



STAMP LAW

[2025] 187 CLA (Mag.) 1

Maharashtra Stamp Act, 1958 and Admissibility of Instruments not duly stamped in Evidence

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In this article, the author makes an attempt to apply the principles laid down by the Supreme Court in the context of the Maharashtra Stamp Act, 1958 so as to make people aware of its implication on the agreement to sell and its admissibility in evidence in court.

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Introduction

1. The courts have to very often deal with questions, which crop up when any instrument not duly stamped in accordance with the Stamp Act, is placed before the Court. Under section 35 of the Indian Stamp Act, 1899 ('the Act'), there is a bar on the admissibility of any instrument which is not duly stamped. The Maharashtra Stamp Act, 1958 ('MS Act') has a similar provision under section 34. The question, which the Supreme Court in the case of *Vijay v. Union of India* [2024] 10 SCC 324, had to deal with was (i) whether a copy of any document can be adduced as secondary evidence when the original instrument is not in possession of the party, and (ii) whether the bar of the admissibility created by under section 35 of the Indian Stamp (Madhya Pradesh) Act, 1989 ('MP Act') applies to any agreement to sell executed by the parties.

Ruling of the Supreme Court

2. The Supreme Court whilst considering these questions, which arose before

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it, inter alia, relied upon a decision reported in the case of *Jupudi Kesava Rao v. Pulavarthy Venkata Subharao* [1971] (1) SCC 545 and a three-Judge Bench in *Suraj Lamp & Industries (P.) Ltd. v. State of Haryana* [2012] (1) SCC 656, which had considered the scope of an agreement to sell. The matter in question arose out of the MP Act, which is *pari materia* with the provisions of the Act. The Supreme Court considered the meaning of the words "duly stamped" as provided for under clause (11) of section 2 as well as the charging section 3 of that Act and the definition of 'Conveyance' as referred to under clause (10) of section 2 of that Act. Article 23 of the Act, which dealt with computation of the amount of stamp duty on any conveyance was amended in the year 1990. An *Explanation* was also inserted in the year 1990 to bring in the meaning of "deemed conveyance". The Supreme Court was confronted with the issue "whether the agreement for sell" (4th February, 1988) handing over possession prior to the amendment brought in the year 1990 is a conveyance and, therefore, whether the agreement to sell was chargeable under article 23 of that Act as a deemed conveyance on the date of execution of the agreement. The Supreme Court had to deal with the issue if they could retrospectively apply the amendment to the *Explanation* added in the year 1990 to an agreement to sell executed on 4th February, 1988. The hon'ble Court took into account the settled rule of interpretation hallowed by time and sanctified by the judicial decisions that, unless the terms of a statute expressly so provides or necessarily requires it, retrospective operation should not be given to any Statute so as to take away or impart an existing right or create a new obligation or impose a new liability on the party. In the case on hand, the document being an agreement for sell was dated 4th February, 1988 and as on that date there was no amendment to the Act, and in particular, to the *Explanation* to article 23 of the Act and, hence, the Supreme Court conclusively held that the Instrument, *viz.*, agreement to sell is not chargeable with any duty.

2.1 The Supreme Court then went on to pronounce its verdict on the other issue whether a copy of the document can be adduced a secondary document when the original is not in its possession. In considering the above, the Supreme Court took assistance from the decision of *Jupudi Kesava Rao* (*supra*) where the Supreme Court had held that, in view of section 35 of the Act, a copy of an instrument when the original instrument is admittedly not stamped or insufficiently stamped, would not fulfil the requirement of section 35 as that section dealt with original instrument only and not a copy thereof. In other words, if any instrument is required to be stamped is not stamped or is insufficiently stamped, then a copy of such document as secondary evidence under the Indian Evidence Act cannot be adduced or led in evidence at all. The Supreme Court, in *Vijay* (*supra*) distinguished its decision in *Jupudi Kesava Rao* (*supra*) and concluded that the copy of the agreement to sell dated 14th

February, 1988 sought to be admitted in evidence is not chargeable with any duty as the document was executed prior to the amendment to the *Explanation* of 'Conveyance', which was introduced in the year 1990 and, therefore, the copy of the agreement to sell is admissible in law as secondary evidence in any court of law if other legal requirements are met as provided for under section 65 of the Evidence Act.

