



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.13409 OF 2023

Salim Baig S/o. Akhtar Baig,
Age: 30 years, Occu: Agri. & Business,
R/o. A/p. Malapuri, Tq & Dist. Beed.

**....PETITIONER
(Orig. Defendant)**

VERSUS

Sayyad Nawid S/o. Sayyad Nazir,
Age: 34 years, Occu: Agri.
R/o. Mominpura, Beed,
Tq. & Dist. Beed.

**....RESPONDENT
(Orig. Plaintiff)**

....
Mr. J. M. Murkute, Advocate for petitioner
Mr. E. S. Potdar, Advocate for Respondent
....

CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 09.07.2025

PRONOUNCED ON 29.07.2025

JUDGMENT :-

1. **Rule.** Rule made returnable forthwith, heard finally by consent of parties.
2. The petitioner/defendant takes exception to order dated 10.05.2023, passed by learned District Judge, Beed in Misc. Civil Appeal No.91 of 2022, thereby upholding order dated 21.09.2022 passed by learned Joint Civil Judge Senior Division, Beed below Exhibit-5, in Special Civil Suit No.93 of 2022, thereby granting temporary injunction in favour of respondent/plaintiff.

3. The brief facts giving rise to the present petition are as under.

4. Petitioner/original defendant is owner of suit property. He agreed to sell suit land to respondent/plaintiff for consideration of Rs.92,50,000/- (Rs. Ninety Two Lac Fifty Thousand only). Accordingly, executed *tabe-isar-pavti* / Notarised Agreement. An earnest money of Rs.2,00,000/- was paid. After execution of agreement, plaintiff paid further installment on 08.07.2020 and 11.11.2020. Eventually, defendant received total earnest money of Rs.22,00,000/- lakh (Rs. Twenty Two Lac only). The sum and substance of agreement is that plaintiff was permitted to develop land and create saleable plots over suit property and after selling them, to pay consideration to defendant in installments within time limit. Defendant was to execute *bharna-pavtis* time to time and also execute documents in favour of prospective purchasers of plots. Defendant was under obligation to clear-off encumbrances upon suit plots and finally execute sale deed of balance land by 25.06.2022 after receiving total consideration.

5. Plaintiff contends that he was ready to pay balance consideration amount and requested defendant to clear-off loans; however, he failed to do so and execute sale deed.

6. Defendant took stand that he was intending to develop property and convert in saleable plots; therefore, agreement was executed. However, plaintiff failed to develop property or sell out plots within

specified time limit. Pertinently defendant admitted receipt of amount of Rs.22,00,000/- (Rupees Twenty Two Lakh Only).

7. Learned Trial Court, after considering rival contentions, allowed application Exhibit-5 and temporarily enjoined defendant from alienating suit property by any mode or disturbing possession of plaintiff till disposal of suit, except by following due process established by law. The aforesaid order was subjected to challenge before learned District Judge in Misc. Civil Appeal No.91 of 2022, who affirmed order and dismissed appeal.

8. Heard learned Advocates appearing for respective parties.

9. Mr. J. M. Murkute, learned Advocate appearing for petitioner submits that *tabe-isar-pavti* dated 26.06.2020 can never be termed as agreement to sell in strict sense. In fact, it was agreement for development of property and plaintiff was expected to carve out plots and facilitate sale to prospective purchasers within specified time limit and pay agreed amount to defendant.

10. Mr. Murkute Points out that document dated 26.06.2020 is neither registered nor it is stamped, but simply notarized on bond paper of Rs.100/-. He would further point out that suit land was never put into possession of defendant, although he was permitted to take necessary steps to carve out plotting and develop property for sale. However, Courts below

relied upon contents of inadmissible and unregistered document, granted temporary injunction against defendant.

11. In support of his contentions, he relies upon judgment of Hon'ble Supreme Court in case of ***Avinash Kumar Chauhan Vs. Vijay Krishna Mishra reported in 2009 AIR SCW 979***. According to Mr. Murkute, in absence of impounding document, it could not have been considered even for collateral purpose.

12. Per contra, Mr. E. S. Potdar, learned Advocate appearing for respondent/plaintiff relying upon judgment of Hon'ble Supreme Court in case of ***Ameer Minhaj Vs. Dierdre Elizabeth (wright) Issar reported in 2019 (3) Mh.L.J 550***, submits that issue as to registration and requisite stamp duty cannot be looked into at preliminary stage when application for temporary injunction is considered. According to him, before admitting document in evidence, Court has power to impound insufficiently stamped instrument under Section 35 of Stamp Act and this issue can be considered by Trial Court at appropriate stage.

