In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 1265 of 2015 (O&M)

Date of Decision: 06.07.2022

Ajit Kumar

... Petitioner(s)

Versus

Sunder Lal and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Namit Gautam, Advocate
for the petitioner(s).

Mr. Saurabh Arora, Advocate
for the respondents.

Anil Kshetarpal, J.

1. The plaintiff, in a suit for grant of decree of specific performance of the agreement to sell dated 07.03.2000, has filed the present revision petition assailing the correctness of the order dated 25.11.2014, passed by the learned Civil Judge (Junior Division), Ludhiana, whereby the plaintiff was directed to make good the deficient stamp duty along with penalty to the extent of ten times of the requisite stamp fee.

2. The learned counsel representing the petitioner contends that the agreement to sell was exhibited in evidence as Ex.P18 and there is no provision for de-exhibiting the document. He submits that Section 36 of the Indian Stamp Act, 1899 (hereinafter referred to as "the 1899 Act" provides that once a document has been admitted in evidence, the same cannot be de-exhibited. He relies upon the judgment passed in ***Javer Chand and Others v. Pukhraj Surana AIR 1961 SC 1655*** in support of his arguments.

3. Per contra, the learned counsel representing the defendants

submits that the agreement to sell is not properly stamped, therefore, it is the duty of the Court to impound the same.

4. Firstly, Section 36 of the 1899 Act is categoric. It provides that once a document has been admitted in evidence without any objection from the other party, such document shall not, except as provided in Section 61 of the 1899 Act, be called in question, at any stage of the suit on the ground that the instrument has not been properly stamped. Admittedly, Section 61 of the 1899 Act is not applicable because there is no revision of the decision of the Court regarding sufficiency of the stamp duty.

5. Moreover, in the present case, the agreement to sell in question is dated 07.03.2000. Entry No.5 of the Indian Stamp (Punjab Amendment) Act, 2001 was notified on 21.12.2001, whereas entry No. 23 was amended by the Indian Stamp (Punjab Amendment) Act 2007 w.e.f. 25.01.2008.

6. Since this issue was not before the trial Court, therefore, this Court does not wish to express any final opinion because the revision petition can be decided on the first ground itself.

7. Keeping in view the aforesaid facts, the present revision petition is allowed and the order dated 25.11.2014 is set aside. The trial Court is directed to proceed with the matter without insisting on the payment of deficient stamp duty or the penalty.

8. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

July 06, 2022
"DK"

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