Application of Provisions of the Maharashtra Stamp Act, 1958 (‘MS Act’)

3. In light of the Supreme Court's decision, the provisions of the MS Act are required to be seen so that in a given set of facts akin to the facts of the above case, the law as pronounced and laid by the Supreme Court in the case of *Vijay (supra)* can be made applicable under the MS Act. Section 34 of the MS Act provides that an instrument which is not duly stamped is inadmissible in evidence. The twin conditions for a document to be admitted in evidence at least under section 34 are that (i) the authority receiving such evidence and/or document shall receive and/or deal with the instrument only if it is duly stamped, and (ii) if the instrument is written on an impressed stamp, the stamp paper is to be purchased in the name of one of the parties to the document. Some other definitions and sections of the MS Act are also required to be examined to comprehend and understand the effect of the Supreme Court decision in the MS Act, *viz.*, definition of 'conveyance' under clause (g) of section 2, the words "duly stamped" under clause (h) of section 2 and 'instrument' under clause (l) of section 2. Section 3 of the MS Act is the charging section. Section 17 of the MS Act provides that all instruments chargeable with duty shall be stamped before or at the time of execution or immediately thereafter on the next working day following the date of execution, section 18 of the MS Act provides that where an instrument is executed out of the State, it is required to be stamped within 3 months after it has been first received in the State. Section 19 of the MS Act provides for instruments relating to any property situate or any matter or thing done in the State is executed out of the State and subsequently, such instrument or a copy of the instrument is received in the State, the quantum of duty shall be the amount payable on such instrument or copy of the instrument less the amount of duty if paid under any law in force in India. This section applies to the instruments executed in one State but is related to any property situate or things done or to be done in another State and the copy of the instrument is received in the second State. The liability to stamp duty arises, first under the Stamp Act of the First State on account of execution of documents and a secondary liability arises under the law of Second State where the instrument or copy of the instrument is received in the Second State.

3.1 The words “such instrument or copy of instrument” was inserted by Maharashtra Act, 17 of 1993 (‘1993 Amendment Act’) with effect from 1st May, 1993. Article 25 provides for the quantum of stamp duty payable on any deed of conveyance. The *Explanation 1* of article 25 provides in case of agreement to sell an immovable property, the possession of any immovable property is transferred or agreed to be transferred to the purchaser before the execution, or at the time of execution, or after the execution then such agreement to sell shall be deemed to be a conveyance. By way of declaration under clause (d) of sub-section (1) of section 8 of 1997 Amendment Act, the Government of Maharashtra clarified that the *Explanation* as introduced on 17th August, 1994 under the 1994 Amendment Act, shall be deemed to have come into force with effect from 10th December, 1985. The amendment in the *Explanation* was brought about in view of the judgment of Bombay High Court in the case of *Padma Nair v. Deputy Collector, Valuation and Stamp Duty* passed by his lordship Dr. Justice B P Saraf (as he then was) and reported in [1994] MHLJ 497 and followed in the case of *ITC Ltd. v. State of Maharashtra* [1997] (4) BCR 536. In that case, the agreement to sell was coupled with possession. The Court took a view that under section 54 of the Transfer of Property Act, the agreement to sell by itself did not create any interest nor any charge on the property and the buyer merely got a right to obtain sale deed in his favour. The court further held that the *Explanation* to article 25 as it then stood seeking to levy stamp duty on deemed conveyance came into effect on 9th December, 1985 and was not retrospective in operation and, hence, would not apply to an agreement of sell dated 16th October, 1984 in the facts of that case and, hence, the demand made by the Dy. Collector was quashed and set aside.

Applicability of the Ruling of the Bombay High Court and Supreme Court in Cases where Agreement to Sell coupled with Possession executed Prior to 10th December, 1985

4. The principles laid down in the decisions of the Bombay High Court although passed almost 2 decades ago were expressed by the Supreme Court in the case of *Vijay (supra)* as discussed above. Thus, insofar as the State of Maharashtra is concerned in view of the amendment to the *Explanation I* to article 25, which came into effect on 9th December, 1985, the principles as laid down by the Bombay High Court and Supreme Court in the cases discussed above would be applicable in the facts and cases where the agreement to sell coupled with possession was executed prior to 10th December, 1985 and not thereafter. For an agreement to sell, which is executed after 10th December, 1985 and which squarely falls within the four corners of the *Explanation I* to article 25 of the MS Act, full stamp duty under article 25 would be levied and payable by the party concerned. The decision of the Supreme Court in the matter of *Veena Hasmukh Jain v. State of Maharashtra* [1999] 5 SCC 725 can

also throw a significant light on the computation of the stamp duty on an agreement to sell. In view of the provisions of section 19 of the MS Act, a copy of the instrument would also be admissible in evidence if the condition so expressed in the section are met. In the event, if there being a short fall in the payment of stamp duty, the Authority receiving the instrument or a copy thereof, shall deal with the same as provided under sections 32A and 33 of the MS Act.

Conclusion

5. The decision of the Supreme Court in the case of *Vijay (supra)* can be successfully employed to the provisions as applicable for admissibility of instruments in evidence under the MS Act. The attempt by this article is, therefore, to bring and clarify the effect of this decision of the hon'ble Supreme Court in the case of *Vijay (supra)* on the provisions of the Maharashtra Stamp Act, 1958 so that the people become aware of the implications of (a) the stamp duty leviable on the instrument, viz., an Agreement to Sell, and (b) the admissibility in evidence of such an instrument in the court of law, if parties are compelled to knock the doors of the hon'ble Court.