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

CR No.2382 of 2021

Reserved on : 6th August, 2022
Pronounced on: 10th August, 2022

Satish Chaudhary (deceased) thr. LR

… Petitioner

Versus

Harbans Singh & others

… Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Deepak Verma, Advocate for the petitioner.

Mr. M.S. Dhami, Advocate for respondents No.1 and 2.

Mr. Parvinder Singh, Advocate for respondent No.3.

MANJARI NEHRU KAUL, J.

Petitioner, who is one of the defendants before the Court below in a suit for specific performance of receipt-cum-agreement to sell dated 18.09.2012/08.10.2012 filed by respondents No.1 and 2, is challenging order dated 16.01.2020 (Annexure P7) vide which his application for impounding the alleged agreement-cum-receipt was dismissed and another order dated 11.08.2021 (Annexure P9) whereby his review application was also declined.

Learned counsel, inter alia submits that the impugned orders (Annexures P7 and P9) are liable to be set aside being perverse, arbitrary and not in consonance with the settled proposition of law. He submits that it is a settled proposition of law that a document by which there has been delivery of possession is as good as a Conveyance Deed.

Therefore, since the alleged agreement-cum-receipt dated 08.10.2012 (Annexure P1) contains a specific recital about the delivery of possession and thus, was required to be properly stamped as per the Indian Stamp Act, 1899 (hereinafter referred to as, 'the Act'). Learned counsel further submits that an insufficiently document cannot be admitted in evidence unless the duty, with which it is chargeable, has been paid.

Learned counsel, in support, has placed reliance upon a judgment of the Hon'ble Supreme Court rendered in **'Omprakash vs. Laxminarayan and others' 2013(4) RCR (Civil) 747.**

Per contra, learned counsel for the respondents, while opposing the prayer and submissions made by learned counsel for the petitioner, have vehemently argued that no interference is warranted in the impugned order inasmuch as delivery of possession stands specifically denied in the written statement, coupled with the fact that the agreement to sell does not confer any title or right and hence in turn, would not amount to sale.

I have heard learned counsel for the parties and perused the relevant material on record.

The question, which arises for consideration of this Court, is whether the agreement cum receipt dated 08.10.2012 would be chargeable with stamp duty as per the first Schedule of the Act or not.

Section 3 of the Act provides for the instruments chargeable with duty. For facility of reference, Section 3(a) of the Act is being reproduced herein below:-

> ***"3. Instruments chargeable with duty.*** *— Subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively, that is to say —*
>
> *(a) every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;*
>
> *XXXX XXXX XXXX"*

As per entry No.23 in the first Schedule, "Conveyance" as defined under Section 2(10) of the Act, which is not a transfer charged or exempted under entry No.62, is chargeable with stamp duty as provided therein. It would also be relevant to reproduce Section 2(10) of the Act, which defines "Conveyance":-

> *"2.* ***Definitions*** *– In this Act, unless there is something repugnant in the subject or context, -*
>
> *XXXX XXXX XXXX*
>
> *(10) "Conveyance" includes a conveyance on sale and every instrument by which property, whether movable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I.*
>
> *XXXX XXXX XXXX"*

The State of Punjab has amended Article 5 in Schedule I-A to include clause (cc) which provides that an agreement to sell followed by or evidencing delivery of possession of immovable property agreed to be sold shall be chargeable with the same duty as provided under column No.2 of entry No.23 of first Schedule.

Adverting to the case in hand, the parties entered into an agreement dated 08.10.2012 in respect of suit property, as detailed in the plaint, for a sale consideration of ₹ 4.95 crores. As per the recitals of the said agreement, possession of the suit property had also been delivered and part payment made vide receipt dated 08.10.2012. In the light of the above reproduced provisions of law, this Court finds merit in the submissions made by learned counsel for the petitioner that the agreement cum receipt dated 08.10.2012 was insufficiently stamped. Hence, in the light of the provisions of Section 35 of the Act, which is reproduced herein under, it would be inadmissible in evidence.

> *"**35. Instruments not duly stamped inadmissible in evidence, etc.** — No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:*
>
> *Provided that—*
>
> *(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of any*

instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped, would be admissible in evidence against him, then such receipt shall be admitted in evidence against him on payment of a penalty of one rupee by the person tendering it;

(c) Where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure 1898 (5 of 1898);

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."

This Court is unable to concur with the submissions made by the learned counsel for the respondents that since the delivery of possession has been specifically denied in the written statement by the petitioner and other defendants thus, the agreement would not fall within the meaning of conveyance and would not be chargeable with the stamp duty. For the purpose of deciding the admissibility of a document, only the recitals made therein are to be seen and not the pleadings of the parties, as they would be of no consequence.

In the circumstances, this Court has no hesitation in observing that the trial Court erred in dismissing the application filed by the petitioner for impounding the alleged receipt-cum-agreement dated 08.10.2012.

As a sequel to the above, the instant revision petition is allowed and the impugned orders dated 16.01.2020 (Annexure P7) and dated 11.08.2021 (Annexure P9) are set aside.

(MANJARI NEHRU KAUL)
JUDGE

August 10, 2022
rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No