13. Mr. Potdar further relies upon judgment of this Court in case of ***Merces Builders Private Limited Vs. Shaikh Mohammad Hanif Bepari & Others reported in 2017 (5) AllMR 401*** to contend that in case of memorandum of understanding which is not duty stamped or registered, appropriate steps can be taken for impounding of document at the stage of

evidence.

14. Having considered submissions advanced by learned Advocates appearing for respective parties and upon perusal of impugned orders, it can be gathered that parties have admitted execution of *tabe-isar-pavti* dated 26.06.2020 and parting of earnest amount of Rs.22,00,000/- in pursuance of agreement. However, defendant disputes nature of agreement contending that he was intending to develop property. Plaintiff had assured for development carve out saleable plots. The validity of agreement expired on 25.06.2025. The agreement is inadmissible being insufficiently stamped. The possession of property was never delivered. Plaintiff is in business of sale and purchase of property. He induced defendant to execute agreement, assuring for development of property. Plaintiff was never intending to purchase property for himself, but he was intending to assist development of plots for defendant without taking possession of property.

15. In above aforesaid background, it can be observed that agreement to sell is neither registered nor sufficiently stamped. It is executed on Rs. 100/- bond paper and notarized. It stipulates delivery of possession of suit property in favour of plaintiff.

16. In this background, Section 35 of Indian Stamp Act would come into play which mandates that :-

“No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped.”

17. The Hon’ble Supreme Court of India in case of ***Avinash Kumar Chauhan Vs. Vijay Krishna Mishra reported in 2009 AIR SCW 97***, observed that where possession of property has been transferred under any instrument, in absence of payment of stamp duty, such instrument cannot be admitted even for collateral purpose or to corroborate oral evidence. There is total and absolute bar as to admission of unstamped instrument, unless there is compliance with requirements of provisos to Section 35.

18. In this background, if unstamped instrument is admitted even for collateral purpose, it would amount to receiving such document in evidence for a purpose which is prohibited under Section 35 of Stamp Act. The bar against admissibility of instrument which is chargeable with stamp duty and is not stamped is of course absolute whatever be the nature of purpose, be it for main or collateral purpose, unless requirements of proviso (A) to Section 35 are complied with.

19. The similar issue was considered by High Court of Karnataka in case of ***Smt. Dyavamma Alias Sanna Mukkamma Vs. Smt. Balamma and Others reported in ILR 2010 KAR 3280***, that instruments which are not duly stamped are not only inadmissible in evidence, but the Court cannot act upon it, or consider the same for any relief like temporary injunction till such time both duty and penalty are paid. In case of ***Yellapu Uma Maheswari & Another Vs. Buddha Jagadheeswararao & Others reported in (2015) 16 SCC 787***, the Hon'ble Supreme Court observed that if party wanted to rely upon document for collateral purpose, it was upon for him to pay stamp duty together with penalty and get document impounded.

20. Looking to the scheme under the provisions of Stamp Act and law espouses in aforesaid judgments, it is apparent that so-called document of agreement to sell could not have been considered for any purpose for accepting plaintiff's case.

21. However, in facts of the present case when defendant has not denied execution of document, so also receipt of part of consideration amount, fact of existence of agreement to sell between the parties can be accepted. However, defendant has empathetically denied delivery of possession of suit property to plaintiff. If contents of agreement to sell are ignored for want of its admissibility, there is nothing on record to depict that

plaintiff has received possession of suit property and even exact nature of transaction cannot be ascertained at this stage. The Courts below have relied upon contents of *isar-pavti* and held that plaintiff is in possession of suit property. The Courts have erroneously observed that prima facie value of document could be adjusted at the time of granting interim injunction; however, such observations are not in tune with legal position. In that view of the matter, impugned order deserves to be modified.

22. In result, writ petition is partly allowed. The impugned judgment and order dated 21.09.2022 passed by learned Joint Civil Judge Senior Division, Beed below Exhibit-5 in Special Suit no.93 of 2022 which is confirmed by learned District Judge, Beed vide order dated 10.05.2023 in Misc. Civil Appeal No.91 of 2022 is hereby modified. Respondent (defendant) or anybody on his behalf is hereby temporarily restrained from alienating suit property by any mode of transaction. However, order of temporary injunction passed against defendant to not to disturb possession of plaintiff over suit property is hereby quashed and set aside.

23. Rule made absolute in aforesaid terms.

[S. G. CHAPALGAONKAR, J.]

HRJadhav