IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 6191 OF 2015(O&M)
DATE OF DECISION : 27.02.2020

State of Punjab & Anr.

...Appellants

versus

Rajiv Khanna **...Respondent**

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Nikhil K. Chopra, AAG Punjab
for the appellant.

Mr. Sandeep Jasuja, Advocate
for the respondent.
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ARUN MONGA, J.

1. This is defendant's second appeal against the judgment of reversal rendered by the First Appellate Court vide which the judgment and decree of the trial Court dismissing the suit of the plaintiff for recovery of Rs.91,050/- along with interest was set aside. Resultantly, suit of the plaintiff has been decreed.

2. Brief facts leading to the filing of the instant regular appeal may be noticed first.

3. The plaintiff purchased one plot no. 8 situated at Sabzi Mandi area Abohar from Administrator, New Mandi, Township, Punjab in an open auction on 19.01.1986 for an amount of Rs. 39,000/-. After approval to the auction by the Administrator, a sum of Rs. 9750/- was paid as earnest money at that point of time and remaining amount was to be paid in instalments. On payment of entire sale consideration of Rs. 39,000/-, the plot was to be registered in the

name of plaintiff. It is the case of the plaintiff that he purchased stamp papers for the registration of sale deed in his favour on 25.08.2008, but defendant no. 2 refused to get the sale deed executed, without the payment of advalorem fee on the market rate instead of auction amount. The plaintiff was forced to pay an amount of Rs. 80,880/- on which registration fee of Rs. 10,170/- was also charged, taking the total to Rs. 91,050/-. The plaintiff sought to recover the said exorbitant amount by serving a notice under Section 80 CPC, but to no avail. Hence, the suit was filed for recovery of Rs.91,050/- along with interest.

4. The defendants in their written statement, submitted that plaintiff was charged stamp duty and registration fee as per the instructions of State Govt. contained in letter no. 1689-1710 dated 15.7.2008. It is the stand of the defendant that in the year 2007-08 the Collector rate of the property in question was Rs 1,50,000/- per marla and the registration was done on the basis of Collector rate. No excess amount was charged from the plaintiff either on account of stamp duty or registration fee. The plaintiff is not entitled to any refund and there was no instructions to charge stamp fee and registration on the basis of allotment amount as alleged by the plaintiff.

5. On the basis of pleadings of parties, the trial Court framed the following issues:-

> *"1. Whether the plaintiff is entitled to recovery of Rs.91050/- along with interest as prayed for?OPP*
>
> *2. Whether the suit is not maintainable in the present form?OPD*

3. Whether the plaintiff has no cause of action to file the present suit?OPD

4. Relief."

6. The parties herein led oral and documentary evidence in support of their pleadings to discharge their respective onus as per the issues *ibid.*

6. The trial Court came to the conclusion that as the plaintiff was required to pay the stamp duty on the Collector rate prevailing on the date of registration of the instrument and he was rightly asked to do so. The plaintiff cannot take undue benefit if there has been insufficiency of stamp duty paid while registering some other sale-deed. Consequently, it was held that the plaintiff is not entitled to recover any amount from the defendant and the suit was dismissed vide judgment and decree dated31.08.2013.

7. The plaintiff challenged the judgment and decree of the trial Court. The First Appellate Court , on re-appreciation of evidence on record, came to the conclusion that the plaintiff was required to affix stamp duty for registration of sale-deed in question only on the price fixed for such allotment and not on the prevailing Collector rate, as held by the trial Court. Resultantly, the appeal was allowed and the suit of the plaintiff was decreed for recovery of Rs.91,050/- along with interest @ 9% per annum, leading to the filing of instant regular second appeal by the State of Punjab.

6. I have heard the rival contentions of learned counsel for the parties and have perused the judgments passed by the Courts below vis-a-vis the grounds of appeal taken before this Court.

