IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CR No. 5564 of 2014 (O&M)
Date of decision: November 30, 2015

Kamal Singh
...Petitioner
Versus
Rajinder Kumar Sharma
...Respondent

(2) CR No. 5565 of 2014 (O&M)

Kamal Singh
...Petitioner
Versus

M/s Raitani Buildcon Pvt. Ltd. and another
...Respondents

(2) CR No. 5566 of 2014 (O&M)

Kamal Singh
...Petitioner
Versus
Banwari Lal Sharma
...Respondent

CORAM:- HON'BLE MR. JUSTICE K. KANNAN

1. **Whether Reporters of local papers may be allowed to see the judgment ? Yes**
2. **To be referred to the Reporters or not ? Yes**
3. **Whether the judgment should be reported in the Digest? Yes**

Present: Mr. Sanjay Vij, Advocate,
for the petitioner.

Mr. Pankaj Jain, Advocate,
for the respondents.

K. KANNAN, J. (Oral)

1. This order shall dispose of the above titled revision petitions as the same arise out of the similar set of facts and involving the similar

questions of law.

2. The point of law that falls for consideration in the three revisions petitions is, whether an agreement of sale which recites delivery of possession would require to be impounded and stamp duty collected, if the stamp used is merely as an agreement without reference to delivery of possession. An additional point regarding admissibility of the document arose in this case on the ground that there was no registration and hence the document could not be admitted.

3. There is no doubt about the fact that the agreement relied on by the plaintiffs in the suits contained a recital of delivery of possession. It is also not in doubt that the plaintiffs have paid court fee on consideration of the recital in the respective agreements. After the suits were instituted the defendant has denied the execution of the agreement but states all the same, that the documents must be impounded for collection of stamp duty penalty. It is contended that Section 53A of the Transfer of Property Act requires the agreement to be registered in order that a person claims the benefit of part performance. The Registration Act also has undergone an amendment and the requirement of Section 17 (1A) and Section 49 compel the agreement that contains a recital of delivery of possession to be registered.

4. Initially, a confusion that was brought by the argument of the counsel for the petitioner must be dispelled. The requirements of the Stamp Act and the Registration Act are different. Under the Stamp Act, if a document is required to be stamped but it was not so stamped or insufficiently stamped, the stamp cannot be received in evidence at all under Section 35 of the Stamp Act, unless the deficit stamp duty for the instrument

other than a promissory note, is paid and the stamp duty collected by the State. In other words, before an unstamped or insufficiently instrument is received in evidence, proper stamp duty must have been paid. The requirement under the Registration Act is different, for, not all documents are required to be registered, the same way as not all documents may required to be duly stamped. If the document is compulsorily registrable, the category of document so spelt out under Section 17 of the Registration Act, the document will not be received as evidence affecting the rights of the property under the instrument so covered.

5. As far as the Stamp Act is concerned, the agreement that contains a recital for delivery of possession does not require to be treated differently for the properties or document executed in the State of Haryana. Some states have brought amendments in the respective stamp law in the Schedule accompanying the provision of the Stamp Act. For instance, in the State of Punjab Article 5 in Schedule IA has been amended to include clause (cc). Clause (cc) provides for the treatment of an agreement for sale with delivery to be leviable as under Column 2 of entry No. 23 of the Schedule which shall be the duty payable for conveyance. However, for the state of Haryana, there is no amendment carried out to the Schedule 1A accompanying the Stamp Act as far as Article 5 dealing with agreement or memorandum of agreement in relation to sale of immovable property, Clause (c) in Haryana amendment provides proper stamp duty to be Rs. 2.50 paise. Consequently, the documents filed by the plaintiffs in the respective suits are adequately stamped and there is no warrant for impounding the same or levying any penalty.

6. The revisions would require dismissal merely by recording the fact that there is no stamp duty penalty to be collected. However, since the counsel brought an argument of requirement of compulsorily registration, I would confront the said argument also.

7. The learned counsel has relied on a judgment of the Supreme Court in Avinash Kumar Chauhan Versus Vijay Krishan Mishra 2009 (1) Civil Court Cases 735 to contend that under the circumstances the Court has power to impound insufficiently stamped instrument and to direct payment of unpaid duty and penalty. The Supreme Court was dealing with an unregistered sale deed written on inadequate stamps as requiring stamp duty penalty to be collected. He further relied on Karnataka High Court judgment in M/s Kapoor Constructions Versus Leela Nagaraj and another 2005 (3) RCR (Civil) 30, where the State amendment introduced Article 5 (e) in the Stamp Act, prescribing a higher denomination of stamps for agreement of sale with delivery of possession the same way as it has been done in the State of Punjab. These decisions do not apply to this case, for the simple reason that the Supreme Court decision must be confined to reliance of a unregistered sale deed as proof of agreement where stamp duty for sale duty will have to be collected and in the latter judgment, the stamp duty for agreement as required by the State law was required to be collected.

8. The Transfer of Property Act that has undergone change under Section 53-A by an amendment Act of 2001 restricts the use of document recording delivery of part performance and protection of possession taken by the purchaser, in furtherance of a contract, will be possible, only if the agreement is registered. In a mere suit for specific performance, the

governing consideration shall be only to examine whether stamp duty as required under the Stamp Act has been paid. If that has been done, the issue of registration is irrelevant so long as the plaintiff seeks no prayer for protection of his possession by injunction either as a plaintiff suing for specific performance to protect his possession or taking up a defence against recovery of possession by the vendor. There is no such prayer for protection of possession. There is only a prayer for delivery of possession and evidently, there is no resort to Section 53A of the Transfer of Property Act in the suit. Section 17 of the Registration Act is the only section which would require to be examined viz, whether agreement of sale would required to be registered. Section 17 (a) to (e) of the Act detail various types of transactions that are compulsorily registrable for instruments that declare or transfer right to immovable property. An agreement to sell creates only an equitable right to purchase and does not operate to create or extinguish right under the instrument. Section 17 of the Registration Act, that requires compulsorily registration of instrument is, therefore, not attracted.

9. The learned counsel refer to Clause 1A of Section 17 of the Registration Act which is also not attracted. Sub section itself deals with document containing contract to transfer for consideration any immovable property for the purpose of Section 53-A of the Transfer of Property Act shall be registered. We have already examined that there is no plea of part performance making out a case of protection of possession by the plaintiff. If only a plea is made under Section 53-A of the Transfer of Property Act would there be a need for examining the applicability of sub-section 1A. The said provision is also, therefore, not attracted. Section 49 of the

Registration Act sets out the limit of disability of a document which is required to be registered under Section 17 of the Registration Act. If Section 17 or 17 (1) (A) of the Registration Act is not attracted to our case, as we have examined, there is no need for examining the effect of unregistered document as prescribed under Section 49 of the Registration Act.

10. There is simply no merit in the revisions. They are dismissed with costs assessed at Rs. 3500/- each against the respondents.

November 30, 2015 **(K.KANNAN)**
prem **JUDGE**