement and should be read in juxtaposition to the word “agreement” and it cannot be independent or outside the agreement. Therefore, the

delivery of possession should follow the agreement i.e., through the agreement. It takes in its sweep the recital in the agreement itself that delivery of possession is

being handed over. It will also cover cases of delivery of possession contemporaneous with the execution of agreement, even if there is no specific recital in the

agreement. In other words, the delivery of possession should be intimately and inextricably connected with the agreement. And in the second type, i.e., agreements

evidencing delivery of possession, if the document contains evidence of delivery of possession by a recital in that behalf, that is sufficient. Such delivery of

possession can be prior to the date of agreement and need not be under the agreement. If the agreement records the fact that the possession was delivered earlier

and such recital serves as evidence of delivery of possession, though prior to the Agreement, it falls under the second limb. Therefore, on a proper interpretation of

the said expressions, it would follow that an agreement containing specific recital of delivery of possession or indicating delivery of possession even in the past is

liable for stamp duty as a *conveyance* under the said Explanation.

11. Mohd. Gafoor (supra) is a case where an agreement was executed with the tenant in possession wherein it was contemplated that the purchaser (the tenant)

can retain the possession and further authorised to collect the rents for himself and sublet the premises. In that context, the learned Judge held that there is no

delivery of possession of property under the agreement. To put it differently, possession has not followed the agreement and it does not evidence delivery of

possession. Before the learned single Judge, neither of the decisions in Mekapothula Linga Reddy (supra) and D. Ramachandra Rao (supra) were cited. No

doubt, the twin situations contemplated under the Explanation I were kept in view but however, on the facts, the learned Judge came to the conclusion that there

is no delivery of possession as the person in possession continued to remain therein. Basically, the learned Judge has not taken into consideration the incidence

of agreement and the change in the jural relationship between the parties. Earlier, the parties were having the relationship of landlord and tenant and under the

agreement, the relationship has transformed into that of a vendor and purchaser. Thus, there is a total novation of not only the situation, but also the relationship

and the respective right and obligations. Even though the parties remain in the same position, the nature of their relationship can be altered. In Mohd. Gafoor

(supra), certainly the tenant has catapulted into a purchaser. Even though there may not be a redelivery of possession as a tenant and again delivery back to the

same person as a purchaser, but the factum of change of relationship certainly leads to the inference of a change in the nature of possession, even if it were to be

taken as a symbolic delivery. Therefore, it cannot be said that simply because one continued to remain in possession, though in different capacities, there is non-

delivery of possession. A symbolic delivery may also amount to actual delivery in given circumstances. Thus in the case in Mohd. Gafoor (supra), there was

delivery of possession and the said explanation gets attracted.

12. The Apex Court had an occasion to consider the provisions under the Bombay Stamp Act, 1958 in *Veena Hasmukh Jain v. State of Maharashtra*, JT 1999 (1)

SC 186. Explanation I to Article 25 of Schedule I to the Bombay Stamp Act reads as follows:

Explanation I:—“For the purpose of this Article, where in the case of agreement to sell an immovable property, the possession of any immovable property is

transferred to the purchaser before the execution, or at the time of execution, or after the execution of such agreement without executing the conveyance in respect

thereof, then such agreement to sell shall be deemed to be a conveyance and stamp duty thereon shall be leviable accordingly.”

Interpreting the said explanation, it was held:

“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 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 a conveyance shall be adjusted towards the

total duty leviable on the conveyance. Now, in the present case, the agreement entered into clearly provides for sale of an immovable property and there is also a

specific time within which possession has to be delivered. Therefore, the document in question clearly falls within the scope of the Explanation I. It is open for the

Legislature to levy duty on different kinds of agreement in different rates. If the Legislature thought that it would be appropriate to collect duty at the stage of

agreement itself if it fulfills certain conditions instead of postponing the collection of such duty till the completion of the transaction by execution of conveyance

deed inasmuch as all substantial conditions of a conveyance have already been fulfilled such as by passing of a consideration and delivery of possession of the

property and what remained to be done is a mere formality of execution of a sale deed, it would be necessary to collect duty at a later stage itself though right,

title and interest may not have passed as such. Still by reason of the fact that under the terms of the agreement there is an intention of sale and possession of the

property has also been delivered, it is certainly open to the State to charge such instruments at a particular rate which is akin to a conveyance and that it exactly

what has been done in the present case. Therefore, it cannot be said that levy of duty is not upon the instrument but on the transaction.”

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.

14. In the case on hand, there is a variation in the expressions used viz., “followed by” and “evidencing delivery of possession”. As discussed above, the

expression “followed by” should be read in conjunction with the earlier expression “agreement” and in the latter case, any agreement recording delivery

of possession should invite the stamp duty as a sale deed, even though the possession had been delivered in the past. The expression “evidencing delivery of

possession” applies to the situation with which we are concerned in the present case.

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11. In the instant case, the agreement to sell executed between the appellant and mother of the Respondent No.1, specifically states that “this

property is in your occupation on rental basis and it will not be part of the sale transaction. After completion of sale transaction, the

possession of the said property will be given to you on the ownership basis. This makes it very clear that the suit property was occupied by the

appellant on a rental basis and it would not be a part of the sale transaction. Further, there was a clause, by which, timeline was given for execution of

sale deed. Since the possession was admittedly given to the appellant even before the date of agreement, implying acquisition of possessory rights

protected under Section 53A of the Transfer of Property Act, the same requires payment of proper stamp duty. As indicated above, the agreement to

sell includes a clause stating that physical possession had already been handed over to the appellant, regardless of the basis of such possession. This

satisfies the requirement to treat the instrument as a “conveyance” within the meaning of Explanation I to Article 25 of Schedule I of Bombay

Stamp Act, with only the formality of executing the sale deed remaining. Pertinently, it is to be pointed out that the appellant filed a suit for specific

performance of the agreement to sell against the respondents; Respondent No.1 filed a suit seeking eviction of the appellant from the subject property;

and both the suits are pending, which clearly establish the possession of the property by the appellant. Therefore, the said document is liable for

payment of stamp duty at the hands of the appellant.

12. Considering the factual and legal aspects, the Courts below impounded the document and directed the same to be sent to the Registrar of Stamps

for recovery of deficit stamp duty and penalty as per law, by the orders impugned herein, which according to us, is perfectly correct. However, we

make it clear that as per the second proviso to Article 25, if the stamp duty is already paid or recovered on the agreement to sell, then, the same shall

be deducted while computing the stamp duty payable, when the sale deed is executed; and the recovery shall be restricted only to the extent of

difference in stamp duty and the entire penalty from the date of execution of the agreement to sell till the date of payment of stamp duty. Needless to

state that until the defect is cured by satisfying the requirements under Section 34, the document impounded cannot be used in evidence.

13. In the light of the above discussion, we do not find any reason to interfere with the orders passed by the Courts below. Accordingly, this appeal

stands dismissed as devoid of merits. No costs. Pending application(s), if any, shall stand closed.