7. The controversy in the instant case is whether the plaintiff was required to pay the stamp duty as per Collector rate of the area on the date of registration of sale-deed or at the rates on which the property was purchased by him in auction.

8. It is not in dispute that the plaintiff purchased the plot in public auction from Administrator, New Mandi Township, Punjab. The plea of the plaintiff is that since he had purchased the plot from Government, he was not liable to pay the stamp duty at Collector rate prevailing at the time of registration of instrument, rather he was to pay at the price on which he got the plot in open auction, as provided under Section 17(2) of Registration Act. It was negated by the trial Court by observing as under:-

> *"10. Now, the present case has been filed by the plaintiff for recovery of Rs.91,050/- along with interest. The plaintiff in his plaint has stated that he has purchased one plot at Sabji Mandi, Abohar in an open auction from Administrator, New Mandi Township, Punjab, Chandigarh on 19.11.1986 for an amount of Rs.39000/- and paid 9750/- as earnest money at the time of auction and the remaining amount was paid by him in instalments and the sale deed was to be registered under form-B, however, when the same was produced before Sub Registrar, Abohar for registration, Sub Registrar refused to register the sale deed without payment of advalorem stamp duty as per market rate and the plaintiff was supposed to pay Rs.80,880/- as stamp duty along with Rs.10,170/- as registeration fee and the said amount has been illegally and forcibly charged by defendant No.2 from the plaintiff, which was purchased*

by him in an open auction from Administrator, New Mandi Township, Chandigarh for an amount of Rs.39,000/- only. Now, as per pleading of the plaintiff he has purchased the plot in an public auction from Administrator, New Mandi Township, Chandigarh and as per Section 17 Clause 2 of the Registration Act, 1908 nothing in sub section 1(b) & (c) applies to any certificate of sale granted to the purchaser of any property sold by public auction by Civil or Revenue Officer. Now as per Section 17(1) of the Registration Act, 1908 the documents, which purport or operate to create, declare, assign, limit or extinguish any right, title or interest of the value of Rs.100/- and upward to or in immovable property shall be compulsorily registered and Sub Clause (2) of Section 17 says that nothing of Sub Section 1(b) and (c) shall apply to any certificate of sale granted to purchaser of property sold by public auction by a Civil or Revenue Officer. In the present case as per pleading of the plaintiff he has purchased the plot from the Civil Officer i.e. Administrator, New Mandi Township, Punjab and accordingly the sale certificate issued by the Administrator was not required to be compulsarily registered but the plaintiff chose to register the same and accordingly presented the same before the Sub Registrar on 25.08.2008 and he was required to pay stamp duty prevailing as per the collector rate of the area on the date of registration. Further, the learned counsel for the plaintiff has argued that State Government has issued one notification dated 28.05.2009 and has produced copy of the same as Ex.PX. Perusal of Ex.PX shows that Govt. of Punjab issued notification dated 28.05.2009 vide which explanation was added under Section 47A and 75 of the

