

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 13th OF APRIL, 2023

MISC. PETITION No. 6310 of 2022

BETWEEN:-

**KISHANALAL S/O DAALOJI DESWALI
OCCUPATION: AGRICULTURIST GRAM
LOOHARDA TEH SATWAS (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI A.S. GARG, SENIOR COUNSEL WITH MS. POORVA MAHAJAN)

AND

**ASHOK KUMAR S/O MOTILAL JAIN, AGED
ABOUT 54 YEARS, OCCUPATION: BUSINESS
GRAM LOOHARDA TEH SATWAS (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI DATTATRAY KALE, ADVOCATE)

MISC. PETITION No. 904 of 2023

BETWEEN:-

**ASHOK KUMAR S/O MOTILALJI JAIN, AGED
ABOUT 54 YEARS, OCCUPATION: BUSINESS R/O
VILLAGE LOHARDA TEHSIL SATWAS DISTT.
DEWAS (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI DATTATRAY KALE, ADVOCATE)

AND

**KISHANLAL S/O DAALUJI NAGLOD DESWALI,
AGED ABOUT 66 YEARS, OCCUPATION:
AGRICULTURE R/O VILLAGE LOHARDA TEHSIL
SATWAS DISTRICT DEWAS (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI A.S. GARG, SENIOR COUNSEL WITH MS. POORVA MAHAJAN)

These petitions coming on for admission this day, the court passed the following:

ORDER

1] This order shall govern the disposal of M.P. No.6310/2022, and M.P. No.904/2023 as both the misc. petitions filed under Article 227 of the Constitution of India, have arisen out of the order dated 22/11/2022, passed in case No.RCSA/57/2020 by the First Civil Judge, Kannod, District Dewas (M.P.).

2] The misc. petition No.6310/2022 has been filed by the defendant, whereas, the misc. petition No.904/2023 has been filed by the plaintiff. In brief, the facts of the case are that the respondent/plaintiff has filed a suit for specific performance of agreement dated 14/06/2018, against the defendant, in which, the plaintiff's evidence is being recording and when the agreement dated 14/06/2018 was being exhibited in the trial Court, an objection was raised by the defendant that the same cannot be exhibited for the reason that it is neither properly stamped nor it is registered. The aforesaid objection of the defendant has been rejected by the learned Judge of the trial Court holding that the agreement is written on stamp papers of Rs.1,000/- which is proper stamp duty. So far as the objection regarding registration of the document is concerned, it is held that since the agreement is being used for collateral purposes, its registration is not necessary.

3] Shri A.S. Garg, learned senior counsel for the

petitioner/defendant appearing in misc. petition No.6310/2022 has submitted that the Court has erred on both the counts for the reason that the agreement is liable to be stamped @1% of value of the agreement as per Schedule 1-A, Article 5(e)(ii) of Indian Stamp Act, 1899 which provides 1% stamp duty on an agreement to sale where the possession is not delivered, whereas regarding the compulsory registration of the document agreement to sale is concerned, counsel has relied upon the decision delivered by the coordinate Bench of this Court in the case of ***Gordhan Vs. Dinesh and others reported in 2017(4) MPLJ 565 and Shanti Bai Vs. Ratna Bai reported in 2018(4) MPLJ 135***. Thus, it is submitted that the impugned order be set aside, and the objection raised by the defendant regarding the admissibility of the document be allowed.

4] Shri D.S. Kale, learned counsel for the respondent/plaintiff (petitioner in M.P. No.904/2023) has although opposed the prayer of the counsel for the petitioner/defendant, however, it is also submitted that the impugned order is erroneous so far as it reflects that the registration of the agreement to sale is not compulsory when it is not being used for collateral purposes. It is submitted that in a suit for specific performance of contract, the contract is used for the main purpose and not for the collateral purposes, thus, it is submitted that the impugned order be modified to that extent and it be held that in a suit for specific performance of contract, the contract is for the main purpose of the suit only and that is not required to be registered which is also the mandate of s.49 of the Registration Act, 1908.

Regarding the registration of the document, counsel has also submitted that the law is well settled that in specific performance of contract suit registration of the contract/agreement is not necessary which has also been held by this Court in the case of *Manish and another Vs. Anil Kumar and others reported in 2015(2) MPLJ 645*. Counsel has also submitted that in the aforesaid decision also, this Court has relied upon the various decisions of the Supreme Court.

