IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-1917-2022 (O&M)
Date of decision: 15.01.2024

JOGINDER SINGH AND ANR **..Petitioners**

Versus

KARTAR KAUR AND ORS **..Respondents**

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sapan Dhir, Advocate
for the petitioner.

Ms. Bhavna Kapur, Advocate
for respondent No.1 to 5.

ANIL KSHETARPAL, J(Oral)

1. In this revision petition, the dispute is with regard to the correctness of the order passed on 21.01.2022 and 25.04.2022. In substance, the liability of the plaintiffs to make good the deficiency in the payment of stamp duty at the time of execution of the agreement to sell has come up for disposal.

2. This issue has been examined in detail in ***Narinder Kapoor and others Vs. Inderjit (since deceased) through his legal heir and others, CR-1931-2017 and CR-3172-2018, decided on 12.02.2020***. After examining the amendment carried out in Entry No.5 in schedule 1-A as applicable to State of Punjab and Stamp Duty leviable under Column No.2 of Entry No.23, it was held that the agreement to sell evidencing the delivery of possession shall fall within the definition of other conveyance as provided in Column No.3 of Entry No.23 and the proportionate stamp duty at the time of agreement to sell was payable. It may be noted here that the amount of

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stamp duty payable on the sale deed remains the same. By way of amendment, the stage of payment of stamp duty is advanced from the date of registration of the sale deed to the date of agreement to sell. It has been provided that the stamp duty shall be payable on the amount paid at the time of entering into an agreement to sell. The amount of stamp duty which has been paid at the time of execution of the agreement to sell shall be liable to be adjusted while executing the sale deed. In other words, only the stage of the payment of stamp duty has been advanced.

3. In this case, the agreement to sell was entered into on 04.09.2020. The total sale consideration agreed between the parties was Rs.10,00,000/- out of which, Rs.4,00,000/- had already been paid before the execution of the agreement to sell, whereas, the remaining amount of Rs.6,00,000/- shall be paid at the time of execution of the agreement to sell. Thus, at the time of execution of agreement to sell, the total sale consideration stood paid. Thus, the stamp duty is liable to be paid on the amount of Rs.10,00,000/-. The trial Court has impounded the agreement to sell and directed the plaintiffs to make good the deficient stamp duty along with the penalty equivalent to amount of 10 times of the deficient stamp duty. In ***Trustee of H.C. Dhanda Trust Vs. State of Madhya Pradesh and others, (2020) 9 SCC 510***, the Supreme Court has held that the amount of penalty is not necessarily required to be 10 times of the deficient stamp duty. In this case, there was no intentional attempt to avoid the payment of stamp duty. The agreement to sell was scribed on a stamp paper, which is done without knowing the amendment.

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4. Hence, the interest of justice would be made if the plaintiffs are directed to pay deficient stamp duty with the equivalent amount of penalty.

5. With these observations, the revision petition is disposed of.

6. All the pending miscellaneous applications, if any, are also disposed of.

January 15th, 2024 **(ANIL KSHETARPAL)**
Ay **JUDGE**

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

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