Sheshrao Bhikaji Kale Vs Damodar Pandhare

Writ Petition No. 4023 of 2002

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Feb. 10, 2004

Acts Referred:
Bombay Stamp Act, 1958 â€" Article 25

Citation: (2004) 2 ALLMR 880 : (2004) 6 BomCR 354 : (2004) 3 MhLj 357

Hon'ble Judges: S.T. Kharche, J

Bench: Single Bench

Advocate: V.G. Wankhede, for the Appellant; G.B. Lohiya, for the Respondent

Final Decision: Dismissed

Judgement

S.T. Kharche, J.
Rule, made returnable forthwith by consent of the parties.

Relevant facts are as under:

2. The petitioner had filed Special Civil Suit bearing No. 12/2001 in the Court of Civil Judge, Senior Division, Washim seeking relief of specific

performance of contract on the basis of Isarchitthi (an agreement of Sale) dated 23-8-1999 or in the alternative for refund of consideration and

damages in respect of agricultural land survey No. 322 of mouza Gaundhala. The land was agreed to be sold for consideration of Rs. 1,50,000/-.

When the document of agreement of sale was produced before the Court, the learned Civil Judge, Senior Division passed the order below Exh.32,

an application filed by the respondent-defendant for giving direction to the plaintiff to get the said document impounded as per the provisions of

law. The learned Civil Judge heard the parties, considered the contentions and directed that the agreement of sale be impounded in view of the

provisions of Article 25, Schedule-I read with Section 34 of the Bombay Stamp Act, 1958 (for short, the Act) with stamp duty and penalty. This

order is impugned in this petition.

3. Mr. Wankhede, the learned counsel for the petitioner contended that the agreement of sale was executed on 23-8-1999 and though in the

agreement it has been made clear that the possession has been delivered, it is a fact that possession is yet to be parted with. He contended that the

respondent admitted in the written statement that possession has not been delivered by him at the time of execution of agreement, and therefore,

according to Mr. Wankhede, the impugned order passed by the learned Civil Judge is not sustainable in law. He contended that the provisions of

Article 25 Schedule-I read with Section 34 of the Bombay Stamp Act are not applicable to the transaction in question, and therefore, the

impugned order deserves to be set aside. In support of this submission, he relied on the decision of this Court in the case of Balasaheb Sahebrao

Jadhao v. Hanumant Bhaurao Deshmukh, 1995 (1) M.L.J. 473 wherein it has been held that the agreement or the contract for sale is a document

which falls outside Article 25 of the Bombay Stamp Act.

4. Mr. Lohiya, the learned counsel for the respondent contended that the agreement of sale has been executed on 23-8-1999 and in view of the

amendment in the explanation (I) of Article 25 of Schedule-I introduced in 1993, the learned Civil Judge was perfectly justified in directing the

plaintiff to get the agreement of sale impounded as per the provisions of Section 34 of the Act. He contended that even if the possession is not

delivered, when the possession is agreed to be transferred, then the agreement in question would fall within the meaning of explanation (I) of Article

25 of Schedule-I of the Act.

5. I have carefully considered the contentions canvassed by the learned counsel for the parties. It is not in dispute that the agreement of sale was

executed on 23-8-1999. It is also not in dispute that it has been mentioned in the agreement that possession has been delivered. Perusal of the

written statement of the respondent would show that possession is yet to be taken by the vendee, i.e. the petitioner though it is agreed that the sale

deed would be executed after obtaining the permission from the competent authority for the sale of the said agricultural land. At this stage, it is

necessary to reproduce explanation (I) of Article 25 Schedule-I which reads thus;

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

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 32A 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 or

recovered on the agreement of sale which is deemed to be a conveyance, shall be adjusted towards the total duty leviable on the conveyance.

6. The words ""or agreed to be transferred"" has been introduced in explanation (I) by the Amendment Act Mah. 17 of 1993 w.e.f. 1-5-1993. In

the present case the agreement of sale has been executed on 23-8-1999 and as such this transaction would be covered by this amended

provisions of the Act. When the agreement of sale is executed and the possession is also agreed to be transferred, the agreement is deemed to be

a conveyance and the stamp duty thereon is leviable accordingly by application of Section 32A. In that view of the matter, the contention of Mr.

Wankhede that the impugned order passed by the learned Civil Judge is not sustainable in law is devoid of any merit.

7. The Single Bench decision of this Court in the case of Balasaheb Sahebrao Jadhao v. Hanumant Bhaurao Deshmukh, 1995 (1) M.L.J. 473

relied on by the learned counsel for the petitioner is in relation to the agreement which was executed on 24-2-1990 when the amendment was not

in existence. Such is not the present case. In the present case the agreement of sale would be governed by the amended words, ""or agreed to be

transferred"", and there is no error or illegality in the impugned order, and therefore, this Court is of the considered opinion that, no case has been

made out for interference into the impugned order passed by the learned Civil Judge, Senior Division, Consequently the writ petition is dismissed

with no costs. Rule discharged.