IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1) **CR 478 of 2016 (O&M)**
Date of Decision: February 17, 2021

M/s JMD Ltd. ...Petitioner

Versus

M/s Twin Brook Developers and Promoters and others
... Respondents

2.) **CR 480 of 2016**

M/s JMD Ltd. ...Petitioner

Versus

M/s Mehta Colonizers Pvt. Ltd. and others
... Respondents

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Mr. Deepinder S. Patwalia, Sr. Advocate with
Mr. Bikramjit S. Patwalia, Advocate
for the petitioner.

Mr. Sumeet Mahajan, Sr. Advocate with
Ms. Ramneeq Kaur, Advocate
for respondent No. 1 in CR-478-2016.

Mr. Aayush Gupta, Advocate
for respondents No. 1 and 2 in CR 480 of 2016.

FATEH DEEP SINGH, J. (Oral)

The matter has been taken up through video-conferencing on account of lockdown due to outbreak of pandemic COVID-19.

Two civil suits one titled as "**M/s JMD Ltd. Vs. M/s Twin Brook Developers and Promotors and others"** bearing No. CS-186 of 17.07.2009 (hereinafter referred as **'first suit'**) and the other titled as " **M/s JMD Ltd. Vs. M/s Mehta Colonizers Pvt. Ltd. and others"** bearing No. CS 187 of 27.07.2009 (hereinafter referred as **'second suit'**) were filed by the same very plaintiff now revisionist against two different sets of defendants, whereby, suits for specific performance of the agreements dated 03.04.2006 and 10.05.2006 in the first and second suit, respectively, in respect of the land detailed therein (details of which need not be reproduced here) were filed.

In the first suit the total sale consideration was Rs.7,54,00,000/- out of which Rs.4,46,00,000/- were given as earnest money, whereby, sale deed was to be executed within 100 days of the signing of the agreement and in the second suit the sale consideration amount was Rs.12 crores out of which Rs.3 crore were paid as earnest money and the balance amount was to be paid at the time of execution of the sale deed. During the course of events, a dispute had arisen between the seller and the buyer, as a consequence of which, the present petitioners filed two different suits for specific performance of these two agreements to sell. It was during the course of pendency of these two different suits, separate applications under Order 7 Rule 11 read with Section 151 CPC were moved by the defendants in each of these two cases for rejection of the plaint on the grounds that as per the claim of the plaintiffs, present petitioners it was enforcement of conveyance deed and not agreement to sell and, therefore, on account of non-registration and non-payment of the stamp duty, the suits does not sustains.

To this, response of the plaintiffs in both the applications was of denial claiming that neither the entire payment was made nor the possession of the entire suit land was taken and, therefore, insisted that it was an agreement to sell and, therefore, no need for registration and payment of stamp duty was to be made.

The Court of learned Civil Judge (Junior Division) Ludhiana through impugned order dated 21.12.2015 allowed the applications of the applicants and, thereby, directing the plaintiffs, now petitioners, to pay stamp duty on the document within one month of agreement of sell. That is how, these two separate revision petitions by the same very unsuccessful plaintiff in the two suits have come about before this Court.

On account of consanguinity of facts and law point and that the challenge is by the same party, who was the plaintiff in both these suits, both these matters are being taken up together for disposal for the sake of brevity.

Heard Mr. Deepinder S. Patwalia, Sr. Advocate assisted by Mr. Bikramjit S. Patwalia, Advocate for the petitioner, Mr. Sumeet Mahajan, Sr. Advocate assisted by Ms. Ramneeq Kaur, Advocate for respondent No. 1 in CR-478-2016 and Mr. Aayush Gupta, Advocate for respondents No. 1 and 2 in CR 480 of 2016 and perused the records.

