

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 3374 of 2015
Date of Decision: 18.5.2015.**

Harsh Kapur

.....Petitioner

Versus

Sant Kumar

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. R.K.Handa, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 18.4.2015 (Annexure P-1).

Learned counsel for the petitioner has submitted that the Trial Court has erred in directing the respondent to affix the *ad valorem* Court fee on the plaint. Learned counsel for the petitioner has further submitted that the suit filed by the plaintiff is not maintainable rather the relief for specific performance of agreement to sell had been rendered time barred and there was no application moved by the plaintiff with permission to amend the plaint and the relief now sought by the plaintiff had been granted by the Trial Court.

Respondent has filed suit for mandatory injunction with consequential relief of permanent injunction. The prayer clause of

the suit filed by the respondent reads as under:-

“17. It is, therefore, prayed that a decree for mandatory injunction may kindly be passed in favour of the plaintiff against the defendants directing the defendants to get deposited an amount of Rs. 35,00,000/- (Rupees Thirty Five Lacs) with the State Bank of India, from the plaintiff and got redeemed/released the plot in dispute from mortgage and further get executed and registered the sale deed on receipt of stamp and registration expenses from the plaintiff before the Sub Registrar Sonapat as per agreement to sell dated 22.5.2009 and receipt of earnest money of the even date.

It is further prayed that a decree for permanent injunction may kindly be passed in favour of the plaintiff against the defendants restraining the defendants from alienating, transferring, further mortgage, leasing out the plot in dispute to any other person forcibly, illegally or any other manner to any other intending person, in the existence of the agreement to sell executed by defendants on 22.05.2009 in favour of the plaintiff.

The costs of the proceedings and any other relief deemed fit and proper may kindly be granted, in favour of the plaintiff against the defendants, in the larger interest of justice.”

The learned Trial Court while dealing with the prayer clause of the plaint filed by the respondent vide the impugned

order, has held as under:-

“A perusal of the para no. 17 of plaint containing relief prayer shows that plaintiff has sought a decree for mandatory injunction directing the defendant to get deposited an amount of Rs. 35,00,000/- with State Bank of India, Atlas Branch, Sonapat and to get redeemed the plot in question from mortgage and further to execute and get registered sale-deed in favour of plaintiff as per agreement to sell dated 22.5.2009. Therefore, the plaintiff has also sought the relief of specific performance of agreement to sell dated 22.5.2009 by filing the present suit in the form of mandatory injunction with consequential relief of permanent injunction. The plaintiff can seek the relief of mandatory injunction to the extent of directing the defendant to get deposited Rs. 35,00,000/- with State Bank of India, Atlas Branch, Sonapat and to get redeemed the plot in question, but the plaintiff cannot seek the relief of mandatory injunction for directing the defendant to execute and get registered the sale deed in his favour on the basis of agreement to sell dated 22.5.2009 and the plaintiff must have filed the suit for specific performance. However, as the plaintiff has also sought the relief of specific performance of agreement to sell dated 22.05.2009 by filing the present suit by way of directing the defendant to execute and get registered the sale-deed in his favour, therefore, the plaintiff is not required to amend the plaint. The plaintiff is only

required to pay ad-volarem court fee on the total sale consideration of Rs. 64,00,000/- (sixty four lacs) as mentioned in agreement to sell dated 22.05.2009 and the suit of the plaintiff without depositing the ad-volarem court fee is not maintainable. Accordingly, the point regarding maintainability of the suit is disposed of and the plaintiff is directed to pay ad-volarem court fees on the total sale consideration of Rs. 64,00,000/- as mentioned in agreement to sell dated 22.05.2009 within one month from passing of this order.”

In the facts and circumstances of the present case, the learned Trial Court rightly held that, in fact, respondent had sought the relief of specific performance of agreement to sell dated 22.5.2009 and was required to affix *ad valorem* Court fee on the sale consideration. The learned Trial Court rightly directed the plaintiff-respondent to affix *ad valorem* Court fee on the plaint.

In the facts and circumstances of the present case, there is no force in the arguments raised by learned counsel for the petitioner.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)
JUDGE**

May 18, 2015
Gurpreet