

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

BEFORE

**HON'BLE SHRI JUSTICE VIVEK RUSIA
ON THE 6th OF FEBRUARY, 2023**

M.P. No.605 of 2023

BETWEEN:-

**SATYANARAYAN VERMA S/O SHRI RANCHHOD JI VERMA VILLAGE
GAWLI PALASIYA TEHSIL MHOW DISTRICT INDORE (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI JITENDRA VERMA - ADVOCATE)

AND

**1. SANDEEP YADAV S/O SHRI RAMJI LAL YADAV 299 VILLAGE
AASHAPURA TESHIL MHOW DISTRICT INDORE (MADHYA PRADESH)**

**2. STATE OF MADHYA PRADESH THROUGH COLLECTOR INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

*This application coming on for hearing this day, the court passed
the following:*

ORDER

Petitioner has filed this present petition being aggrieved by the order dated 09.11.2022 whereby application filed under Order 11 Rule 12 and 14 of C.P.C. has been dismissed.

The facts of the case in short are as under:-

02. Plaintiff Sandeep Yadav has filed a suit for specific performance

of the contract and a permanent injunction. Defendant No.1 is an owner of agricultural land (described in Para 2 of the plaint). He entered into an agreement for the sale of the suit land with the plaintiff on 15.06.2021 at the rate of Rs.401 per square foot. The plaintiff was required to make full payment on or before 21.11.2021. The plaintiff made an advance payment of Rs.10,50,000/- at the time of execution of the agreement. Thereafter, further payments were made by way of cheques to defendant No. 1. According to the plaintiff, he was always ready and willing to get the sale deed executed. As per the terms and conditions of the agreement, he sought permission from defendant No.1 to go for an agreement to sale with another person for which he permitted him to do so. The plaintiff entered into an agreement to sale with Smt. Ranjana Yadav and Rajkumar on 02.09.2021 and made partial payment to defendant No. 1 but later on the said agreement has come to an end and defendant No. 1 returned the cheques to them. According to the plaintiff despite the cancellation of the aforesaid deal he is still willing to get the sale deed executed in his favour. Hence, he filed the present suit. The plaintiff has valued the suit at Rs.75,96,920/- and paid the maximum amount of Court fees of Rs.1,50,000/-.

03. The plaintiff also filed an application under Order 39 Rule 1 & 2 seeking a temporary injunction against the defendant that he restrained not to eliminate the suit property to a third person.

04. Defendant No.1 filed a written statement as well as a reply to the application for temporary injunction. Before the argument on this application filed for a temporary injunction, defendant No.1 filed an application under Section 33 & 35 Stamp Act, 1899 that the agreement

to sale dated 02.09.2021 is also the Power of Attorney whereby the defendant No.1 has also given an authority to the plaintiff to sale the suit property to the third person, therefore, the stamp duty at the rate of 5% i.e. Rs.3,79,346 is liable to be paid. The aforesaid application was opposed by the plaintiff and vide impugned order dated 9.11.2022, the learned Court has dismissed the application. Hence, the present petition before this Court.

05. Shri Verma, learned counsel for the petitioner/defendant No.1 submitted that although the suit is filed seeking relief of specific performance of contract dated 15.06.2021 but by way of Clause-(vi), the defendant gave the Power of Attorney to the plaintiff to transfer the suit land to third person during the validity of the agreement. Therefore, this Clause-(vi) makes an agreement to sale, a Power of Attorney which attracts the stamp duty at the rate of 5%. This fact has been brought to the knowledge of the Court, therefore, it is the duty of the Court to get the documents impounded before proceeding with the matter. In support of his contention, he has placed reliance on the judgments in the case of *Amit Dixit vs. Smt. Sadhana Singh & ors.* reported in **2015 (III) MPWN 99**, *Narbada Prasad Agrawal vs. Tarun Bhawasar* reported in **2009 (1) MPLJ 176** and *D.K. Construction vs. State of M.P.* reported in **2017 (3) MPLJ 571**.

06. learned counsel further submitted that though the document in question has been named as an agreement to sale but in fact it is the Power of Attorney. The recital of the document should be a deciding factor about the admissibility of the document and in support of his contention, he has placed reliance on a judgment passed by Apex Court

in the case of *Omprakash Vs. Laxminarayan and Others* reported in *2014 (1) SCC 618*.

Analysis and conclusion

07. Admittedly, the plaintiff and defendant No.1 entered into an agreement to sale dated 15.06.2021 and the plaintiff has filed the suit of specific performance of the said agreement. As per Clause-(vi) of the agreement, defendant No.1 has agreed not to retain the right to the sale and transfer of the suit land to any other person but has given the right to the plaintiff to enter into a sale agreement and accept the consideration. The Clause-(vi) is reproduced below :-

“यह कि, विक्रेतापक्ष यह वचन प्रकट करते हैं कि इस विक्रय अनुबंध की प्रभावशीलता विक्रेतापक्ष का उक्त सम्पत्ति पर किसी प्रकार हस्तांतरण योग्य हित, अधिकार नहीं रहेगा तथा उक्त सम्पत्ति हस्तांतरण, व्यवहार अन्य पक्ष से करने के अधिकारी नहीं रहेंगे न ही ऐसा कृत्य या व्यवहार करेंगे, जिससे उक्त सम्पत्ति किसी प्रकार हस्तांतरित, भारित बोझित हो तथा क्रेतापक्ष सदर संपत्ति का विक्रय अनुबंध अन्य से कर सकेंगे एवं इस बाबद प्रतिफल की राशि प्राप्त कर सकेंगे।

08. Defendant no.1 treats this Clause as the Power of Attorney given to the plaintiff by him and demands the stamp duty at the rate of 5%. The agreement to sale has been executed on a stamp paper of Rs.1,000/- and the possession was not given to the plaintiff, therefore, so far the sale agreement is concerned Rs.1,000/- stamp duty has rightly been paid. The document deed is unregistered deed, which is permissible under the proviso to Section 49 of the Registration Act.

09. The plaintiff is not seeking any relief in this suit in respect of authority given under Clause-(vi). The said condition is not a subject matter of the suit between the parties. The suit is mainly filed for

specific performance of a contract, execution of a sale deed & permanent injunction. The learned trial Court has held that by way of this Clause-(vi), the right to sale has not been given to the plaintiff but only the right to enter into an agreement to sale was given.

10. As per Indian Stamp Act, the stamp duty of Rs.1,000/- is payable on an agreement to sale. As per the proviso to sub-section (C) of Section 35 of the Indian Stamp Act where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped. Therefore, even if Clause-(vi) constitute a Power of Attorney but this deed is executed for the sale of the land for which Stamp Duty i.e. Rs.1,000/- has already been paid, therefore, the contract or agreement shall be deemed to be duly stamped.

In view of the above, I do not find any ground to interfere in this petition.

Accordingly, the petition is *dismissed* in limine.

(VIVEK RUSIA)
J U D G E

vs