



IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 7TH DAY OF MAY, 2026

BEFORE

THE HON'BLE MR. JUSTICE E.S.INDIRESH

WRIT PETITION NO.201156 OF 2025 (GM-ST/RN)

BETWEEN:

SHIVASHARANAPPA
S/O LATE SANGRAMAPPA PATIL,
AGED ABOUT 76 YEARS,
OCC: AGRICULTURE,
R/O NAVADGERI, BIDAR – 585 401.

...PETITIONER

(BY SRI. D.P. AMBEKAR, ADVOCATE)

AND:

1. SHIVSHANKAR H. PULSE
S/O LATE HARILAL PULSE,
AGED ABOUT 50 YEARS,
OCC: BUSINESS, R/O BIDAR,
NOW AT R/O #1211, SRI. MAILARLING NILAYA,
1ST PHASE, 1ST MANI, 5TH STAGE, BEML LAYOUT,
RAJARAJESHWARI NAGAR, BENGALURU – 560 098.
2. RAJASHREE
W/O NANDAKUMAR PATIL,
AGED ABOUT 51 YEARS,
OCC: HOUSEWIFE,
R/O BRAHMPUR COLONY,
BIDAR – 585 401.
- . VEERANGOUDA
S/O SHIVSHARANAPPA PATIL,
AGED ABOUT 48 YEARS,
OCC: AGRICULTURE,
R/O NAVADGERI, BIDAR – 585 401.





4. VIJAYLAXMI
W/O ANILKUMAR NAVADGI,
AGED ABOUT 45 YEARS,
OCC: HOUSEWIFE,
R/O KOTHARI BHAVAN,
KALABURAGI – 585 401.

...RESPONDENTS

(BY SRI. RAVI B. PATIL, ADVOCATE FOR R1;
SRI BASAVAKIRAN G.R., ADVOCATE FOR R2 TO R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT, ORDER OR DIRECTION SETTING ASIDE ANNEXURE-E VIZ. IMPUGNED ORDER DATED 21.02.2025 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, BIDAR, REJECTING THE IA NO.15 DATED 05.02.2025 IN O.S.NO.267/2024 AND FURTHER ALLOW SAID IA NO.15 IN O.S.NO.267/2024 ON FILE OF THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, BIDAR AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE E.S.INDIRESH

ORAL ORDER

This petition is filed by defendant No.1 in O.S. No.267/2024, assailing the order dated 21.02.2025 on I.A.No.15 on the file of Principal Senior Civil Judge and CJM, Bidar, dismissing I.A.No.15.

2. Heard the learned counsel appearing for the parties.



3. Learned counsel appearing for the petitioner contended that, the order impugned is passed without providing an opportunity to the petitioner herein and the document produced by respondent No.1/plaintiff requires registration and the payment of the stamp duty and therefore sought for interference of this Court.

4. Per contra, Sri Ravi B. Patil, learned counsel appearing for respondent No.1 submitted that, the petitioner/defendant No.1 has not filed written statement and has prolonged the matter even without producing any evidence before the Trial Court and therefore, sought for dismissal of the writ petition. It is also contended by the learned counsel appearing for respondent No.1 by referring to the prayer made in the plaint that, respondent No.1 herein has entered into Memorandum of Joint Development Agreement dated 17.06.2016 (Annexure-F) with one Sumangala Bai, who is deceased and the defendants in the suit, have consented for the aforesaid document and in that view of the matter, since the



executor of the document-Sumangala Bai is no more, it is only left for the defendants to perform the obligation as to the Joint Development Agreement at Annexure-F. In this regard, it is further argued by the learned counsel appearing for respondent No.1 that, Annexure-F is only a collateral document as to the transaction between the plaintiff and defendants and in this regard, learned counsel appearing for respondent No.1 places reliance on the judgments of the Hon'ble Supreme Court in the case of ***R. HEMALATHA Vs. KASHTHURI*** reported in ***2023 LiveLaw (SC) 304*** and in the case of ***MURUGANANDAM Vs. MUNIYANDI (DIED) THROUGH LRS.*** in ***CIVIL APPEAL NO.6543 OF 2025*** disposed of on 08.05.2025 and argued that the order passed by the Trial Court requires to be confirmed.

5. In the light of the submissions made by the learned counsel appearing for the parties, the prayer in the plaint is to direct defendant Nos.2 to 4 to give consent for change of Khatha/RTC in respect of the suit schedule



property. It is also to be noted from the Memorandum of Joint Development Agreement dated 17.06.2016 (Annexure-F), wherein the mother of the petitioner herein – Sumangala Bai, had executed the said indenture and the defendants were consenting party to the same. The mother of the petitioner - Sumangala Bai is no more. Therefore, the Memorandum of Joint Development Agreement at Annexure-F, which is only insofar as the transaction between the parties as to the development of schedule property and is only a collateral transaction and also actual sale of property in question required to be effected only by way of registered instrument, which requires to be made in due course and therefore, following the judgments of the Hon'ble Supreme Court in the aforementioned cases, I am of the view that no interference is called for in this petition.

6. Recently, Hon'ble Supreme Court in the case of **VAYYAETI SRINIVASARAO V. GAINEEDI JAGAJYOTHI**



reported in ***AIR 2026 SC 637*** at paragraphs 5.8 to 12.1
held as follows:

"5.8 *Further, Section 54 of the Act defines sale of immovable property as a transfer of ownership in exchange for a price paid or promised or part paid or part promised. A contract for sale or an agreement to sell of immovable property is a contract that sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property. By virtue of Section 47 of the Registration Act, 1908, a mere agreement to sell immovable property, which creates only a right to obtain another document conveying property, is not compulsorily registrable under Section 17 of the Registration Act, 1908. An averment of the existence of a contract for sale, whether with or without an averment of possession following upon the contract by itself, is not a relevant defence to an action for ejectment. The reason is that a mere agreement for sale does not create any interest in immovable property. If an agreement to sell or an agreement for sale does not create any interest in it, there can be no transfer of interest in the property by such a mere contract for sale. A contract for sale gives only a right to compel the*



other party to execute a sale deed in respect of the property. An agreement to sell confers no title and is not a transfer of any rights in an immovable property. Therefore, an agreement to sell per se cannot be construed as a "conveyance", which is restricted to delivery of possession or execution of a sale deed.

5.9 *In Suraj Lamp and Industries Private Limited (2) vs. State of Haryana, (2012) 1 SCC 656, this Court speaking through Raveendran, J. referred to the scheme of the Act, the Registration Act, 1908 as well as the Indian Stamp Act, 1899 (Central Act, though the provisions may be similar to those in the State Acts). Section 5 of the Act which defines transfer of property, Section 54 which defines sale and Section 53A of the Act which defines part performance as well as contract for sale as defined in Section 54 of the Act were examined. Similarly, Sections 17(1)(b) and 17(1A) of the Registration Act, 1908 and the relevant provisions and Section 27 of the Indian Stamp Act, 1899 were considered. While referring to Section 54 of the Act, the scope of an agreement to sell was considered to hold that only when there is a transfer which means to convey ownership and would entail the transfer of title, would there be a requirement of registration of the document as a*



non- testamentary instrument within the meaning of Section 17(1)(b) of the Registration Act, 1908? Thus, only when there is a sale deed, would there be any creation of an interest in the property including transfer of title and the same would imply a conveyance? In paragraphs 18 and 19 of the said judgment, it was observed as under:

"18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not



create any interest or charge on its subject-matter."