Indian Stamp Act, 1889. State Govt. vide this notification declared that the consideration amount fixed at the time of allotment of immovable property by any Govt./ Semi Govt. organization shall be deemed to be the collector's rate and the stamp duty shall be charged for registration of the document upon the consideration amount fixed by the Govt./ Semi Govt. organisation provided that document is registered by the original allottee upto 02.09.2009 from the issue of the notification, whereas in the present case the plaintiff presented the document for registration of the same before Sub Registrar on 08.08.2008, which was registered by the Sub Registrar on 25.08.2008 and the notification by the Govt. of Punjab was issued on 28.05.2009 and the same was not given any retrospective effect, which means that the plaintiff cannot take advantage of the same as he has already got registered the document on 25.08.2008 i.e. before the issue of notification by the Govt. of Punjab. Further, learned counsel for the plaintiff has argued that defendant No.2 Sub Registrar, Abohar has registered similar document by charging nominal stamp duty on the consideration amount paid by the auctioner and has produced on record certified copy of the said sale deed as Ex.P7. Perusal of Ex.P7 shows that one Varinder Kumar has purchased one shop in public auction from Administrator, New Mandi Township, Punjab Chandigarh for consideration of Rs.38500//- and Sub-Registrar registered the same by charging stamp duty of Rs.1925/-. The document Ex.P7 was executed on 11.06.2008 by Administrator New Mandi Township, Punjab Abohar in favour of Varinder Kumar and the same was registered by Sub Registrar on 02.07.2008 and document of the plaintiff was registered by Sub Registrar *on 25.08.2008. No doubt, Sub Registrar has charged stamp duty in Ex.P7 on the consideration amount of Rs.38500/- and the plaintiff was charged with stamp duty at the prevailing collector rate on the date of registration of sale deed but if the Sub Registrar has charged insufficient stamp duty from Varinder Kumar in Ex.P7 then the Collector has the ample powers to impound the said document, which is insufficiently stamped and the plaintiff cannot take advantage of the same as the plaintiff himself chose to get registered the sale deed and he is required to pay stamp duty on the property at the prevailing collector's rate of the area, which has been proved on record by the defendants as Ex.D3 and accordingly the stamp duty and registration fee was charged from the plaintiff for the registration of the sale deed qua the suit property, as such the plaintiff is not entitled to recover the amount paid by him as stamp duty. So, accordingly in view of above discussion, this issue is decided against the plaintiff and in favour of the defendants."*

9. The learned First Appellate Court reversed the findings of the trial Court by observing as under:-

"9. Admittedly, the appellant had purchased one plot measuring 20 feet X 100 feet situated at Sabji Mandi area Abohar from Administrator, New Mandi, Township, Punjab, Chandigarh in an open auctin on 19.01.1986 for an amount of Rs.39,000/-. A sum of Rs.9750/- was paid by the appellant as earnest money and the remaining amount was paid by the appellant in installments. As per section 71 of the Registration Act, 1908, the sale certificate issued by the Govt. was not compulsory registrable document but still the appellant preferred to

get it registered and accordingly he presented the same for registration before the Sub Registrar on 25.08.2008. The appellant was required to pay stamp duty as per Collector rate of the area on the date of registration of sale deed, whereas the claim of the appellant is that he was not required to pay registration fee as per the prevailing Collector rate on the date of registration of the sale deed but he was required to pay the registration fee only on an amount of Rs.39,000/-, for which he had purchased the plot in question in an open auction.

10. Writ petition in Ram Lakhan and another Vs. State of Punjab and others, passed in CWP No. 24435 of 2011, decided on 27.11.2012 was allowed, wherein the issue involved was that the property purchased in public auction, or a property purchased on the rates prescribed by the Government through its agencies, is to be assessed for the purpose of registration under the Indian Stamp Act as per the rates prescribed by the Government through its agencies, is to be assessed for the purpose of registration under the Indian Stamp Act as per the rates prescribed by the State Agency, or the auction amount or the rates prescribed by the Collector on the basis of market value. It was been held as under:-

> *"On due consideration of the matter, I am of the opinion that the controversy is no longer res integra. The respondents themselves have issued the notification stating that where the property has been allotted or purchased in public auction conducted by the Government or a Public Sector Undertaking or a local body, the price fixed for such allotment or auction shall be deemed to be the Collector's rate and the evaluation for the purpose of registration necessarily has to be made*

on the basis of such determined price."

11. In Mohali Club Mohali through its President Kuldeep Singh son of Sh. Roshan Singh Vs. State of Punjab and others, passed in CWP No. 6387 of 2009 on 06.05.2010. Hon'ble Punjab and Haryana High Court had an occasion to examine the matter of stamp duty on a plot allotted by the Government/ Semi Government Organization while extending the benefit of notifications issued by State of Punjab. The writ petition was allowed and it was held that excessive stamp duty cannot be levied beyond the price paid by the purchaser at the fixed price by the government at the time of allotment of plot.

