2023:PHHC: 106935

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-3976-2023
Date of Decision: 28.07.2023.

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Hardeep Singh

......Petitioner

Versus

Sukhbir Singh and Anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr.Harchand Singh Batth, Advocate for the petitioner.

GURBIR SINGH, J (ORAL)

1. This civil revision petition filed under Article 227 of the Constitution of India for quashing/setting aside the impugned order dated 06.05.2023 (Annexure P-6) passed by learned Court of ACJ (SD) Khadur Sahib whereby application of the respondents-plaintiffs has been allowed to make good the deficiency of stamp duty in the agreement to sell dated 11.05.2015.

2. Mr. Sukhbir Singh, respondent filed a suit for possession by way of a specific performance of the agreement to sell dated 11.05.2015 for the recovery of principal amount and interest. Petitioner-defendant has been contesting the suit. During the pendency of suit, respondent-plaintiff moved an application for payment of the remaining stamp duty on agreement to sell alongwith penalty on the ground that agreement to sell had been written on the stamp paper of Rs.500/- but as per law the same was to be written on the stamp paper of Rs.2000/-. So he be allowed to make good the deficiency of stamp duty alongwith 10 times of penalty.

3. Learned counsel for the petitioner submits that at the time of filing of the suit no such application for making good the deficiency of stamp duty was moved. The application has been filed to fill the lacunae. Pleadings have already been completed, so application cannot be considered filed in time. The said agreement was already on record as exhibit P-1. So, the learned trial Court could not allow the application for making good deficiency of stamp duty in this manner.

4. I have heard submissions of learned counsel for the petitioner. When a document is produced which is not stamped then Court is required to impound the document and said document can only be taken into consideration on payment of stamp duty alongwtih 10 times of penalty. The Section 35 of the Stamp Act is 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 deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;*
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> (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;*
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> (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;*
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> (d) *nothing herein contained shall prevent the admission of any instrument in evidence in any 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.”*

5. As per the impugned order, the respondent-plaintiff in his evidence has already tendered agreement to sell as Annexure P-1. The other party did not raise any objection that said document could not be exhibited due to deficient stamps. Despite that respondent-plaintiff moved an application to make good the deficiency of stamp duty and to pay the penalty and learned trial Court passed the order accordingly.

6. A document which is insufficiently stamped can be read in evidence on payment of deficient stamp and penalty. The Court can direct the party to pay deficient stamp duty and penalty. On payment of the same, said document is admissible and can be read as evidence. Reliance is placed on case of *Avinash Kumar Chauhan Vs. Vijay Krishna Mishra; (2009) 2 SCC 532*.

7. The learned trial Court was within its right to pass the said order and there is no illegality or any infirmity in the impugned order. The same is in accordance with law.

8. Petition stands dismissed.

(GURBIR SINGH)
JUDGE

28.07.2023
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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No