115. 2023:PHHC:166098

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7058-2023
Date of decision: 12.12.2023

Babu Singh .... Petitioner

Versus

Kuldeep Singh .... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Anmol Puri, Advocate, for the petitioner.

GURBIR SINGH, J.

1. Prayer in this revision petition filed under Article 227 of the Constitution of India is for setting aside the order dated 25.08.2023 (Annexure P-6) passed by learned trial Court, vide which, the application filed by the petitioner has been allowed and he has been directed to pay deficient stamp duty of Rs.41,800/- including penalty.

2. Brief facts of the case are that the petitioner-plaintiff (hereinafter called, “plaintiff”) has filed a suit for specific performance of agreement to sell dated 27.12.2019 regarding land situated at Village Akila, Tehsil and District Mansa, and in the alternative, suit for recovery of Rs.2,20,000/- along with pendent lite and future interest.

2.1 Upon notice, respondent-defendant (hereinafter called, “defendant”) appeared and took objection that there is deficiency in stamp duty as the agreement was required to be scribed on stamp paper of Rs.4,000/- whereas it has been executed only on Rs.200/-. It was submitted that he has not entered into any agreement to sell with the plaintiff on 27.12.2019. Agreement is the result of misrepresentation, cheating and fraud. There is deficient court fee on the plaint itself as well. He has further submitted that his father Gurjant Singh and plaintiff were real brothers. Gurjant Singh died in 2016. After death, his mother Sukhwinder Kaur married with plaintiff and thereafter, Sukhwinder Kaur, Gurtej Singh, Kuldeep Singh (defendant), Sarabjit Kaur and Rajvir Kaur started residing with the plaintiff. But after a period of three years, plaintiff started giving beatings to the defendant and his mother. The matter was compromised in the panchayat. As per compromise, the house in which plaintiff was residing was to be given to the defendant and in exchange thereof, the defendant was to execute sale deed of 1 Kanal of land in favour of plaintiff. However, plaintiff resiled from that oral compromise. It was submitted that perhaps his signatures were obtained on stamp paper for affidavit in connivance with the witnesses and a false agreement has been prepared.

2.2 Thereafter, plaintiff filed an application to make good the deficiency in stamp duty. Said application was allowed vide order dated 25.08.2023, vide which, he has been directed to pay deficient stamp duty of Rs.41,800/- including penalty. It is the said order which has been challenged by way of present revision petition.

3. Learned counsel for the petitioner submits that the petitioner-plaintiff has been burdened with maximum penalty without giving any reason. Petitioner had no mala fide intention to evade stamp duty. He himself moved the application for making the deficient stamp duty good. It is further submitted that the petitioner is a poor person and is not in a position to

deposit the amount of Rs.41,800/- as directed by learned trial Court. Reliance is placed on the case ***Trustees of H.C. Dhanda Trust Versus State of Madhya Pradesh and others, 2020(4) Civil Court Cases 134 (S.C.).***

4. I have heard the submissions of learned counsel for the petitioner and have gone through the paper book.

5. In case ***Trustees of H.C. Dhanda Trust (supra),*** the question to be determined in the appeals was as to whether the imposition of ten times penalty by the Collector of Stamps under Section 40 of the Indian Stamp Act, 1899 was validly imposed or not. It is held that it is only in very extreme situation that penalty needs to be imposed to the extent of ten times. That case relates to power given to Collector and does not deal with the power of court under Section 35 of Indian Stamp Act.

6. In the case in hand, the Court has imposed penalty of ten times in admitting the documents in evidence. 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-*
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> *(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 any 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;

(b) ....”

The aforesaid Section contemplates that 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, is required to be deposited. Under Section 35(a), there is no option for the Court except to ask for pay the insufficient stamp duty along with penalty equal to ten times and on payment of same, such insufficient stamped instrument can be admitted in evidence. No discretion has been given to the court to reduce penalty.

7. In view of above, this Court is of the view that lawful order has been passed by the trial Court and no ground for interference is made out. The revision petition is without merit and it is dismissed accordingly.

(GURBIR SINGH)
JUDGE

December 12, 2023
sanjeev

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