

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

CR 5359/2022(O&M)

Date of decision: November 30,2022

Amarjeet Singh through Special Power of Attorney

.....Petitioner

Vs.

Nirmal Singh

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Sarabjit Singh Sidhu,Advocate for the
Defendant/petitioner.

Nidhi Gupta,J.

Defendant/petitioner has filed this revision petition through his Special Power of Attorney-Balbir Singh, challenging the order dated 14.11.2022 (Annexure P-1) passed by learned Civil Judge (Junior Division) Kharar whereby his application (Annexure P-6) for impounding the agreement to sell on the ground of non-payment of stamp duty by the plaintiff/respondent has been dismissed; as well as the alternative prayer for rejection of the plaint under Order 7 Rule 11 read with Section 151 CPC, has also been rejected fide the impugned order dated 14.11.2022.

Brief facts of the case are that on 20.2.2015 the plaintiff/respondent filed a suit (Annexure P-3) for possession as owner, by way of specific performance of agreement to sell dated 20.5.2013, in respect of suit land as detailed in the head note of the plaint, and for directing the defendant/petitioner to execute and get the sale deed registered in favour of the plaintiff/ respondent after payment of Rs.6 lacs and after adjusting Rs.1,09,00,000/- received by the defendant/petitioner as earnest money.

The petitioner filed written statement dated 28.4.2015 (Annexure P-4). He also moved an application dated 7.11.2022 (Annexure P-6) for impounding the agreement to sell dated 20.5.2013 for non-payment of stamp duty as required under Section 35 of the Indian Stamp Act, or alternatively for rejection of the plaint under Order 7 Rule 11 read with Section 151 CPC.

Learned counsel for the defendant/petitioner submits that plaintiff/respondent has claimed specific performance of the agreement to sell dated 20.5.2013 contending that the possession of the land is with him i.e., plaintiff/respondent. It is submitted that accordingly the plaintiff/respondent was required under law to register and affix stamp duty on the valuation of the agreement in question since admittedly possession has already been delivered to him by the defendant/petitioner. Learned counsel submits that the defendant/petitioner had also taken an objection in this regard in the written

statement filed by him to the effect that the agreement to sell is not properly valued. It is submitted that as such the plaint was liable to be rejected under Order 7 Rule 11 CPC and that the learned Civil Judge (Junior Division) Kharar is in patent legal error in not accepting the application filed by the petitioner. Reliance is placed upon judgment of this Court in **2022(2) Civil Court Cases 672 Bikram Singh v Charanjit Singh**; as also judgment of Telangana and Andhra Pradesh High Court in **2018(3)CCC334 Tatineni Venkata Subba Rao Versus Kodali Jayalaxmi Devi**. Para 16 of the said judgment reads as under:-

“16. In Omprakash's case (5 supra), the Hon'ble Supreme Court again was called upon to decide a similar question and in paras 15 and 16, the Court held that unless the agreement of sale was adequately and properly stamped, it cannot be received in evidence. The Supreme Court also pointed out that the recitals in the document are important. There was an explanation in the State of Madhya Pradesh, which was material in this decision. Therefore, the Supreme Court held that the document was inadmissible in evidence. The question that fell for consideration before the Hon'ble Supreme Court was whether the admissibility of a document would depend upon the recitals in the document or upon the pleadings. In this case, the Supreme Court clearly held that at the time of considering the question of admissibility of a document, it is the recitals in the document that would decide the admissibility of the document”.

Notice of motion.

Ms. Harpreet K. Gill, Advocate, who is present in Court accepts notice.

Learned counsel for the plaintiff/respondent submits that it is factually incorrect that possession of the suit land has been given to the plaintiff-respondent. This is inter-alia, borne out from the fact that

the defendant/petitioner had himself given a statement to the police that he had given the suit land on *theka* to one Karamjit Singh son of Dalvir Singh resident of Village Majatari.

Heard learned counsel for the parties and gone through the paper book in detail as also perused the relied upon judgments.

A perusal of the Headnote of the plaint Annexure P-3 shows that the Plaintiff/respondent is not seeking relief of specific performance, but is seeking relief of possession by way of specific performance of agreement to sell. The prayer clause also shows the same.

Moreover, in the present case it cannot be said with any degree of certainty that possession was delivered by the defendant/petitioner to the plaintiff/respondent at the time of execution of agreement to sell.

Para 2 of the plaint reads as follows:

“2- That the plaintiff paid Rs.40,00,000/- as earnest money to the defendant at the time of entering into the said agreement in the presence of witnesses and the rate fixed was Rs.1,20,00,000/- per acre and the last date for execution and registration of sale deed was fixed 20-7-2014. On the day of agreement the defendant also gave the possession to the plaintiff in Kh No. 241, 246, 239 exclusively”.

And para 2 of the reply on merits Annexure P-4 filed by the petitioner-defendant reads as follows:

“6. That the agreement is not even admissible in evidence as it is not properly stamped for the purpose of Stamp Act”.

Thus, though a routine averment has been made by the respondent in the plaint regarding delivery of possession, the same has been denied by the petitioner. It is therefore, clear from the above averments that in the present case it cannot be said with absolute certainty that possession of suit land is with the respondent.

Moreover, learned counsel for the petitioner has been unable to controvert the contention of counsel for the respondent that the defendant/petitioner had given a statement to the police that he had given the suit land on theka to Karamjit Singh for Rs. 2.5 lacs per month.

Even further, in the present case issues have been framed by the learned Court below with regard to affixation of such stamp duty as well as whether the agreement in question is hit by the provisions of Section 53 of Transfer of Property Act. Accordingly, in the facts and circumstances of the present case, as also in view of the fact that in this case the evidence has already been concluded, I find no error in the reasoning of the learned Civil Judge that *“if after the appreciation of evidence, court finds that possession is delivered to the plaintiff vide the impugned agreement then before pronouncement of the judgment, the deficiency in stamp duty can be fulfilled.”*

Further, this Court in **2016(2) RCR (Civil) 626 Haroon v Kaley Khan** has held that *“in a suit for specific performance based upon an unregistered agreement to sell which contained a clause*

regarding part performance of the contract by delivery of possession shall not be dismissed for want of registration of the contract”. The judgments relied upon by the learned counsel for the petitioner are distinguishable as in the said cases there was no dispute regarding delivery of possession unlike the present case.

Accordingly, in view of the above discussion, I find no merit in this revision petition, and the same is hereby dismissed.

Application(s),if any, also stand disposed of.

(Nidhi Gupta)
Judge

November 30,2022.
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No