5.10 *Therefore, a contract for sale (agreement to sell) would not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53A of the Act). Thus, an agreement to sell or a contract for sale with or without possession is not a conveyance deed. Therefore, a sale of immovable property can only be made by a registered instrument and that an agreement of sale does not create any interest or charge on its subject matter.*

5.11 *Section 53A of the Act reads as under:*

"53A. Part performance.—Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,



and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefore by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

5.12 *Section 53A applies to a person who contracts to transfer immovable property in writing. If the proposed transferee in the agreement has taken possession of the property or he continues in possession thereof being already in possession in part performance of the contract and has done some act in furtherance of the contract and transferee has performed or is willing to perform his part of the contract, the transferor shall be debarred from enforcing any right in respect of the*



property vide Shashi Kapila vs. RP Ashwin, (2002) 1 SCC 583.

5.13 *In a case where a person claims benefit of part performance, evidence that he was inducted into possession for the first time subsequent to the contract, would be a strong piece of evidence regarding the contract and of possession changing hands pursuant to the contract. Continuous possession of a tenant in the suit property even after entering into the sale agreements would not by itself amount to a part-performance, putting the tenant in possession of the suit properties pursuant to the sale agreements vide Chinnaraj vs. Sheik Davood Nachair, AIR 2003 Mad 89.*

6. *However, just like in many states, amendments were made to the A.P. Stamp Act whereby agreements to sell acknowledging delivery of possession or power of attorneys authorising the attorney "to sell any immovable property" along with delivery of possession were charged with the same duty as leviable on a conveyance deed. In the instant case, Article 47A of Schedule IA of the A.P. Stamp Act reads as under:*

"47A. Sale as defined in Section 54 of the Transfer of Property Act, 1882 - (a) in respect of	



<i>property situated in any local area comprised in a Municipal Corporation-</i>	
<i>(i) where the amount or value of the consideration for such sale as set forth in the instrument or the market value of the property which is the subject matter of the sale whichever is higher but does not exceed Rs.1,000.</i>	<i>*Eight rupees for every one hundred rupees or part thereof.</i>
<i>(ii) where it exceeds Rs.1,000.</i>	<i>The same duty as under clause (i) for the first Rs.1,000 and for every Rs.500 or part thereof in excess of Rs.1,000, forty rupees.</i>
<i>(b) In respect of property situated in any local area comprised in the Selection Grade or in Special Grade Municipality-</i>	
<i>(i) where the amount or value of the consideration for such sale as set forth in the instrument or the market value of the property which is the subject matter of the sale, whichever is higher, but does not exceed Rs.1,000;</i>	<i>Seven rupees for every one hundred rupees for part thereof.</i>
<i>(ii) where if exceeds Rs.1,000.</i>	<i>The same duty as under clause (i) for the first Rs.1,000</i>



	<i>and for every Rs.500 or part thereof in excess of Rs.1,000, Thirty five rupees.</i>
<i>c) Where the property is situated in any area other than those mentioned in clauses (a) and (b)– (i) where the amount or value of the consideration for such sale as set forth in the instrument or the market value of the property which is the subject matter of the sale, whichever is higher, but does not exceed Rs.1,000/-</i>	<i>*Six rupees for every one hundred rupees or part thereof.</i>
<i>(ii) where it exceeds Rs.1,000.</i>	<i>The same duty as under clause (i) for the first Rs.1,000 and for every Rs.500 or part thereof in excess of Rs.1,000, Thirty rupees.</i>
<i>(d) If relating to a multi-unit house or unit of apartment/ flat/ portion of a multi-storied building or part of such structure to which the provisions of Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987, apply :</i>	



<i>(i) where the value does not exceed Rs.2,00,000/-</i>	<i>Rupees Twelve Thousand.</i>
<i>(ii) where it exceeds Rs.2,00,000/- but does not exceed Rs.3,50,000/</i>	<i>Rupees Twelve Thousand plus 4% on the value above Rs.2,00,000/-</i>
<i>(iii) where it exceeds Rs.3,50,000/- but does not exceed Rs.7,00,000/</i>	<i>Rupees Eighteen Thousand plus 6% on the value above Rs.3,50,000/-</i>
<i>(iv) where it exceeds Rs.7,00,000/-</i>	<i>Rupees Thirty Nine Thousand plus 8% on the value above Rs.7,00,000/-</i>
<i>Explanation I:- An agreement to sell followed by or evidencing delivery of possession of the property agreed to be sold shall be chargeable as a "sale" under this Article: Provided that, where subsequently a sale deed is executed in pursuance of an agreement of sale as aforesaid or in pursuance of an agreement referred to in clause (b) of Article 6, the stamp duty, if any, already paid or recovered on the agreement of sale shall be adjusted towards to total duty leviable on the sale deed. Interim order granted earlier is extended till next date of hearing.</i>	



