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

CR-2000-2017 (O&M)

Date of decision : 07.02.2019

Sanjeev Bhardwaj

... Petitioner

Versus

Gurdial Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. Anil Kumar Garg, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 20.01.2017 (Annexure P-6), whereby an application of defendant No.3, for impounding the agreement to sell dated 28.04.2009 being unregistered document and had been executed on stamp paper of only ₹300/-, has been dismissed on the ground that it was executed on the requisite stamp papers.

Mr. Arihant Jain, learned counsel for the petitioner submitted that the stamp papers required for sale deed of ₹60,00,000/-, in view of the Indian Stamp Act, 1899 (in short 'the 1899 Act') and therefore, it was liable to be impounded under Section 31 of the 1899 Act, particularly when the possession was allegedly delivered to the plaintiff. In such circumstances, Section 35 of the 1899 Act, would also come into play.

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Mr. Anil Kumar Garg, learned counsel appearing on behalf of respondent No.1 supported the impugned order, under challenge, on the premise that the stamp duty is liable to be calculated as per the Column 2 of Entry 23 of the Schedule, subject to the adjustment of duty charges, at the time of execution of the sale deed. In support of his contentions, reliance has been laid down to the decision rendered by the Division Bench of this Court in "**Ram Kishan and another V/s Bijender Mann alias Vijender Mann and others**" 2013 (2) RCR (Civil) 419. The possession though not delivered, though there is recital and that fact can only be seen at the final stage.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Jain, for, it is a settled law that in a mere suit for specific performance, the plea of unregistered agreement to sell, cannot be taken in view of the law laid down for **Ram Kishan's case** (supra). The impounding agreement to sell, where the person has been put in possession, came to be debated by the Coordinate Bench of this Court in "**Kamal Singh V/s Rajinder Kumar Sharma**," 2016 (2) PLR 239. For the sake of brevity, para Nos.8 and 9 of the judgment read as under:-

"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

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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."

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Keeping in view the aforementioned facts and circumstances, I do not find any illegality and perversity in the impugned order, much less, no ground is made out for interference. Accordingly, the present revision petition is dismissed.

07.02.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**