



2024 INSC 730

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10804 OF 2024
(Arising out of SLP (C) No.5843 of 2021)

SHYAMSUNDAR RADHESHYAM AGRAWAL & ANR. ...APPELLANT(S)

VERSUS

PUSHPABAI NILKANTH PATIL & ORS. ...RESPONDENT(S)

J U D G M E N T

R.MAHADEVAN, J.

Leave granted.

2. This appeal is filed assailing the final order dated 03.03.2021 passed by the High Court of Judicature at Bombay (hereinafter shortly referred to as "the High Court") in Writ Petition No.4695 of 2017, by which, the High Court has dismissed the said writ petition, thereby affirming the order dated 26.10.2016 passed by the Court of 4th Joint Civil Judge (Senior Division), Thane, (hereinafter shortly referred to as "the trial Court") in allowing the application filed by the Defendant No.46 for impounding the six documents produced by the appellants herein.

3. Originally, the appellants instituted a suit in Special Civil Suit No.200 of 2008 seeking declaration and injunction. Denying the plaint averments, the defendants filed their written statements. Thereafter, the Defendant No.46 took out an application under Sections 33, 34 & 37 of the Maharashtra Stamp Act, 1958 r/w Section 17 of the Registration Act, to impound the six original agreements for sale viz., Exh.145/3 dated 20.07.1994, Exh.145/9 dated 20.07.1994, Exh.145/15 dated 12.10.1994, Exh.145/19 dated 12.10.1994, Exh.145/23 dated 27.04.2006 and Exh.145/25 dated 19.09.2004 produced by the appellants, so as to get them registered, on the premise that the said documents include a clause that the physical possession of the properties mentioned therein, was transferred to the purchasers; however, they were not duly stamped; and hence, the documents require the payment of stamp duty of the conveyance. By order dated 26.10.2016, the trial Court allowed the said application, thereby impounding the documents and directing to send the same to the Collector of Stamp, Thane, for adjudication of stamp duty and penalty, if any, payable by the appellants. Aggrieved by the same, the appellants herein filed the aforesaid writ petition, which was dismissed by the High Court, by the order impugned in this appeal.

4. Referring to Section 4 of the Maharashtra Stamp Act, 1958 (hereinafter shortly referred to as “the Act”), the learned counsel appearing on behalf of the appellants contended that the agreements to sell in relation to the same immovable properties ultimately resulted into a sale deed in favour of the

appellants and the said sale deed was also duly registered, upon payment of the required stamp duty and therefore, the prior agreements to sell are not required to be registered and stamped. Further, one of the agreements in respect of 2.550 sq. meters of land was executed in favour of Mira Bhayandar Municipal Corporation and hence, no separate stamp duty is required to be paid by the appellants. However, misinterpreting the said provision, the trial Court allowed the application filed for impounding the documents and directed to send the same to the Collector for adjudication of stamp duty and penalty, which was also erroneously affirmed by the High Court.

5. Per contra, the learned counsel appearing on behalf of the respondents submitted that on a detailed analysis of the agreements to sell, wherein, there was a specific clause about the transfer of physical possession to the purchasers therein, the courts below have rightly allowed the application filed for impounding these documents and, therefore, the same need not be interfered with by this Court.

6. We have heard the learned counsel appearing for the respective parties and perused the material on record, more particularly, the documents in question.

7. The issue involved herein is, whether the appellants are liable to pay stamp duty and penalty on the agreements to sell executed prior to the sale deed executed in their favour, in respect of two properties viz., (i) S.No.165/4

admeasuring 2,550 sq. mtrs. and (ii) S.No.208/3 admeasuring 860 sq. mtrs. and S.No.208/4 admeasuring ,5650 sq. mtrs.

8. 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.