5] So far as the proper stamp duty on the agreement dated 14/08/2018 is concerned, Shri Kale has also drawn the attention of this Court to the old provisions of the Stamp Act which were in force from 02/08/2008 to 15/09/2014, provided that as per Article 5(e)(ii), when possession of the property is not given, the stamp duty payable is 1%, whereas the aforesaid provision has been amended since then in the year 2015, and Article 5 has been renumbered as Article 6 which provides Rs.1,000/- stamp duty where the possession of the property is not given, and which duty has been paid on the questioned document. Thus, it is submitted that no interference is called for in the impugned order so far as it relates to the stamp duty is concerned, however, it is stated that it may be modified to the extent that the registration of the agreement is not necessary even if the specific performance of the same is sought.

6] In rebuttal, Shri A.S. Garg, learned counsel for the defendant has drawn the attention of this Court to Para No.2 of the agreement Annx.P/2 which provides that the possession of the house in question has been symbolically given to the purchaser. Thus, it is submitted

that when the agreement itself says that the possession has been given to the purchaser, the plaintiff cannot say that the possession has not been given, thus, he was liable to pay stamp duty accordingly.

7] Heard learned counsel for the parties and perused the record.

8] From the record, it is found that the agreement in question was executed between the parties on 14/06/2018, in respect of the suit house. It is written on a stamp paper of Rs.1,000/- as provided under Article 6 appended to the Schedule.1A, which was the appropriate stamp duty which was to be paid on such agreement when the possession of the property is not given.

9] So far as the reference of symbolic possession in the agreement is concerned, in the same para 2 of the agreement, it is also mentioned that the only symbolic possession is given to the plaintiff, however, its physical possession shall be given at the time of registration of the document. It is also found that the plaintiff has also sought the relief of possession which leaves no doubt in the minds of the Court that the possession of the house was not given to the plaintiff. In such circumstances, this Court is of the considered opinion that the symbolic possession cannot be deemed to be actual possession for the purpose of stamp duty.

10] So far as the registration of the document is concerned, it is true that the learned Judge of the trial Court has held that the agreement is being exhibited for collateral purpose, hence, it is admissible but, this Court is of the considered opinion that when the agreement itself is sought to be executed through the suit, it cannot

be said that it is being used for any collateral purposes. Otherwise also, the Proviso to Section 49 of the Registration Act clearly provides that the registration of such document is not necessary, Section 49 reads as under:-

“49. Effect of non-registration of documents required to be registered.—
No document required by section 17 1[or by any provision of the Transfer of Property Act, 1882 (4 of 1882)], to be registered shall—
(a) affect any immovable property comprised therein, or
(b) confer any power to adopt, or
(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered:
[Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877) [***] or as evidence of any collateral transaction not required to be effected by registered instrument.]”

(emphasis supplied)

11] This position has also been clarified by this Court in the case of ***Manish and another (supra)***, the relevant para of the same reads as under:

“15. IN the present case, there is no such direct irreconcilable inconsistency between section 17(2)(b) and proviso to section 49 of the Registration Act. The scope of proviso to section 49 of Act is very limited to the extent of receiving such document as evidence of a contract in a suit for specific performance or as evidence of any collateral transaction not required to be effected by registered instrument.

16. Counsel for respondents has placed reliance upon judgment of the Supreme Court in the matter of Raghunath and others vs. Kedar Nath, reported in 1969(1) SCC 497 but that was not a case of specific performance of contract nor proviso to section 49 of Act has been examined in that matter. Similar is the position in respect of the Division Bench judgment of Allahabad High Court in the matter of Vijay Kumar Sharma vs. Devesh

Behari Saxena, reported in AIR 2008 Allahabad 66. In the judgment of Rajasthan High Court in the matter of Raju Ram vs. Khinyaram, reported in AIR 2014 (NOC) 83 (Raj.) also the effect of proviso to section 49 of Act has not been examined.”

(emphasis supplied)

12] In view of the same, this Court does not find any substance and the misc. petition No.6310/2022 filed by the defendant is hereby ***dismissed***, however, so far as misc. petition No.904/2023 filed by the plaintiff is concerned, the same is ***partly allowed*** and it is directed that the observation made by the trial Court that the agreement is used for collateral purposes is hereby set aside and it is held that the agreement is filed for the main purpose of the suit and is not required to be registered.

13] Accordingly, both the petitions are ***disposed of***.

14] Signed copy of this order be placed in connected matter.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

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