12. Similarly, a Division Bench of Hon'ble Punjab and Haryana High Court, in a case of State of Punjab and others Vs. Purshotam Das and another, passed in LPA No. 890 of 2010, decided on 02.08.2010 has dismissed the writ petition of the State and has held that the provisions of Section 47a of the Indian Stamp Act will not be attracted in a case where the property had been purchased through public auction conducted by the State authorities.

13. In view of the cae law as referred above, the appellant was required to affix court fee for the registration of sale deed in question only on the price fixed for such allotment and not on the prevailing Collector rate. The appellant has also proved on file certified copy of one Sale deed Ex.P7 registered in favour of one Varinder Kumar for the purchase of one shop in auction from Administrator, New Mandi Township, Punjab Chandigarh for a consideration of Rs.38,500/- and the same was registered by Sub Registrar by charging duty of Rs.1925/-. This sale deed was executed on 11.06.2008 and was registered by Sub Registrar on 02.07.2008, whereas the sale deed in question was registered by Sub Registrar on 25.08.2008 and the present appellant was charged with stamp duty at the prevailing Collector rate on the date of registration of sale deed. No explanation has been

> *tendered by the learned Govt. Pleader for the respondents as to why two different yard sticks were opted by the Sub Registrar, Abohar for registration of sale deed in favour of present appellant and the sale deed Ex.P7, having been executed in favour of one Varinder Kumar. Pick and choose policy cannot be allowed to be adopted by the Sub Registrar for registration of the sale deeds on similar grounds. In view of the case law as referred above and in view of the fact that sale deed Ex.P7 was registered by Sub Registrar only by way of charging stamp duty on the basis of auction amount, the appeal in question is ordered to be allowed and the suit of the plaintiff seeking recovery of Rs.91050/- along with interest @ 9% PA from the date of realization is ordered to be decreed in favour of the appellant Rajiv Khanna as against the respondents...."*

10. From a perusal of findings returned by the Courts below, I am of the considered opinion that the trial Court has erred in dismissing the suit. Not only the Registration Act, but the law settled by this Court in the cases of Ram Lakhan, Mohali Club and Purshotam Das, as relied upon by learned First Appellate Court coupled with the notification issued by the Government, mandate that the price of property taken in auction from Government or Public Sector Undertaking shall be deemed to be the Collector rate and evaluation thereof for the purpose of registration necessarily has to be made on the basis of such determined price. The purchaser of such property cannot be forced to pay the stamp duty and registration charges on the marked value prevailing at the time of registration of the sale-deed, but stamp duty has to be charged on the purchase price of such property. Not only this, the First Appellate Court rightly opined that the plaintiff was discriminated while registering the instrument, as in another case the defendants got the sale deed registered on the auction price and not on market price prevailing on

the date of registration of the sale deed, as was done in the case of the plaintiff. The findings returned by learned first Appellate Court are in consonance with the law, record and facts of the case. There seems no perversity or illegality in the findings returned by the First Appellate Court on appreciation of evidence while reversing the findings of the trial Court. No interference is thus called for. No fresh ground worthy of interference in the appellate jurisdiction of this Court is made out.

11. Furthermore, neither any question of law much less substantial question of law, which is *sine qua non* for entertaining second appeal before this Court is involved in present appeal, so as to exercise appellate jurisdiction under Section 41 of the Punjab Courts Act read with Section 100 of Civil Procedure Code.

12. In view of my discussion above and the reasons recorded therein, this appeal is dismissed being bereft of any merit. Resultantly, the impugned judgment and decree passed by First Appellate Court is upheld.

13. Pending applications stand disposed of.

14. No order as to costs.

(ARUN MONGA)
JUDGE

February 27, 2020
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1.	Whether speaking/reasoned :	Yes/No
2.	Whether reportable :	Yes/No