6.1 *Explanation I to Article 47A is relevant to the instant case. The said Explanation states that if an agreement to sell is followed by or evidences delivery of possession of the property agreed to be sold, then the same shall be chargeable as "sale" under the said Article. The proviso states that where, subsequently a sale deed is executed in pursuance of an agreement of sale, the stamp duty if any already paid or recovered on the agreement of sale shall be adjusted towards the total duty leviable on the sale deed. Therefore, it is necessary to interpret the agreement to sell in the instant case in light of the aforesaid Explanation I to Article 47A of Schedule I-A of the A.P. Stamp Act.*

7. *In Gafoor, an agreement to sell was executed with the tenant in possession of the schedule property therein, wherein it was contemplated that the purchaser (the tenant) can retain the possession and further was authorised to collect rents for himself by subletting the premises. It was held that in view of the aforesaid express term in the agreement to sell, the jural relationship between the parties had changed from that of landlord-tenant to one of vendor and vendee. Even though the parties remained in the same position vis-à-vis the schedule property therein, the nature of their relationship was altered. The tenant had*



transformed into a purchaser even though there was no delivery of possession to the landlord and again re- delivery to the same tenant as a purchaser. The factum of change of relationship led to an inference of change in the nature of possession. This is a case whereby through an implied surrender, there was determination of the lease or tenancy. Therefore, the relationship of landlord and tenant had ended and the creation of a relationship of vendor and purchaser had commenced on the execution of the agreement to sell. But, the High Court held that the Explanation I to Article 47A of Schedule I-A of the A.P. Stamp Act was not applicable.

8. *In Ratnamala, a Division Bench of the High Court of Andhra Pradesh interpreted Explanation I to Article 47A of Schedule I-A of the A.P. Stamp Act on a reference made to it by a learned Single Judge of that Court, differing with the view taken by another learned Single Judge in Gafoor. In paragraph 9 of the judgment in Ratnamala while considering Explanation I to Article 47A of Schedule I-A of the A.P. Stamp Act, it was observed as under:*

"... 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 'sale' under the said Explanation."

(underlining by us)

8.1 *In Ratnamala, it was observed that the judgment in Gafoor was not the correct law by observing as follows:*

"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.”

8.2 *In our view, the Division Bench of the High Court was right in overruling the judgment in Gafoor. This is because the facts of the case and the recitals of the agreement therein in the latter judgment were not appreciated in their proper perspective.*

8.3 *To recollect the facts in Gafoor, the agreement to sell had a clause which stated that the purchaser who was the lessee can retain and collect rent from the schedule property after the agreement of sale of the property and the vendor will, in no way, interfere or object to the same even if the purchaser sub-lets the premises and collects rent. This recital meant that, (i) the tenant of the building was specifically permitted to retain possession and collect rent from the schedule property subsequent to the execution of the agreement and (ii) he was also authorised to*



sub-let the premises. (iii) Apart from that it was specifically mentioned in the agreement that the vendee, who was the tenant of the building, would not have to pay monthly rent subsequent to the agreement of sale. Thus, the position of the tenant and his relationship with his landlord had metamorphosed into that of vendee and vendor. The possession of the property continued with the tenant or lessee but not in that capacity but as a vendee who had got possession pursuant to the agreement to sell. Therefore, there was deemed conveyance and it was interpreted to come within the scope and ambit of the Explanation I to Article 47A of Schedule I-A of the A.P. Stamp Act. In our view, this interpretation in Ratnamala about Gafoor was just and proper inasmuch as there was an implied surrender of the tenancy and a cessation of the landlord-tenant relationship and pursuant to the agreement therein, the relationship was one of vendor and vendee. These recitals in the agreement by the vendor revealed that the plaintiff therein i.e., the vendee who had filed the suit for specific performance was already in possession of the building as a tenant and as such the question of delivering of physical possession of the property under the agreement did not arise. It was held that the delivery of possession after the execution of the agreement was notional on an implied surrender of



