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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2999-2021
Date of Decision:- 04.08.2023

ALLA SINGH SINCE DECEASED THROUGH LRS
....Petitioners

Vs.

AVINASH KAUR AND ANR ...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present: Mr. Sanjeev Goyal, Advocate for the petitioners.
Mr. Varun Jain, Advocate with Mr. Kanish Jindal, Advocate for respondent No.1.

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AMARJOT BHATTI, J. (Oral)

1. The petitioner - Alla Singh now represented through legal heir through its Special Power of Attorney Holder filed civil revision against impugned order dated 19.10.2021, Annexure P-1, passed in appeal No.63 of 2016 titled as Avinash Kaur Vs. Alla Singh and another, passed by learned Additional District Judge, Sangrur whereby the application filed by the petitioner directing the respondent No.1/plaintiff/appellant to pay deficient stamp duty along with penalty pertaining to agreement to sell dated 04.03.2005, has been dismissed.

2. Learned counsel for the petitioner argued that the plaintiff/respondent No.1 Avinash Kaur filed civil suit No.314 of 2006 for specific performance of agreement to sell dated 04.03.2005 against Alla Singh (since deceased). In the plaint it was specifically mentioned that the possession of the property was delivered to her by Alla Singh. The suit

was contested by Alla Singh and during the pendency of the civil suit, Alla Singh expired and legal heir was impleaded. One application dated 07.03.2014 was filed in the Court of Additional Civil Judge (Sr. Divn) Sangrur for directing the respondent No.1/plaintiff to pay deficiency of Rs.2,09,100/- of stamp duty along with 10 times penalty of deficiency of stamp fee and to impound the document. The said application was contested by the plaintiff. The application was dismissed vide order dated 26.11.2014 with the observation that in case the stamp fee was found deficient at the time of final arguments, the plaintiff will be directed to affix the stamp duty along with penalty. The Additional Civil Judge (Sr. Divn.) Sangrur further observed that as per Section 36 of the Indian Stamp Act, 1899 debars the other party to raise objection to exhibition of the document on the ground that the instrument was not properly stamped. The order passed by the said Court dated 26.11.2014 is Annexure P-5. The said civil suit was finally disposed of vide judgment dated 04.01.2016, Annexure P-6. The respondent No.1 filed Civil Appeal No.63 of 2016 before District Judge, Sangrur whereas the legal representative of Alla Singh through Shri Maan 111 Sant Baba Balwant Singh Ji Maharaj filed separate appeal against the aforesaid judgment and decree before learned District Judge, Sangrur. During the pendency of said appeal again application was filed directing the plaintiff to pay deficient stamp fee along with the deficiency of stamp fee and to impound document i.e. agreement to sell dated 04.03.2005. The said application is Annexure P-7 and reply thereto is Annexure P- 8. The said application has been again dismissed vide impugned order dated 19.10.2021, Annexure P-1. The learned counsel for the petitioner referred to Scheduled-1-A:- Section-III of Indian Stamp Act applicable in Punjab according to which the stamp duty is required to be paid in case the agreement to sell is followed by or evidencing delivery of possession of the immovable property agreed to be sold. To support his arguments, learned counsel for the petitioner has relied upon the authority cited in **2019 (1) RCR (Civil) 90 Supreme Court of India titled as "Rakesh Malhotra Vs. Kamaljit Singh Sandhu & Ors."** where in that case "appellant/plaintiff had filed suit on the basis of agreement to sell which was a complete sale and it could not be accepted for simple reason that agreement to sell was not registered one and even the same was not properly stamped, therefore, the same was not admitted in evidence and it was held that it could be used only for collateral purpose. In that case the suit filed by the plaintiff was dismissed." It is argued that as per the provision of Indian Stamp Act, 1899 as applicable in Punjab the respondent No.1/plaintiff was duty bound to pay deficient stamp duty along with the penalty that has to be imposed 10 times. In-fact the said agreement to sell dated 04.03.2005 was inadmissible in evidence and the same could not be relied upon. Even then the learned trial Court has decreed the suit filed by the plaintiff granting alternate relief. He has also relied upon another citation in **2014 (3) CivCC 40 Supreme Court of India, in case titled as "Omprakash Vs. Laxminarayan and others"** whereby while dealing with the provisions of Section 20 of Specific Relief Act, 1963 read with Section 35 of Stamp Act it was observed that "agreement was pertaining to sale of immovable property, part consideration was paid to the seller and the possession was given to the purchaser. The said agreement to sell was not duly stamped. It was observed that it was a conveyance within the meaning of Section

