

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6149 of 2016(O&M)
Date of Decision: 02.12.2019

Hira Lal

.....Petitioner

Versus

Satnam Singh

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Sharad Mehra, Advocate
for the petitioner.

Mr. Veneet Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Challenge is to the order dated 20.08.2016 passed by Civil Judge (Junior Division), Amritsar, vide which application for making good the deficiency in stamp paper of less denomination was dismissed.

[2]. Plaintiff/respondent filed a suit for specific performance of agreement to sell dated 20.10.2012 executed by the

defendant in favour of the plaintiff in respect of a double storied house.

[3]. Defendant/petitioner contested the suit. After framing of issues, some evidence was led by the plaintiff and the case was fixed for cross-examination of PWs on 21.09.2015. On the said date, defendant/petitioner filed an application for making the deficiency of deficient stamp paper good.

[4]. Defendant/petitioner submitted that the document i.e. agreement to sell dated 20.10.2012 could not be exhibited unless deficiency in stamp paper is made good. The plaintiff has mentioned in the agreement in respect of plea of possession. If the agreement contains recital of plea of possession, the same requires to be registered and cannot be taken in evidence unless the same is registered. 9% charges of the registration are required to be paid by the plaintiff along with 11% penalty on the value of the sale consideration. Defendant/petitioner further submitted that unless the plaintiff pays the amount of Rs.5,94,000/- in the Court as penalty, the document cannot be allowed to be exhibited.

[5]. Vide the impugned order, the application has been dismissed by the trial Court on the premise that the suit for specific performance can be filed on the basis of registered agreement to sell. The suit for specific performance based on

unregistered agreement to sell if contains clause regarding part performance of the contract by delivery of possession, then the suit cannot be dismissed for want of registration. The proviso to Section 49 of the Registration Act legitimizes such contract to that extent.

[6]. Learned counsel for the respondent submitted that only possession of one room at the first floor was delivered and he is ready to make good the deficiency in the stamp paper to the extent of value/consideration of said room.

[7]. This fact has been admitted by learned counsel for the petitioner that possession of one room was delivered.

[8]. Learned counsel for the petitioner by referring to **Omprakash Vs. Laxminarayan and others, 2013(4) RCR (Civil) 747, Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, 2009(1) RCR (Civil) 615, Dilawar Singh Vs. Amandeep Singh, 2016(4) RCR (Civil) 724, Kamal Singh Vs. Rajinder Kumar Sharma, 2016(3) PLR 239, Mahesh Chand Vs. Judicial Officer and others, 2015(40) RCR (Civil) 201 (Rajasthan)** and **Y. Sharanappa Vs. Balasu Subramanyam and others, 2016(5) KantLJ 309** contended that if the possession is given to the purchaser in an agreement to sell of an immoveable property on part payment of consideration, then the agreement to sell shall be reckoned as a conveyance under

Section 2(10) of Stamp Act and stamp duty is leviable on the instrument. An instrument insufficiently stamped cannot be admitted in evidence unless and until, the deficiency is made good after payment of requisite stamp duty along with penalty. Agreement to sell in question was reduced in writing and admittedly, the possession of one room was delivered to the respondent. Stamp duty has to be paid in case of delivery of possession. Agreement to sell is not admissible in evidence without payment of stamp duty. Learned counsel further submitted that since the objection is with regard to deficiency of stamp duty, therefore, the objection has to be decided before proceeding with the suit further.

[9]. Per contra, learned counsel for the respondent placed reliance upon **Ram Kishan and another Vs. Bijender Mann @ Vijender Mann and others, 2013(2) RCR (Civil) 419 (DB)** and contended that Section 53-A of the Transfer of Property Act, 1882 would leave no ambiguity that though a contract accompanied by delivery of possession is compulsorily registrable under Section 17(1A) of the Registration Act, but failure to register such a contract would only deprive the person in possession of any benefit conferred by Section 53-A of the Transfer of Property Act. Proviso to Section 49 of the Registration Act postulates that non-registration of such a

contract would not prohibit filing of suit for specific performance on the basis of such agreement to sell or leading of such unregistered agreement in evidence.

[10]. It is true in view of ratio laid down in **Bipin Shantilal Panchal Vs. State of Gujarat, 2001(1) RCR (Criminal) 859.** that the objection as regards admissibility of document has to be decided at an appropriate stage and the trial should not be held up otherwise, the same would be an *archaic* practice, but in that very judgment, it has been clarified that if the objection relates to deficiency of stamp duty of a document, the Court has to decide the said objection before proceeding further. For all other objections, procedure suggested in the said case can be followed.

[11]. In the instant case, the prayer of the defendant/petitioner is not that the agreement in question be discarded on the ground of non-registration. By filing application in question, defendant/petitioner only prayed that deficiency in stamp duty on the agreement to sell vide which admittedly possession of one room was delivered in favour of the respondent be made good. Therefore, the scope of this revision petition is not to test the proposition as has been highlighted in the case laws cited by learned counsel for the parties.

[12]. Evidently, learned counsel for the respondent is ready

to make good the deficiency to the extent of delivery of possession of one room for which the trial Court can undertake necessary exercise. The objection relating to deficiency of stamp duty of a document/conveyance can be decided at this stage in view of exception carved out in **Bipin Shantilal Panchal's case (supra)**, wherein it was held that the objection relating to deficiency in stamp duty of a document/conveyance has to be decided before proceeding further in the suit. For all other objections, trial of the suit cannot be withheld as admissibility, genuineness and veracity of the document/evidence can be seen at an appropriate stage.

[13]. It is a settled principle of law that when document/conveyance is found to be deficient in terms of stamp duty, the Court instead of dismissing the suit on that premise, can ask the plaintiff to make good the deficiency along with requisite penalty prescribed by law. If the plaintiff persists in the default and does not adhere to the requirement of law even after notice by the Court, then in such eventuality, the Court can proceed to dismiss the suit.

[14]. Since plaintiff/respondent is ready to make good the deficiency in stamp duty along with requisite penalty, therefore, the trial Court can be obligated to work out the amount to be deposited towards deficiency in stamp paper of less

denomination. The plaintiff shall affix the requisite stamp duty as per delivery of possession of the property in consonance with the stamp duty and registration charges prescribed by the Revenue Department, Government of Punjab.

[15]. In view of above, this revision petition is disposed of.

02.12.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No