tenancy as the plaintiff therein was in actual possession of the property as a tenant even prior to the agreement. Hence, Explanation I to Article 47A of Schedule I-A of the A.P. Stamp Act was rightly applicable.

9. *Ramesh Mishrimal is a judgment of this Court. The facts of the said case were that the Trial Court by its order had allowed the application filed by the respondent therein and impounded the document (Ex. 30) i.e. Agreement to Sell dated 03.09.2003 in respect of a house property and an adjoining room 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. This order was passed in a suit for specific performance of the agreement to sell dated 03.09.2003 and other reliefs. The respondents therein had filed the 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 a place called Khed 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 therein by contending that the agreement to sell was not an agreement of conveyance and hence, no stamp*



duty was payable on the same as a conveyance. Reference was made to Explanation I to Article 25 of the Bombay Stamp Act, 1958. The said Explanation presupposes an immediate or agreed transfer of possession under the agreement to sell itself but when the possession remains with the seller until the sale deed is executed, the agreement to sell cannot be equated with the conveyance and no stamp duty can be levied as such. In the said case, the agreement to sell dated 03.09.2003 explicitly stated that the suit property was in the possession of the appellant therein in the capacity of a tenant and this possession was independent of the sale transaction. The extension agreement dated 28.7.2004 entered into between the parties also reiterated the same position.

9.1 *The appellant therein had contended that three conditions were not satisfied and hence Explanation I to Article 25 of the Schedule I to the Bombay Stamp Act, 1958 did not apply. They were namely, (i) no possession was transferred under the agreement to sell; (ii) no agreement to transfer possession existed until the sale deed was executed; and (iii) the possession of the appellant remained that of a tenant, which was legally distinct and independent. Hence, no stamp duty*



could be levied on the agreement to sell dated 03.09.2003 as a conveyance.

9.2 *Per contra, the respondent therein had submitted that the said Explanation was applicable and the agreement to sell was to be treated as a conveyance. In support of the same, reliance was placed on two decisions of this Court in Veena Hasmukh Jain vs. State of Maharashtra, (1999) 5 SCC 725, ("Veena Hasmukh") and Shyamsundar Radheshyam Agrawal vs. Pushpabai Nilkanth Patil, (2024) 10 SCC 324 ("Shyamsundar Radheshyam") wherein it was held by this Court that the stamp duty is leviable only on the document and not on the transaction.*

9.3 *At this stage itself, it could be observed that having regard to the specific nature of recitals in the respective agreements to sell considered by this Court in the aforesaid two cases, it was held that there was in fact a deemed conveyance and hence, the requisite stamp duty in terms of Explanation I to Article 25 of Schedule I to the Bombay Stamp Act, 1958 was applicable.*

9.4 *The significant facts in Ramesh Mishrimal were that there was a civil suit filed by the landlord against the tenant- vendee seeking eviction and possession of the schedule premises. This Court*



considered the question, whether, the appellant was liable to pay the stamp duty and penalty on the agreement to sell dated 03.09.2003 allegedly executed between the appellant and mother of respondent no.1 therein in respect of the suit property. It was the specific case of the appellant therein that the agreement to sell clearly stated that the possession of the appellant was on rental basis and the same would not form part of the sale transaction. Therefore, the question of treating the agreement a deemed conveyance did not arise. This Court held that the suit property was occupied by the appellant therein on a rental basis and there was a clause that the transaction was to take place later by execution of the sale deed. This Court noted the following clause in the agreement, namely, "this property is in their 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."

