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Agreement to sell granting possession of immovable property must be treated as a conveyance for stamp duty purposes

Recently the Hon'ble Supreme Court of India ("**Supreme Court**"), while deciding the case of **Mr. Ramesh Mishrimal Jain vs. Mr. Avinash Vishwanath Patne and Niranjan Prakash Dali**,¹ held that an agreement to sell granting possession of property would be deemed to be a conveyance and would attract stamp duty as applicable to a conveyance under Explanation I to Article 25 ("**the Explanation**") of the Maharashtra Stamp Act, 1958 ("**Maharashtra Stamp Act**").

Brief facts

1. Respondent no. 1 along with his mother were joint owners of the property situated at Paiki Village Kasaba Khed, Khed Taluk, within the limits of Khed Municipal Council, Maharashtra ("**Suit Property**"). The appellant was a tenant in the Suit Property.
2. By and under an unregistered Agreement to Sell dated September 3, 2003 ("**said Agreement**") executed on a stamp paper of INR 50 (Indian Rupees fifty), respondent No. 1's mother, agreed to sell the Suit Property to the appellant for a consideration of INR 11,00,000 (Indian Rupees eleven lakh) on the terms and conditions mentioned therein. The said Agreement provided the timeline within which the sale deed was to be executed, upon which the possession would be handed over on ownership basis. The same was also reaffirmed by an extension agreement dated July 28, 2004. Pursuant to the demise of respondent no.1's mother, respondent no 1 became the absolute owner of the Suit Property. The appellant filed a suit² for specific performance of the said Agreement before the Court of Civil Judge, Senior Division, Ratnagiri ("**Trial Court**").
3. The respondents filed an application under Section 34 of the Maharashtra Stamp Act before the Trial Court for impounding the said Agreement on the ground that the said Agreement was not sufficiently stamped. The appellant who was already in possession of the Suit Property in the capacity as a tenant, claimed that the said Agreement did not amount to a conveyance and that no stamp duty was payable at that stage. The appellant argued that his occupation of the Suit Property as a tenant was not part of the sale transaction. The appellant further claimed that after completion of the sale transaction, the possession of the Suit Property would be given to the appellant on ownership basis.

¹ 2025 INSC 213 (Civil Appeal No. 2549 of 2025)

² Special Civil Suit No. 65 of 2012

4. The Trial Court, *vide* order dated August 3, 2015 (“**Trial Court Order**”) allowed the application, impounded the said Agreement and directed that the same be sent to the Register of Stamps for recovery of deficit stamp duty. The Appellant’s contention that no stamp duty was required as it was not a conveyance was rejected.
5. The appellant challenged the Trial Court’s Order, but the Bombay High Court dismissed the writ petition³, upholding the impounding of the said Agreement and stamp duty recovery. The Bombay High Court ruled that since the appellant remained in possession of the Suit Property, the said Agreement was ‘deemed conveyance’ under the Explanation of the Maharashtra Stamp Act.
6. The order of Bombay High Court came to be challenged by the appellant before the Supreme Court.

Issue

The Supreme Court in the civil appeal framed the following question of law:

“Whether the Appellant is liable to pay stamp duty and penalty on the Agreement to Sell dated 3rd September, 2003 in respect of the Suit Property”.

Finding and analysis

1. The legal position that stamp duty is applicable on the instrument rather than the transaction was re-affirmed by the Supreme Court. Thus, even if the actual transfer of ownership occurs later, the agreement itself can attract stamp if possession has been given.
2. The Explanation provides that an agreement to sell an immovable property is considered as a conveyance, if under such agreement possession is transferred or agreed to be transferred.
3. The Supreme Court referred to its judgments in the matters of *Veena Hasमुख Jain vs. State of Maharashtra*⁴, and *Shyamsundar Radheshyam Agarwal vs. Pushpabai Nilkanth Patil*⁵, whereunder it had held that in case of an agreement to sell immovable property if possession is transferred at any time without executing the conveyance such an instrument is deemed to be a ‘conveyance’.
4. The Supreme Court stated that the intent in equating the agreement at par with a conveyance, was with an object to realise the revenue at the earliest point of time. It further held that since possession was given to the appellant before the said Agreement, possessory rights protected under Section 53A of the Transfer of Property Act, 1882 would also be derived and therefore the same requires payment of proper stamp duty.

Conclusion

The Supreme Court affirmed that an agreement to sell attracts stamp duty as a conveyance under the Maharashtra Stamp Act if possession of property is given.

³ Writ petition No. 3246 of 2016

⁴ (1999) 5 SCC 725; 1999 SCC Online SC 78

⁵ (2024) 10 SCC 324

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