

vinita

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 427 OF 2023.

1. Shri. Rohidas Gadekar, S/o Late Shri. Dattaram Gadekar, Aged about 70 years, Occ.: Business, Widower, Indian National,
2. Shri. Nandu @ Nandakumar Gadekar, S/o Shri. Rohidas Gadekar, Aged about 41 years, Occ.: Business, Married, Indian National,
3. Smt. Gauri N. Gadekar, W/o Shri. Nandakumar Gadekar, Aged about 38 years, Occ. : Business, Married, Indian National,
4. Shri. Lav R Gadekar, S/o Shri. Rahidas Gadekar, Aged about 39 years, Occ.: Business, Unmarried, Indian National,
5. Shri. Ankush R. Gadekar, S/o Shri. Rohidas Gadekar, Aged about 39 years, Occ. : Business, Unmarried, Indian National,
All R/o House No.C-56, Shetyewado, Near Panvel PUC Centre, Duler, Mapusa, Goa Petitioner No.1, 3 to 5 are acting through their Power of attorney i.e. Petitioner No.2.Petitioners.

Vs

1. Shri. Shiraj Vishram, S/o Shri. Rahimulla Vishram, Aged about 63 years, Occ. : Business, married, Indian National, R/o H. No. 302, Devaki Building, Carazalem, Tonca Goa,
2. Shri Jaideep Vasudeva, S/o Shri. M. N. Vasudeva, Aged about 52 years, Occ.: Business, married, Indian National, R/o

A-19, Marble Arch Apartments, 9,
Prithvi Raj Road, New Delhi.Respondents.

Mr A. H. Lohiya and Ms P. Nagvekar, Advocate for the petitioners.
Mr A. R. Kantak, Advocate for respondent no.1.

CORAM: BHARAT P. DESHPANDE, J

DATED: 25th January, 2024

ORAL JUDGMENT.:

1. Rule. Rule is made returnable forthwith.
2. Heard parties with consent for final disposal.
3. Learned counsel for the petitioner submits that the impugned order passed by the trial Court is perverse and illegal on the face of it since the objection raised by the petitioners/defendants to admit the document which is styled as receipt but claim to be agreement for sale, has been rejected. He submits that as per Indian Stamp Act, a document which is not properly stamped, cannot be received in evidence unless duty chargeable under the said provision has been paid thereof. He would submit that respondents/plaintiffs in the suit specifically stated that the receipt itself is an agreement for sale and accordingly filed a suit for specific performance of contract. Issues are framed by the trial Court with regards to said document and whether it is an agreement for sale. He further submits that affidavit filed by the respondents before the trial Court also refers at many

places that the said receipt is in fact an agreement for sale. Thus objection raised by the petitioners to admit said receipt in evidence were justified as the document is not properly stamped and, therefore, the impugned order needs interference.

4. Per contra, Mr Kantak learned counsel appearing for the respondent would submit that document is styled as a receipt, therefore, learned Trial Court was justified in considering it as a receipt at this stage. He submits that question as to whether document is a receipt or an agreement for sale will have to be considered at the relevant stage.

5. Rival contention fall for determination are as under:-

Respondents filed Special Civil Suit against the petitioners for Specific Performance of Contract. In the plaint, specific case has been put forth by the plaintiffs that the defendants agree to sell the suit property to the plaintiffs and the receipt has been issued to that effect which is dated 29.3.2019. Paragraphs 31 onwards of the plaint refers to agreement compromising of the receipt issued by the respondents. Paragraph 33 of the plaint further refers to receipt/cum agreement of which plaintiffs are seeking relief of Specific Performance of Contract. Prayer clause(a) in the plaint reads thus:-

A For a Judgement & Decree of specific performance directing the Defendants to sell

and convey unto the Plaintiffs and/or their assignee, the suit property in terms agreed upon by the Defendants in the receipt dated 29.3.2019 and after receiving the balance consideration payable by the Plaintiff.

6. Though the petitioners/defendants denied such agreement, issues have been framed by the learned Trial Court wherein burden is placed on plaintiffs to prove that there is an agreement between plaintiffs and defendants in respect of the suit property.

7. Learned counsel for the petitioners submits that defendants filed an application for re-framing of issues in order to clarify the stand taken by the parties. Such application was disposed of vide order dated 28.7.2022 wherein learned trial Court has observed in paragraph 8 that while framing issues Court has already framed the issue as to whether plaintiffs prove that they are entitled for specific performance of agreement with the defendants, if any? The Court observed that this issue covers the objections raised by defendants as to whether there exists any agreement between the parties.

8. Paragraph 31 of the affidavit in evidence of the plaintiffs clearly show that agreement comprising of receipt is issued by defendants.

9. When the plaintiffs tried to place the receipt dated 29.3.2019 in evidence before the Court, defendants objected to admitting such

receipt on the precise ground that the same cannot be admitted in evidence in absence of payment of stamp duty. Learned trial Court in the impugned order observed that though it is styled as a receipt, it cannot be at this stage considered as an agreement for the purpose of stamp duty chargeable as per Act.

10. Perusal of the pleadings of the plaintiffs, contents of the affidavit in evidence of PW1 and specific case put forth before the trial Court, it is claimed by the plaintiffs that it is not a simple receipt but it contains an agreement to sell the property. Thus in view of Section 6A of the Indian Stamp Act, any agreement for sale cannot be admitted in evidence unless properly stamped.

11. Learned trial Court has completely lost sight of the pleadings of the parties together with contents of the affidavit in evidence of PW1 and rejected the objection raised by the defendants.

12. In fact, entire case of the plaintiffs as pleaded is based on receipt/cum agreement. Admittedly such receipt is not properly stamped as an agreement. Thus, the impugned order needs interference.

13. Order dated 27.3.2023 which is impugned in the present petition is hereby quashed and aside. Objection raised by the defendants with regards to admitting the document in evidence is upheld. Learned trial Court shall therefore proceed as per the

procedure provided under the Indian Stamp Act before admitting such document in evidence.

14. Rule is made absolute in the above terms.

15. Petition stands disposed of.

BHARAT P. DESHPANDE, J.

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