9.5 *This Court observed that the agreement to sell included a clause stating that the physical possession had already been handed over to the appellant. Regardless of the basis of such possession, by applying the Explanation to Article 25 of Schedule I of the Bombay Stamp Act, 1958*



this Court held that there was a conveyance within its meaning and hence dismissed the appeal and directed that until duty and penalty was satisfied under Section 34 of the Bombay Stamp Act, 1958, the document impounded could not be used in evidence. This Court invoked Section 53A of the Act to hold that the tenant therein had acquired the possessory right and therefore there was a conveyance or sale within the meaning of Explanation I to Article 25 to Schedule I of the Bombay Stamp Act, 1958. This Court observed that the vendee therein was already in possession of the property to be sold to him and continued to do so in part performance of the contract as the said possession was recognised under the agreement and therefore there was a sale or conveyance.

9.6 *The judgment of this Court in Ramesh Mishrimal has to be distinguished on two aspects. Firstly, on the basis of the text of Explanation I under the A.P. Stamp Act and Bombay Stamp Act, 1958. Secondly, in Ramesh Mishrimal this Court has invoked Section 53A of the Act which is not being done so in the instant case.*

10. *Explanation I to Article 25 of Schedule I of the Bombay Stamp Act, 1958 reads as under:*



"Explanation 1.— 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."

However, in the present case, Explanation I to Article 47A of Schedule I-A to the A.P. Stamp Act reads as under:

"An Agreement to Sell followed by or evidencing delivery of possession of the property



agreed to be sold shall be chargeable as a sale under this Article."

10.1 *The phrases in the aforesaid two Explanations could be highlighted. Under Explanation I to Article 47A of Schedule I-A to the A.P. Stamp Act, the words used are "followed by or evidencing delivery of possession of the property agreed to be sold" whereas in Explanation I of the Bombay Stamp Act, 1958, the words are "the possession of any movable property is transferred or agreed to be transferred to the purchaser before the execution, or at any time of execution, or after execution of such instrument". The differentiation in the wordings of the two Explanations reveal that they are not identical and the intention of the respective legislations are dissimilar. Under the A.P. Stamp Act, the delivery of possession of the property must follow the execution of the agreement to sell or if delivery of property has been made prior to the agreement to sell then it should be evidenced in the agreement to sell by a recital to that effect. However, if the possession of the property by the vendee does not have any nexus to the agreement to sell, as in the present case where the possession of the property was with the appellant as a tenant for nearly five decades and the respondent vendor has decided to sell the same*



to the appellant vendee then, the said possession is not relatable to the agreement to sell. In such a case, neither is the sale within the meaning of Explanation I to Article 47A of Schedule I-A to the A.P. Stamp Act nor is it a case of deemed conveyance.

10.2 *It is also necessary to observe that where pursuant to an agreement to sell, possession is handed over to the vendee then the protection under Section 53A of the Act would apply and the possession of the vendee would be protected subject to the conditions mentioned in the said provision including registration of the instrument and therefore, the necessity to pay the requisite stamp duty. However, in the present case, Section 53A of the Act does not apply as the possession was not handed over to the appellant herein in relation to the agreement to sell dated 14.10.2009. In fact, the appellant was in possession of the subject property for almost fifty years prior to the said agreement to sell. This is in fact recorded in the agreement to sell.*

10.3 *In the circumstances, it is necessary to distinguish the ratio of the judgment in Ramesh Mishrimal as in the present case, Section 53A will not apply as has been invoked in the aforesaid*



case. Though in both the cases, the vendee on the date of the agreement was in possession of the property as a tenant, since Section 53A of the Act has been applied by this Court in Ramesh Mishrimal, we restrict the said judgment only to the facts of that case. This is because in the instant case, there is an order of eviction against the appellant here subsequent to the execution of agreement to sell which clearly proves that the tenancy continued in respect of the suit schedule property in the present case even subsequent to the execution of the agreement to sell dated 14.10.2009. Therefore, Section 53A of the Act is not applicable in the present case.