The consistent stand of both the parties to these suits before the trial Court and as is there before this Court in their submissions is the admitted stance that a contract by way of agreement was entered into between the two sides though the plaintiffs/petitioners in their plaint admitted that in pursuance of this agreement, they have made payment of the substantial amount of money and were delivered possession of the land subject matter of sale. Though before this Court, the counsel for the plaintiffs/petitioners has sought to dither over the same, however, the own plaint of the plaintiffs/petitioners reflects that they alongwith main relief of specific performance of the agreement have sought relief of permanent injunction restraining the defendants now respondents from taking forcible possession of the land subject matter of this dispute is itself reflective of the fact and due admission that the possession of the suit land was with the plaintiffs, now petitioners. More so being an admission in terms of Section 17 of the Indian Evidence Act 1872 is a substantive piece of evidence though at a later stage during the trial the plaintiffs/petitioners may take up the stand and so that the fact admitted is not correct but at this juncture the petitioners cannot wriggle out of this commitment in their pleadings.

Furthermore, such a document which purports to transfer the interest in a immoveable property of such a huge amount in terms of Section 53-A of the Transfer of Property Act 1882 needs compulsory registration by virtue of Section 17 (1-A) of the Registration Act 1908 which comes into operation w.e.f. 2001. Be so as it is before this Court under the terms of Section 2 sub-Section 10 of the Indian Stamp Act 1899, under which, such an instrument falls under Schedule I of the Indian

Stamp Act 1899, for which, proper stamp duty is to be levied and paid.

To the specific query of this Court as has been the arguments on behalf of the respondents, the present documents on which the plaintiffs/petitioners have laid their claim are neither registered nor stamped as required under the law and, therefore, cannot be considered as legal and legitimate piece of evidence under the law.

On behalf of the petitioners, reliance has sought to be laid on **Suraj Lamp and Industries Pvt.** Vs. **State of Haryana and another** 2011 (183) DLT 1, **Om Prakash** Vs. **Laxminarayan and others** **2014(1) W.L.N. 36, Ram Kumar** Vs. **Satbir Singh 2012(2) PLR** and **Raj Kumar** Vs. **The Commissioner Jhansi Division, Jhansi and others** 2012(115) R.D. 799 to drive home the point that there cannot be any legally permissible approval through general power of attorney and that an agreement to sell does not create any interest or charge upon a property. However, the own law relied by the petitioner in **Om Parkash case (supra)** the Hon'ble Apex Court in same situation have clearly held that such an instrument which implies an interest in a immovable property falls within term “Conveyance” and it was held that payment of part of the consideration amount and handing over of the possession of the property is nothing but a conveyance and, therefore, is governed under the Registration Act 1908 as well as the Stamp Act 1899 and none of the ratios so cited advance the case of the plaintiffs/petitioners. No doubt, the plaintiffs have to decide the very question of admissibility of such a document and they might insist on the admissibility of such a document which they can do so before the trial Court which has ample powers by virtue of Section 33, 35 and 38 of the Indian Stamp Act.

In the impugned order, the learned trial Court has rightly held that by this receipt of money and handing over of the possession, the right, title and interest in the suit property stands assigned to the plaintiffs and, therefore, has correctly termed this instrument to be a conveyance deed falling under the Indian Stamp Act. What one could decipher that apparently it being a real estate venture where the plaintiffs appear to have been speculative of further selling the property in question has tried to evade their legal obligation of paying the stamp duty and getting the instrument registered and in the process might even hoodwink the income tax authority. Counsel for the petitioner could not pin point any illegality or perversity in the findings of the lower Court.

Both the petitions being hopelessly without merits needs to be dismissed. However, in the interest of justice, to ensure that there is due dispensation of the same the petitioners/plaintiffs afforded one month's time from the receipt of copy of this order to make good the stamp duty and get the instrument registered and on their failure to do so after the expiry of this period, the suits of the plaintiffs would be deemed to have been dismissed.

February 17, 2021 **(FATEH DEEP SINGH)**
amit rana **JUDGE**

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