2(10) on which stamp duty was payable, therefore, the agreement was inadmissible in evidence.” The suit filed by the respondent No.1/plaintiff falls within the ambit of Section 53-A of the Transfer of Property Act, as from the facts narrated in the plaint, Annexure P-2, the plaintiff sought the relief of specific performance of agreement to sell and never sought any possession which clearly indicates that the possession was already delivered to her. Therefore, the learned Additional District Judge, Sangrur wrongly concluded that the respondent No.1/plaintiff filed suit for specific performance without seeking relief regarding possession under Section 53-A of the Transfer of Property Act. The respondent No.1/plaintiff was required to pay stamp fee on agreement to sell dated 04.03.2005 as per the value of the property otherwise the said agreement to sell is not admissible in evidence. Without considering these facts application filed by the petitioners/defendants now represented through his legal heir, was wrongly rejected. It is prayed that the respondent No.1/plaintiff be directed to pay requisite stamp duty along with penalty as provided under the provisions of Indian Stamp Act as applicable in Punjab.

3. On the other hand, learned counsel for the respondent No.1/plaintiff argued that the stand taken by the petitioner is without any justification. Initially similar application was filed during the pendency of trial which was declined by the Additional Civil Judge (Sr. Divn.) Sangrur vide order dated 26.11.2014 which is Annexure P-5. The suit filed by the plaintiff was ultimately decreed granting alternate relief vide judgment and decree dated 04.01.2016 which is Annexure P-6. While passing the said judgment and decree there was no condition imposed by learned Civil Judge (Senior Divn.), Sangrur to affix stamp duty along with penalty as it

was claimed by the petitioner/defendant No.1. Thereafter both the parties have filed their respective appeals in which the present petitioner again filed application for directing the respondent No.1/plaintiff to pay deficient stamp duty along with the penalty, which is again declined by learned Additional District Judge, Sangrur by passing impugned order dated 19.10.2021. It is argued that there is nothing on record to show that respondent No.1/plaintiff claimed possession or part performance of agreement to sell by seeking protection under Section 53A of the Transfer of Property Act. Even the main relief was not granted in favour of the respondent No.1/plaintiff as alternate relief of recovery along with interest was granted in favour of the plaintiff. The agreement to sell dated 04.03.2005 was prepared on a stamp paper worth Rs.300/- as required by the law. The document was duly exhibited and no objection was raised at that time. It is rightly held under the provision of Section 36 of Indian Stamp Act, 1899 that where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been stamped. To support this argument, learned counsel for the respondent No.1/plaintiff has referred the authority cited in **2007 AIR SC (Supreme Court) 637 case titled as "Shyamal Kumar Roy Vs. Sushil Kumar Agarwal"** wherein in a suit for specific performance of contract by respondent though the agreement was insufficiently stamped but it was admitted in evidence and marked as exhibit without objection by the appellant. Thereafter, the appellant lost his right to re-open question of insufficiency of stamp duty after consent. It was further held that under Section 36 of Stamp Act court of law was prohibited from reopening the matter in regard to the sufficiency or otherwise of the stamp duty paid on an instrument in the event of the same having been admitted in evidence. He has relied upon another authority of Hon'ble Supreme Court of India (Large Bench) cited **in 1962 (2) SCR 333 case titled as "Javer Chand and others Vs. Pukhraj Surana"** where again by referring to the provisions of Sections 35 and 36 of Stamp Act, 1899 it was observed that once a document has been admitted in evidence it is not open either to the trial Court itself or to a Court of Appeal or Revision to go behind that order. It was further observed that such an order is not one of those judicial orders which are liable to be reviewed or revised by the same Court or Court of Superior jurisdiction. Learned counsel for the respondent No.1/plaintiff has also put reliance on the judgment of our own **High Court cited in 2021 (3) RCR (Civil) 726 titled as "Bir Singh and others Vs. Brij Kishore"** where again it was observed that once the agreement to sell was exhibited and no objection was raised at that time and thereafter the objection could not be raised subsequently. In that case the reliance was put on the case titled as "**Himanshu Steel Ltd. Vs. M/s Dillip Construction Co." 1969 (1) SCC 597 "**where the inadmissibility of the award of the Arbitrator was sought to be raised before the Three Judges Bench of the Apex Court on the ground that the Award was unstamped and on that ground it was invalid and illegal. The District Judge had directed that the award be impounded and the Collector had levied stamp duty and penalty and the respondents had been called to pay the appropriate stamp duty on the Award. The same has been challenged on the ground that it was not liable to be put in evidence and could not be acted upon. Keeping in view the provision of

Section 35 and 36 of the Indian Stamp Act, 1899, it was held that Stamp Act was a fiscal measure enacted to secure revenue for the State on certain classes of instruments, but not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent and the provisions of the Act were conceived in the interest of revenue. Resultantly, the appeal as such was dismissed.” A number of other Authorities, on this point, are also relied upon by learned counsel for the respondent No.1/plaintiff. It is prayed that the impugned order dated 19.10.2021 passed by the learned Additional District Judge, Sangrur is fully justified and the same does not require any interference.

4. I have considered the arguments advanced before me by learned counsel for both the parties. I have also carefully gone through the authorities relied upon by both the counsels. As per the facts of the case Avinash Kaur had filed suit for specific performance of agreement to sell dated 04.03.2005 against Alla Singh now represented through legal heir and Vijay Kumar with the alternate relief of suit for recovery of Rs.18 lacs and also sought for declaration vide which judgment and decree dated 06.10.2006 in civil suit No.287 of 09.09.2000 titled as Vijay Kumar Vs. Alla Singh passed by Additional Civil Judge (Sr. Divn.), Sangrur and agreement dated 21.07.2006, sale deed No.2527 dated 27.10.2006 executed by Alla Singh in favour of Shree Maan 111 Sant Baba Balwant Singh Ji Maharaj were challenged as detailed therein. Copy of the plaint is Annexure P-2. In that civil suit the defendant No.1 Alla Singh now represented through legal heirs had filed application for directing the plaintiff to pay deficiency of Rs.2,09,100/- stamp duty along with 10 times penalty on deficiency of stamp fee and to impound the document. The

application is Annexure P-3. The said application was contested by the plaintiff by filing reply which is Annexure P-4 and ultimately the said application was disposed of vide order dated 26.11.2014, Annexure P-5 vide which the application was declined by relying upon the provision of Section 36 of Indian Stamp Act, 1899 by imposing costs of Rs.1000/-. There is nothing on record to show that the present petitioner challenged the aforesaid order dated 26.11.2014, Annexure P-5. Ultimately the suit filed by the plaintiff was decreed by granting alternate relief of recovery of Rs.9 lacs along with interest vide judgment and decree dated 04.01.2016 which is Annexure P6. Thereafter, Avinash Kaur had filed appeal against the impugned judgment dated 04.01.2016 in which Alla Singh deceased through legal heirs again filed application directing the appellant/plaintiff to pay deficient stamp duty along with the penalty on deficiency of stamp fee and to impound the document. The application in this regard is Annexure P-7 and reply to this application is Annexure P-8. After hearing the arguments, the said application was again declined by passing impugned order dated 19.10.2021 which is Annexure P-1. The perusal of order dated 26.11.2014, Annexure P-5 clearly shows that agreement to sell dated 04.03.2005 was exhibited as Ex.P1 on 22.07.2012 in the evidence of Khajan Singh. At that time no objection was raised by the defendant and the same was accordingly exhibited. The application was filed by the present petitioner subsequently which was declined by learned Additional Civil Judge (Sr. Divn.) Sangrur by passing order dated 26.11.2014 (Annexure P-5). Again similar application has been filed when Avinash Kaur filed appeal against impugned judgment and decree dated 04.01.2016 vide which she was granted alternate relief of recovery along with the interest. The perusal of the plaint, Annexure P-2, indicates that as per the terms of agreement to sell dated 04.03.2005 it was mentioned that defendant No.1 had delivered possession of land to the plaintiff. However, in the entire plaint, the plaintiff did not claim part performance of agreement to sell nor there was any claim under Section 53A of the Transfer of Property Act. The perusal of head note of the plaint clearly indicates that Avinash Kaur while filing the present suit for specific performance of agreement to sell had challenged another judgment and decree dated 06.10.2006 as well as sale deed dated 27.10.2006. The perusal of judgment passed by the Civil Judge (Sr. Divn.) Sangrur further indicates that this property was already subject to litigation and on that account the alternate relief for recovery was granted in favour of the respondent No.1/plaintiff.

Therefore, considering the aforesaid factual position, the petitioner was required to raise objection regarding inadmissibility of document when it was going to be exhibited. Otherwise no objection could have been raised lateron as provided under Section 36 of Indian Stamp Act, 1899. Furthermore, when the application filed by the present petitioner was declined by Additional Civil Judge (Sr.Divn.) Sangrur vide order dated 26.11.2014, no appeal or revision was filed as permissible under the law and accordingly that order attained finality. In the judgment dated 04.01.2016 there was no such direction to the respondent No.1/plaintiff to pay the deficient stamp duty along with penalty. Therefore, in my opinion the application filed by the petitioner during the pendency of the appeal is not maintainable. The findings given by Additional District Judge, Sangrur while disposing of the application vide impugned order dated 19.10.2021 do not require any interference and the same is, accordingly, upheld.

Considering these facts, the Civil Revision preferred by the petitioner is, accordingly, declined.

Pending applications, if any, shall also stand disposed of.

04.08.2023 **(AMARJOT BHATTI)**
snd **JUDGE**

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