9. According to the appellants, the sale deed having been executed in relation to the same immovable properties and stamp duty having been paid, the earlier agreements to sell which are part and parcel of the same transaction, got merged with the said sale deed and hence, separate stamp duty is not required to be paid on the earlier agreements to sell. To buttress the same, reliance was placed on Section 4 of the Act, which is quoted below for ready reference:

“4. Several Instruments used in single transaction of development agreement, sale, mortgage or settlement:

1) Where, in the case of any development agreement, sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule –I for the conveyance, development agreement, mortgage or settlement, and each of the other instruments shall be chargeable with a duty of one hundred rupees instead of the duty (if any) prescribed for it in that Schedule.

2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of sub-section (1), be deemed to be the principal instrument.

3) If the parties fail to determine the principal instrument between themselves, then the officer before whom the instrument is produced may, for the purpose of this section, determine the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.”

10. The aforesaid provision, especially, Section 4(1), makes it clear that where several instruments are executed for completing a transaction, the principal instrument alone shall be chargeable with duty prescribed in Schedule I. The proviso makes it clear that the duty chargeable on the instrument so determined shall be the highest duty which could be chargeable in respect of any of the said instruments forming part of the same transaction. Each of the other instruments is chargeable with a fixed duty. That apart, sub-section (2) also gives an opportunity to the parties to determine for themselves, which of the instruments shall be deemed to be the principal instrument. We shall therefore look into the documents in question and determine whether they are required to be stamped and registered.

11. The documents sought to be impounded at the instance of one of the defendants are:

(i) Exh.145/3 dated 20.07.1994 – agreement for sale-cum-development executed by Vinayak Kashinath Gharat and others in favour of Naresh N.Jain, Sunita P.Jain and Kalawati N. Jain, which is on the stamp paper of Rs.20/-;

(ii) Exh.145/9 dated 20.07.1994 – agreement for sale-cum- development executed by Vinayak Kashinath Gharat and others in favour of Naresh N. Jain, Sunita P. Jain and Kalawati N. Jain, which is on the stamp paper of Rs.20/-;

(iii) Exh.145/15 dated 12.10.1994 executed by Naresh N. Jain and others in favour of M/s.Chedda Enterprises, which is on the stamp paper of Rs.20/-;

(iv) Exh.145/19 dated 12.10.1994 – agreement for sale-cum-development executed by Naresh N. Jain and others in favour of M/s.Chedda Enterprises, which is on the stamp paper of Rs.20/-;

(v) Exh.145/23 dated 27.04.2006 – agreement for sale executed by M/s.Sunshine Builders and Developers in favour of the appellants, which is on the stamp paper of Rs.100/-; and

(vi) Exh.145/25 dated 19.09.2004 – agreement for development -cum-sale executed by M/s.Sunshine Builders and Developers in favour of the appellants, which is on the stamp paper of Rs.100/-.

12. On a reading of all these six documents, it could be seen that the instruments /documents were not forming part of a single transaction between the same parties and they were different transactions between different vendors and purchasers. Further, for several documents to form part of a single transaction, there must be a transaction in furtherance of which several other documents are executed to complete that transaction and then it becomes imperative to charge stamp duty on the principal instrument/document. The

language used in the provision is very clear, whereby the stamp duty is on the instrument and not on the transaction. It will be useful to refer to Explanation 1 to Article 25 of Schedule I of the Maharashtra Stamp Act, which would read 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.”

13. It will be apropos to mention here that the agreements were not only between different parties but also were executed during different periods, by which time the Explanation I to Article 25 of Schedule I underwent a change. The words *“without executing the conveyance in respect thereof”* was deleted with effect from 17.08.1994 by Maharashtra Act 38 of 1994. The above Explanation I makes it lucid that an agreement for sale is to be treated as a

“conveyance” if either possession is handed over immediately or if it is agreed to be handed over within a particular time. A reading of the above Explanation I along with Section 4 makes it clear that the duty is levied only on the instrument and not on the transaction. This court, 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 document of conveyance, liable to stamp duty held as follows:

“4. On examination of these terms, the High Court took the view that the agreement in question could be construed to be a conveyance falling under Section 2(g) of the Bombay Stamp Act inasmuch as the right, title and interest in the flat stands transferred in favour of the purchaser on payment of instalments as provided therein.

