ORDER BELOW EXH.62

CNRNO.MHSO100000812015

Stamp paper of alleged agreement of sale was required to be purchased either by an executant of agreement of sale or by person who agree to purchase the suit property. But in the suit the stamp paper of agreement of sale neither purchased by executant of agreement of sale or proposed purchaser. Furthermore the alleged agreement of sale is not admissible in the evidence as it is not properly stamped. It is required to be impounded. Therefore, the agreement of sale may not be read in evidence.

2. The plaintiff has submitted evidence by way of affidavit of Pandurang below Exh.113. During course of evidence learned advocate of defendant no.2 and 3 have taken objection that agreement of sale is not impounded and its stamp is purchased by third person. To this argument the learned advocate of plaintiff replied that on the basis of agreement of sale possession is not delivered and stamp of agreement of sale is purchased by husband of plaintiff no.5. Thereafter both sides claimed a time for argument on this aspect.

3. I have heard learned advocate of both sides. Learned

advocate of defendant no.2 and 3 submits that as per Section 2(g) of Bombay Stamp Act the agreement of sale is conveyance. According to his submission agreement to sale is conveyance because consideration paid and part consideration agreed to be paid at the time of sale and possession will be handed over on execution of sale deed. Therefore, these document is required to be impounded. Furthermore he submits that as per agreement to sale a right is created in favour of plaintiffs. Therefore, these document be sent for impounding it. For which he relied on ***Nanik K. Daryanani Vs. Deputy Inspector General of Registration & Deputy Controller of Stamps (Enforcement) Mumbai 2008 (6) AIR Bom R 541*** in which the Hon'ble Bombay High Court laid down a ratio that subject document is in the nature of Agreement for sale and amenable to levy of stamp duty, as if, it was a conveyance; having regard to the legal fiction created by the provisions of the Act' as amended. In this cited case in MOU there is a condition that balance amount of Rs.88,00,000/- would be paid by the purchaser to the vendors on handing over the possession. But in the present case in my hand the agreement of sale dated 25.12.2014 shows that deceased defendant no.1 agreed to deliver possession at the time of execution of sale deed. In the cited case in MOU it is specifically mentioned vendors and purchaser. Therefore, the Hon'ble Bombay High Court directed to impound the document.

4. The learned advocate of defendant no.2 and 3 relied on *Shri. Prakash Ramchandra Wanjari Vs. Sau. Vasundh Domaji Pantawane & Anr 2023 (1) All MR 1* that document or instrument which the party wants to place it on record as an evidence will not be allowed unless it is duly stamped.

5. The learned advocate of plaintiff submits that deceased defendant no.1 has not delivered possession of the suit property on the basis of agreement of sale. Therefore, it is not necessary to impound the agreement of sale. For which he relied on ***Nanibai Balwant Giri Vs. Mansi Construction and Developers Laws Bombay 2006–7 33*** in which the Hon'ble Bombay High Court laid down a ratio that the agreement dated 3-3-2000 is purely an agreement for sale wherein there is no recital for delivery of possession in terms of the agreement. On the contrary, the terms of agreement are to the effect that the possession would be delivered on execution of the sale deed. Hence, such an agreement cannot be construed as a conveyance within the meaning of the said expression under

Explanation-I to Article 25 of Sechedule - I of the said Act.

6. He relied on ***<u>Omprakash Vs. Laxminarayan And Ors. Laws SC 2013-10-17</u>*** in which the Hon'ble Apex Court laid down a ratio that when possession is delivered then that document is conveyance. So it is required to be impounded. In the cited case a facts are that the properties in question were delivered to them on payment of part consideration money in persons of agreement of sale and such recital finds place in the said agreement and actual possession has been handed over to the purchaser and after receiving sale consideration from the purchaser within a year the purchaser will get the sale deed of the said land registered in the name of purchaser. In this cited case a possession was delivered. Therefore, that document is impounded.

7. The learned advocate of plaintiff relied on ***<u>Nagibhai P. Desai Vs. Taraben A. Sheth Laws Bombay 2002-11-27</u>*** in which the Hon'ble Bombay High Court observed that the fiction created by explanation 1 to article 25 of Bombay Stamp Act by which the agreement for sale is to be treated conveyance is limited only for the purposes of Stamp Act for no other purpose. On the other hand the learned advocate of defendant no.2 and 3 relied on

Supreme Mega Constructions LLP. Vs. Nitin Pramod Samel & Ors. common Arbitration Application no.48/2016 dated 3.12.2018 in which the Honble Bombay High Court laid down a ratio that MOU dated 23.12.2010 as entered between the parties is examined for the purpose of stamp duty. It prima facie appears that certain rights are created by virtue of this document and if that be so, then the document needs to be examined for the purpose of stamp duty. Therefore, it is directed for ascertainment of stamp duty on the MOU. On which the learned advocate of defendant no.2 and 3 argued that when certain right are created by virtue of agreement of sale then that document is required to be impounded. As per Section 54 of Transfer of Property Act, “agreement of sale does not of itself, create any interest in or charge on such property.” When this is definition and no such interest or charge created on the basis of agreement of sale then this ratio laid down by Hon’ble Bombay High Court is not applicable to the present case.

8. I have reproduced article 25 Explanation 1 as under-

“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 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."

9. I have perused the agreement of sale dated 25.12.2014 in which the executant of it i.e. deceased defendant no.1 agreed that at the time of execution of sale deed a possession will be delivered as a owner. So there is no averment made in agreement of sale that before execution of sale deed on payment of remaining consideration a possession of suit property will be delivered. Prima facie from contents agreement of sale a possession is not delivered of the suit property to the plaintiffs. When possession is not delivered then the case law relied by defendants are not applicable. Furthermore the case law relied by plaintiff in ***Nainabai Balwant Giri Vs. Mansi Construction and Developers (Supra)*** is more applicable to the present case because in agreement of sale there is no recital for delivery of possession to plaintiffs. Therefore, there is no substance in argument of learned advocate of defendant no.2 and 3.

10. As per contents made in the application the stamp paper of agreement of sale is purchased by third party that is matter of merit. At this stage it is not

necessary to make comment on it. Hence, I pass the following order.

<u>ORDER</u>

Objection for impounding of agreement of sale is rejected and objection in regard to purchase of stamp paper of agreement of sale by third person is kept open.

Digitally signed by UDAY VIJAYKUMAR JOSHI
Date: 2023.07.19 12:30:15 +0530

Place - Malshiras.
Date - 18/07/2023.

(**U. V. Joshi**)
Civil Judge Senior Division,
Malshiras.