10.4 *In Veena Hasmukh, the question raised for consideration was as to the duty payable under the Bombay Stamp Act, 1958 on an agreement for sale of flats covered by the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as "the MOF Act") and the Maharashtra Apartment Ownership Act, 1971. The contention of the appellant therein was that she was not liable for payment of duty under Entry 25 of Schedule I of the Bombay Stamp Act, 1958; that the agreement for sale had been executed under Section 4 of the MOF Act and in terms of the said*



provision, it was mandatory to register the same under Section 17(1) of the Indian Registration Act, 1908; that the provisions of the Bombay Stamp Act, 1958 were not applicable and consequently, proceedings under Section 32-A of the Bombay Stamp Act, 1958 could not have been initiated. Hence, it was contended that the action of impounding the document was illegal. This Court noticed that in paragraph 7 of the agreement, it was stated that subject to the purchaser making full payment of all amounts due and payable by him under the agreement and subject to a force majeure, possession of the said premises was expected to be delivered by the builders to the purchasers on or before 30.11.1987. The agreement was dated 08.10.1987 and the possession was to handed over by 30.11.1987. Paras 14 and 15 of the agreement read as follows:

"14. Nothing contained in these presents is intended to be nor shall it be deemed to be a grant, demise, conveyance, assignment or transfer in law of the said property premises or the building thereon, or any part thereof to the purchaser by the builders.

15. The purchaser shall not let, sub-let, sell, transfer, assign or otherwise deal with or dispose of the said premises or his interest or benefit under



this agreement till all the dues payable by him to the builders under this agreement have been fully paid up and until previous consent in writing of the builders in that behalf is obtained by him.” The aforesaid terms were construed by this Court to hold that the agreement entered into merely provided for sale of an immovable property and there was also a specific time within which possession had to be delivered (which was a few days after the execution of the agreement to sell). It was therefore held that the document in question fell within the scope of Explanation I to Article 25 of Schedule I to the Bombay Stamp Act, 1958 and the appeal filed by the appellant therein was dismissed.

10.5 *In Shyamsundar Radheshyam, there were six documents or instruments which were held to be different transactions between different vendors and different purchasers. The question involved was whether the appellant therein was liable to pay stamp duty or penalty on the agreements to sell executed prior to the sale deed executed in their favour in respect of two properties. This Court observed that in order to determine the stamp duty that is chargeable upon an instrument, the legal rule is that the real and true meaning of the instrument is to be determined by ascertaining the intention of the parties from the*



contents and the language employed in the whole instrument and the description or the nomenclature given to the instrument by the parties is immaterial. This Court noted that the agreement to sell consisted of a clause whereby the possession was handed over to the purchaser satisfying the requirement to treat the instrument as a conveyance and what remained was only the formality of execution of the sale deed. Therefore, it was concluded that the agreement to sell necessitated payment of stamp duty as per the Explanation I of Article 25 of Schedule I of Bombay Stamp Act, 1958. It was further held that the subsequent sale deed executed could not be construed as the principal transaction and that the agreement to sell was the principal conveyance as per the aforesaid provision.

10.6 *Therefore, the judgments of this Court in Veena Hasmukh and Shyamsundar Radheshyam have no bearing having regard to the facts of the present case.*

11. *On a conspectus reading of the recital in the agreement to sell dated 14.10.2009 with the order dated 03.01.2017 passed in RCC No.4 of 2013, it becomes clear that the appellant herein was a tenant and as a tenant, he entered into an agreement to buy the schedule property from the*



landlord. The respondent- landlord did not treat the possession of the suit schedule property by the appellant-tenant pursuant to the agreement to sell dated 14.10.2009 as a vendee. In fact, long prior to that agreement to sell (around fifty years), the appellant came into possession of the suit schedule property as a tenant. Therefore, this is not a case where pursuant to the agreement to sell dated 14.10.2009 or in relation to it, or prior to the agreement to sell possession of the suit schedule property has been handed over to the appellant herein as a vendee.

