

Civil Revision No.316 of 2017 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Sr. No.107

Civil Revision No.316 of 2017 (O&M)

DECIDED ON: February 27, 2017

DALJINDER KAUR AND OTHERS

..PETITIONERS

VERSUS

KARAM SINGH

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Sham Lal Bhalla, Advocate,
for the petitioners.

JASPAL SINGH, J.

CM No.1696-CII of 2017

Application is allowed as prayed for.

Copy of agreement to sell dated 30.08.2010 (Annexure P-5) is taken on record subject to all just exceptions and be tagged at appropriate place. The filing of certified copy thereof also stands exempted.

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By virtue of the instant revision petition preferred under Article 227 of the Constitution of India, petitioners have sought the setting aside of order dated November 23, 2016, passed by learned Civil Judge (Jr. Divn.),

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Ludhiana, whereby an application moved by the petitioners/defendants regarding inadmissibility of the document i.e. agreement to sell dated August 30, 2010 (Ex.P-1) being insufficiently stamped has been declined.

2. While assailing the impugned order dated November 23, 2016, it has been argued with vehemence by the learned counsel for the petitioners that the same is illegal, arbitrary, improper and against the settled canons of law. Both the courts below have failed to appreciate that an instrument by which movable or immovable property is transferred, comes within the expression “Conveyance”. Through an agreement to sell dated August 30, 2010, an immovable property stands transferred on payment of part of consideration and handing over the possession of the property. Thus, such an agreement to sell is a “conveyance” within the meaning of Section 2(10) of the Stamp Act (for short 'Act') and the stamp duty is required to be affixed according to the value of the sale consideration, on it. While relying upon the judgment of Hon'ble Apex Court in case “*Om Parkash versus Laxmi Narayan and others*” 2013(4) Recent Civil Report 747 (SC). Learned counsel for the petitioners further contends that as per Section 2 (10) of the Act, agreement to sell is a conveyance deed and under Section 23-A of the Act, the respondent-plaintiff is liable to pay stamp duty, otherwise, agreement to sell cannot be read in evidence even though, it has been exhibited in spite of an objection raised by the petitioners-defendants in the cross-examination of PW-1 Karam Singh. It is also well settled that mere exhibition of the document is not suffice, if, it is legally not admissible in evidence. Learned counsel for the petitioners further contends that both the courts below have wrongly observed that the petitioners have not raised

any objection at the time of execution of agreement to sell and as such, the application is not maintainable or that the petitioners-defendants intends to prolong the court proceedings. But, the learned trial court has failed to appreciate the fact that it is clear from the agreement to sell that an immovable property is being transferred and as such, it definitely comes within the ambit of "Conveyance". Thus, impugned order is not sustainable in the eyes of law and is liable to be set aside by way of acceptance of instant petition.

3. This court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioners and have perused the records available on file.

4. Undoubtedly, agreement to sell dated August 30, 2010 is the basis of the suit, which is alleged to be executed by petitioners-defendants in favour of respondent-plaintiff qua the sale of land measuring 8K-4M fully detailed and described in the head note of the plaint. Though, there is a recital in the above referred agreement to sell that the possession of the property subject matter of agreement was handed over to the respondent-plaintiff at the time of its execution. But as per the mutual understanding, the possession is stated to have been left with the petitioners-defendants with an undertaking that respondent-plaintiff will take the possession at the time of execution and registration of sale deed. Thus, it is a matter of evidence whether an agreement to sell dated August 30, 2010 is insufficiently stamped or that it is admissible or inadmissible evidence.

5. Without expressing any opinion on the merits of the case with regard to the impugned order dated November 23, 2016, instant petition is

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disposed of with the direction to the learned trial court that an objection raised by the petitioners-defendants with regard to admissibility or insufficiency of the stamp of the agreement to sell be kept open to be decided at the time of final disposal of the suit. However, it is made clear that the aforesaid objection shall be decided independently that too, without being influenced by any of the observation made in the impugned order. The instant petition stands disposed of accordingly. Since this order has been passed in the absence of the respondents, if they feel so aggrieved of this order, they shall have the liberty to approach this court.

February 27, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No