

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR No.3048 of 2021

Date of Decision : 08.04.2022

Bikram Singh

....Petitioner

VERSUS

Charanjit Singh

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Rohit Rattewal, Advocate for the petitioner.

ALKA SARIN, J.

The present civil revision under Article 227 of the Constitution of India has been preferred challenging the order dated 16.04.2021 (Annexure P-3) passed by the Additional Civil Judge (Sr. Division), Garhshankar, District Hoshiarpur whereby agreement to sell dated 07.10.2014 has been impounded for want of stamp duty and the petitioner was directed to pay the amount of stamp duty on the agreement to sell plus ten times of the penalty of deficit amount of the stamp duty.

Brief facts in the present case are that the plaintiff-petitioner filed a suit for specific performance of agreement to sell dated 07.10.2014 *qua* land measuring 25 *marlas*. In the plaint, it was specifically stated in para 3 that possession of the suit property had been delivered to the plaintiff-petitioner on 07.10.2014 i.e. the date of the execution of the agreement to sell. The Trial Court vide impugned order dated 16.04.2021 ordered the impounding of the agreement to sell and directed the plaintiff-petitioner to pay the deficit amount of stamp duty on the agreement plus ten times of the penalty of the deficit amount of stamp duty.

Learned counsel for the plaintiff-petitioner would contend that no stamp duty needs to be paid on an agreement to sell in case possession has not been delivered. It is further the contention that it was a mere recital in the agreement to sell that possession has been delivered, however, the possession was never delivered to the plaintiff-petitioner.

I have heard learned counsel for the plaintiff-petitioner.

In the present case, admittedly, there is a recital in the agreement to sell to the effect that possession has been delivered to the plaintiff-petitioner by the defendant-respondent on the date the agreement to sell was executed. Further, to the same effect are the pleadings by the plaintiff-petitioner. A specific averment has been made in the plaint that the possession of the property stood delivered to the plaintiff-petitioner on 07.10.2014. In fact, a perusal of the plaint appended with the civil revision as Annexure P-1 would reveal that no alternative prayer has been made that the plaintiff-petitioner be delivered possession in case he was not found to be in possession of the suit property. Hence, the argument of learned counsel for the plaintiff-petitioner that he was not in possession of the suit property cannot be accepted.

Section 35 of the Indian Stamp Act, 1899 reads as under :

“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 an 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 deficit 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, 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 any*

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.”

In case of **Avinash Kumar Chauhan vs. Vijay Krishna Mishra [2009(1) RCR (Civil) 615]**, the Hon'ble Supreme Court held as under :

“15. The said explanation has been inserted by M.P. Act 19 of 1989 with effect from 15th November, 1989. By reason of the said provision, thus, a legal fiction has been created. Although ordinarily an agreement to sell would not be subject to payment of stamp duty which is payable on a sale deed, but having regard to the purpose and object it seeks to achieve the legislature thought it necessary to levy stamp duty on an instrument whereby possession has been transferred.

The validity of the said provision is not in question.

16. It is not in dispute that the possession of the property had been delivered in favour of the appellant. He has, thus, been exercising some right in or over the land in question. We are not concerned with the enforcement of the said agreement. Although the same was not registered, but registration of the document has nothing to do with the validity thereof as provided for

under the provisions of the Indian Registration Act, 1908.

17. We have noticed hereto before that Section 33 of the Act casts a statutory obligation on all the authorities to impound a document. The court being an authority to receive a document in evidence is bound to give effect thereto.”

It is trite that the document that is required to be registered and which contains a recital of delivery of possession would also require to be stamped as per the provisions of the Indian Stamp Act, 1899, as amended by the State of Punjab.

Keeping in view the law laid down, I do not find any illegality or infirmity in the order passed by the Trial Court in impounding the agreement to sell and directing the plaintiff-petitioner to pay the deficit amount of stamp duty on the agreement to sell plus ten times of the penalty of the deficit amount of the stamp duty. The impugned order does not suffer from any error of law or jurisdiction which would warrant interference by this Court.

In view of the above the present civil revision, which is devoid of any merit, is dismissed.

Dismissed.

8th April, 2022
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO