

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

221

CR-1461-2016

Date of Decision :20.03.2023

Vinod Kumar**..Petitioner****Versus****Narinder Kumar through LRs****...Respondents****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI**

Present: Mr. Sunny Singla, Advocate for the petitioner.

Mr. Raman Mohinder Sharma, Advocate
for the respondents.

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Harsimran Singh Sethi, J. (Oral)

In the present revision petition, the challenge is to order passed by the trial Court dated 04.09.2015 (Annexure P/7) as well as order dated 08.01.2016 (Annexure P/9) by which, the petitioner-plaintiff has been directed to make good the deficiency in stamp duty in respect to agreement to sell dated 27.09.2009 and the stamp duty along with penalty calculated to the tune of Rs.4,50,000/-.

Learned counsel for the petitioner submits that order dated 04.09.2015 (Annexure P/7) is not correct for the reason that incorrect facts have been recorded in the said order. Learned counsel for the petitioner submits that in the impugned order dated 04.09.2015 (Annexure P/7), it has been recorded that in pursuance to the agreement to sell dated 27.09.2009, the possession of the property in question was delivered to the petitioner hence, the said agreement to sell needs to be properly stamped and as the said document was not properly stamped, proper stamp duty was directed to

be affixed and vide impugned order dated 04.09.2015 penalty was imposed. Learned counsel for the petitioner submits that a bare perusal of the agreement to sell dated 27.09.2009 clearly shows that the possession of the property was already with the petitioner much prior to the date of agreement to sell hence, the said fact has not been taken into account correctly while passing the impugned order.

Learned counsel for the respondents has not been able to dispute or dislodge the argument that the impugned order dated 04.09.2015 (Annexure P/7) has been passed on the premise that by the agreement to sell dated 27.09.2009, the possession of the property in question has been delivered to the petitioner, which requires proper stamp duty on the document.

At this stage, learned counsel for the respondents submits that possession was already delivered to the petitioner in pursuance to the agreement to sell dated 27.09.2009.

Nothing has come on record that the possession has been delivered in pursuance to the agreement to sell dated 27.09.2009 as even in the agreement to sell in question, no such averment has been made that possession was being delivered in pursuance to the agreement to sell in question. Rather possession of the property in question was already with the petitioner at the time of the agreement to sell.

Keeping in view the above, prima facie, order passed by the trial Court is without appreciating the agreement to sell dated 27.09.2009 in a correct perspective hence, impugned order dated 04.09.2015 (Annexure P/7) as well as order dated 08.01.2016 (Annexure P/9), which has been passed in continuance of order dated 04.09.2015 (Annexure P/7), are set

aside. Case is remanded back to the trial Court for fresh adjudication by taking into account correct facts and law.

Petition stands allowed of in above terms.

March 20, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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