5. The High Court also examined the scope of Explanation I to Article 25 of Schedule I of the Bombay Stamp Act and held that the same was attracted to the case. Under the agreement, there is an obligation to hand over the possession even before execution of a conveyance and, therefore, it was a “conveyance” for the purpose of duty payable under the Bombay Stamp Act and there was no obligation in the agreement to enter into a conveyance at a later stage and clearly it was a case which attracted the said Explanation. Handing over of the possession on the very date of execution was not relevant for determining the nature of the document. On that basis, the High Court upheld the stand taken by the State in the matter of levy of duty. Other questions raised in the writ petition are not the subject-matter of these appeals and, therefore, we do not advert to those questions. On the conclusion reached by the High Court, the writ petition stood dismissed.

6. The learned counsel appearing for the appellants urged before us that the conclusion reached by the High Court either on the question of construction

of the agreement amounting to a “conveyance” or on the applicability of Explanation I to Article 25 of Schedule I to the Bombay Stamp Act is incorrect. It was submitted that the agreement in question had been executed only in terms of Section 4 of the MOF Act and that under the scheme of the Act, a deed of conveyance had to be drawn in terms of Section 11 thereof. Therefore, it was submitted that the document executed in terms of Section 4 of the MOF Act cannot be construed to be a “conveyance”. He also submitted that under the same Act, duty can be levied only on the “instrument” and not on any “transaction”. Here, in the present case, by Explanation I to Article 25 of Schedule I, what has been done is to provide for levy of duty on a “transaction”, namely, handing over possession and not on the “instrument” as such and hence the provision is ultra vires the Constitution.

7. Under Entry 44 of List III-Concurrent List of the Seventh Schedule to the Constitution, any State as well as the Central Government can levy stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty and in respect of such instruments mentioned in Entry 91 of List I-Union List of the Seventh Schedule to the Constitution. A duty is leviable under Section 3 of the Bombay Stamp Act which indicates the instruments executed in the State or those outside the State but brought into the State for the first time relating to any property situate or to any matter or thing done or to be done in the State shall be chargeable to stamp duty prescribed under the Bombay Stamp Act. Article 25 of Schedule I refers to conveyance and the amount of conveyance as sought to be explained by the Explanation. Explanation I to Article 25 of Schedule I to the Bombay Stamp Act reads as follows:

“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 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.”

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.”

14. 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 53A 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 parties to determine as to which of the document shall be principal document. 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. 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 by 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.

15. Taking note of the facts and circumstances of the case and legal position, the trial Court rightly observed that the subsequent sale deed cannot be construed as a principal transaction and the agreements to sell would be treated as the principal conveyance as per Explanation I of Article 25 of Schedule-I of the Act and impounded all these documents and directed to send the same to the Collector for adjudication of stamp duty and penalty. After, a detailed analysis, the High Court held that no case for interference was made out by the appellants, which, we affirm, to be correct.

16. In addition, we wish to further record that the second proviso to Article 25 only states that if the stamp duty is already paid or recovered on the agreement to sale, then the same shall be deducted while computing the stamp duty payable when the sale deed is executed; the proviso does not contemplate a situation similar to this case, where the document ought to have been registered with payment of stamp duty on the agreement for sale initially and only the balance, on the deed of sale after deduction of the duty already paid ought to have been collected. Since, the state cannot recover by way of stamp duty in excess of what it is entitled to, 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 for sale till the date of payment of stamp duty. Needless to say, that until the defect is cured by satisfying the requirements under Section 34, the documents impounded cannot also be used in evidence.

17. In view thereof, we find no reason to interfere with the orders passed by the Courts below. Accordingly, this appeal fails and is dismissed. Pending application(s), if any, shall stand closed.

.....J
[Pankaj Mithal]

.....J
[R.Mahadevan]

NEW DELHI
SEPTEMBER 24, 2024.