11.1 *Thus, there is no express or implied surrender of the tenancy by the appellant in favour of the landlord vendor. The tenancy in fact continued and the appellant has also suffered an order of eviction as a tenant vide order dated 03.01.2017. Consequently, it is held that there is no "deemed conveyance" within the meaning of Explanation I to Article 47A of the A.P. Stamp Act, as the agreement to sell in the instant case does not come within the scope and ambit of the Explanation thereto. Therefore, neither there being transfer of title in the suit schedule property nor there being any deemed conveyance from the respondent to the appellant herein, the stamp duty*



payable on the nature of the transaction being an agreement to sell simplicitor is just and proper.

11.2 *The facts of the case in Gafoor can be compared to the present case, as it was rightly overruled by the Division Bench of the Andhra Pradesh High Court in Ratnamala, as the findings in the said case were incorrect wherein, it had been expressly mentioned in the agreement to sell that the possession of the schedule property was with the appellant therein as a tenant. Therefore, the appellant therein also did not come into possession of the property in relation to the agreement to sell but was already in possession of the property as a tenant. But, there was surrender within the meaning of Section 111 of the Act so as to determine the lease or tenancy. On the other hand, pursuant to the agreement to sell in the present case, there was no change in the status of the appellant herein inasmuch as he continued to be a tenant and did not acquire possession under the agreement to sell. The appellant herein also suffered an eviction order as a tenant of the schedule property. Therefore, the appellant did not acquire possession of the property prior to the agreement to sell dated 14.10.2009 in relation thereto or at the time of its execution or subsequent thereto. In other words, the possession*



of the schedule property by the appellant herein was not following the agreement to sell nor was delivery of possession pursuant to the execution of agreement to sell as stipulated under the A.P. Stamp Act. It is only when the possession is acquired in relation to the execution of the agreement to sell, that it would be a deemed conveyance and stamp duty has to be levied as conveyance.

12. *However, in the instant case, the agreement to sell dated 14.10.2009 expressly states that the appellant was in possession of the schedule property as a tenant for fifty years and in fact an order of eviction was also passed against the appellant. Therefore, the appellant did not come into possession of the schedule property in relation to the execution of the agreement to sell dated 14.10.2009 but almost fifty years prior thereto as a tenant and not as a vendee. In fact, the existing tenant sought to purchase the schedule property but there was no express or implied surrender of tenancy so as to bring about determination of the tenancy or lease by the appellant herein. Hence, the judgment of this Court in Ramesh Mishrimal is not applicable to the facts of the present case.*



12.1 *The Trial Court failed to notice this aspect of the matter and simply directed the appellant herein to pay the stamp duty as if it were a conveyance or sale and there was a transfer of title from the respondent to the appellant herein. The High Court in fact misdirected itself in assuming that there was in fact a deemed conveyance between the respondent and the appellant herein. The appellant herein is not liable to pay any additional duty and penalty on the said instrument and neither is the said instrument liable to be impounded for the purpose of payment of duty and penalty. Hence, we find that the High Court was not right in sustaining the order of the Trial Court. Consequently, both the impugned orders of the High Court as well as the order of the Trial Court are set aside. The appeals are allowed in the aforesaid terms."*

Following the declaration of law made by the Hon'ble Supreme Court in the aforementioned case, I am of the view that as there is no transfer of title in favour of the plaintiff, the observation made by the Trial Court in dismissing the application is just and proper.



7. Be that as it may, the defendants have not filed written statement, nor adduced any evidence in the matter and in that view of the matter, taking into consideration the order sheet of the Trial Court produced by the respondents herein, I am of the view that no interference is called for in this petition. Accordingly, the writ petition is ***dismissed.***

8. However, the Trial Court is directed to dispose of the suit at the earliest.

Sd/-
(E.S.INDIRESH)
JUDGE

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