IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

114 **RSA-14990-2018(O&M)**
Date of Decision: 05.10.2023

Charanjit Kaur ....Appellant

Versus

State of Punjab ....Respondent

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sandeep K. Sharma, Advocate
for the appellant.

Mr. Anurag Bansal, AAG, Punjab.

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SANJAY VASHISTH, J.(Oral)

CM-19391-C-2018

(i) Present application has been filed under Section 151 CPC for seeking condonation of delay of 50 days in re-filing the appeal.

(ii) For the reasons enumerated in the application, the same is allowed and the delay of 50 days in re-filing the present appeal is hereby condoned.

(iii) Application stands disposed of.

RSA-14990-2018(O&M)

1. Present regular second appeal has been filed by the plaintiff-Charanjit Kaur against the concurrent findings of the dismissal of the civil suit.

2. Plaintiff (appellant herein) filed a suit for seeking relief of mandatory injunction directing the defendant to return/refund the amount of Rs.3,83,502/- to the plaintiff alongwith interest since, the excess amount was charged from the plaintiff i.e. from 07.12.2012, 16.05.2012 and 11.04.2012 at the time of registration of sale deed i.e.

(a) Sale deed dated 11.04.2012 regarding land measuring 21K-2Mls, old measurement i.e.,16K-1Mls.-1 Sarsahi as her standard measurement;

(b) Sale deed dated 16.05.2012 regarding land measuring 27K-10Mls., old measurement i.e., 20K-18Mls.-5 Sarsahis as per standard measurement, and;

(c) Sale deed dated 07.12.2012 regarding land measuring 34K-0Mls.; old measurement and 25K-17Mls.-4 ½ Sarsahis as per standard measurement i.e., total land 82K-12Mls., old measurement

Learned Counsel for the appellant further submits that a stamp duty amounting to Rs.11,12,952/- was charged @ Rs.36,80,000/- per acre from the plaintiff, though the measurement of land as per the standard measurement was 63K-0MIs, i.e, 7 acres 7 Kanals only and even as per the collector rate, the duty chargeable for the sale deed was Rs.8,46,989/- and 21ps. Further submits that the actual price of entire land of 82K-12Mls as per old measurement was agreed at Rs.2,40,000,00/-, upon which stamp duty of Rs.7,29,450 only was to be charged. Thus, State has charged an excess amount of Rs.3,83,502 as stamp duty, which the defendant is liable to return the same.

3. It is also pointed out by learned counsel for the appellant-plaintiff that before the filing of the civil suit, the legal notices under Section 80 of Code of Civil Procedure, 1908, dated 28.06.2012 (Ex.P-10) and 18.10.2012 (Ex.P-22) were issued by the plaintiff to the State through Deputy Commissioner, S.B.S. Nagar through postal receipts (Ex.P11 and Ex.P23), however, since no reply was ever given on the said legal notices, therefore, plaintiff/appellant herein had to file the civil suit.

4. In the written statement filed by the defendant, it has been admitted that there are two measurements i.e. old measurement and standard measurement, in two different Patwar Halquas of Village Mahalon. As per old measurement, one Karam is equal to 57 ½ inches and as per standard measurement, 66 inches. However, it was denied that Khasra numbers have been alloted by taking one standard acre equal to 10 Kanals 11 Marlas of land, as alleged by the appellant. The respondent State of Punjab had made it clear that revenue records are maintained by counting 1 acre equivalent to 8 Kanals irrespective of the length of the karams. At the same time, State of Punjab had clarified that standard acres are not calculated by measurement but are

taken on the basis of the value of the land whenever so required and the conversion of the land to the standard acre is not applicable for the purpose of registration of sale deed and charging of stamp duty.

5. It is also an admitted fact that plaintiff-Charanjit Kaur has paid the stamp duty as per the standard measurement and not on the old measurement and stamp duty was affixed prior to the registration of sale deed. The civil suit filed by the plaintiff was dismissed and when the matter was again taken to the Lower Appellate Court, a categoric finding was given that before affixing the stamp duty on the sale deed, plaintiff neither inquired from the deed writer; nor in view of Section 31 of the Stamp Act,1899 asked from the Collector, regarding the stamp duty to be chargeable on the sale deed.

6. The Ld. Lower Appellate Court has also expressed its mind that in case of levying of excess stamp duty on the sale deed, the proper remedy before the plaintiff was to move to the Collector under Section 39 of the Stamp Act,1899 for a refund of the penalty, but no such attempt was made before the Collector by the plaintiff for the purpose of seeking a refund of the alleged excess stamp duty paid to the State.

Therefore, considering it to be an admission on the part of the plaintiff, the appeal filed by the appellant-plaintiff was dismissed.

7. Learned counsel for the appellant does not dispute the

fact that the plaintiff never approached the Collector concerned for the purpose of refund of the alleged excess stamp duty. Thus, no findings could be given on the question raised by the plaintiff directly before the Civil Court, without approaching the appropriate forum i.e. learned Collector.

8. Considering the circumstances in its totality and the findings given by learned Lower Appellate Court in paragraph No.13, this Court also is of the view that at the first instance, the plaintiff was required to knock the doors of the Office of the Collector dealing with the issue of Stamp Act,1899.

Therefore, plaintiff is directed to file a representation/appeal as per the statutory provisions of the Stamp Act, 1899 to the Statutory authority at the first instance within a period of six weeks from today.

For the sake of brevity, needless to say here that already, legal notice dated 28.06.2012(Ex.P-10) and another legal notice dated 18.10.2012 (Ex.P-22) have been addressed by the appellant/plaintiff, which are awaiting its decision by the authority under the Stamp Act, 1899.

In case any such application/representation/appeal for seeking withdrawal/refund of the excess stamp duty is moved before the Collector or the concerned authority, the same would be finally decided within the next 08 weeks from the date of its filing in accordance with law. The collector or any other concerned authority is expected to decide the same by passing a speaking order on the issue raised by the plaintiff.

9. However, it is clarified that for deciding the issue by the concerned authority under the Stamp Act,1899, the observations given by the Courts in pursuance to the Civil Suit RBT No.164 of 2014 including that in the appeal would not come in way of its independent decision.

It is further clarified that in case, the legal notice issued by the plaintiff/appellant regarding the refund of the amount is found to be genuine, he would be entitled for such amount alongwith interest @ 6% per annum from the date of first legal notice dated 28.06.2012 (Ex.P-10).

10. Disposed of.

[SANJAY VASHISTH]
JUDGE

October 05, 2023
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Whether speaking/reasoned yes/no
Whether reportable? yes/no