

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5455-2022 (O&M)
Decided on: 30.01.2024

Rajwinder Kaur

...Petitioner

Versus

Chhinder Kaur and others

...Respondents

CORAM: HON'BLE MRS JUSTICE RITU TAGORE

Present: Mr. G. S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate
for the petitioner.

Mr. Om Pal Sharma, Advocate
for respondents No.1 to 3.

RITU TAGORE, J. (Oral)

1. This petition is directed against the order dated 16.09.2022 (Annexure P-2), passed by learned Civil Judge (Junior Division), Ludhiana in Civil Suit No.531 of 2022 titled as ‘Rajwinder Kaur Vs. Chhinder Kaur and others’, directing the petitioner to pay requisite stamp fee and ten times penalty on the agreement to sell dated 19.08.2021 (Annexure P-4) as per the provisions of The Indian Stamp Act, 1989 (referred to as ‘the Act’).
2. It is stated by learned counsel for the petitioner that petitioner-plaintiff, filed a Civil Suit No.642/2022 titled ‘Rajwinder Kaur Vs. Chhinder Kaur and others’ for symbolic possession (being in actual possession) by way of specific performance of agreement to sell dated 19.08.2021 to the extent of half share, in property measuring 0B-2B-14B comprised in Khewat

No.242, Khatauni No.254, Khasra No.474 in village Dugri, Ludhiana. The respondents moved an application (Annexure P-1) under Sections 33 & 35 of the Act for impounding agreement to sell besides denying the agreement and challenging its validity, stating that agreement to sell amounts to 'conveyance deed' as defined under Section 2 (10) of the Act. It is chargeable with stamp duty and penalty ten times on the sale consideration shown in the agreement to sell. The alleged agreement to sell is on stamp paper of Rs.500/- which is otherwise to be scribed on a stamp paper of Rs.4,000/-. As such proper stamp duty has not been paid on the agreement, it is liable to be impounded.

3. The learned counsel for the petitioner submits that learned trial Court erred in allowing the application by observing that the document is conveyance deed, evidencing transfer of possession. It is stated that learned lower Court failed to consider that the document in question is an agreement to sell and not a conveyance deed. Therefore, the provisions of the Act are not applicable. Learned lower Court also failed to note that the document in question, contains a recital that the petitioner is already in possession of the suit property and further that petitioner has not sought relief of possession of the suit land; rather, a decree of permanent injunction restraining the defendants from dispossessing, interfering in her peaceful possession from the suit land has been sought. The learned counsel submitted that in similar facts, Hon'ble the Supreme Court in **Vijay Kumar Goyal (dead) through LRs Vs. Neena Rani and others, 2022 (4) R.C.R Civil 358**, observed that for determination of requisite stamp duty, what requires to be seen is whether the possession is already with the purchaser or it is by virtue of agreement to sell, the possession is being handing over to the purchaser.

Consequently, order given to plaintiff, to pay deficit stamp duty with penalty

under the provisions of the Act as amended by State of Punjab was held unsustainable and order passed by co-ordinate Bench of this Court in Civil Revision Petition No.CR-1931-2017 titled as 'Narinder Kapoor Vs. Inderjit (since deceased) through his LRs and other, was set aside. The learned counsel submitted that the order impugned, herein, should be set aside by accepting the petition.

4. Learned counsel for respondents No.1 to 3 stated that in case of agreement to sell followed by or evidencing delivery of possession of immovable property agreed to be sold, stamp duty is leviable under column No.2 of entry No.23 of schedule-I-A of Indian Stamp Act as amended and also referred to entry No. 5, clause (cc) added by the Indian Stamp (Punjab Amendment) Act, 2001 notified on 21.12.2001. By referring to photocopy of agreement to sell (Annexure P-4), learned counsel stated that it evidence delivery of possession and is on a stamp paper of Rs.500/-, which is deficit in stamp duty. It is submitted that there is no illegality in the order directing the plaintiff to pay the requisite stamp duty and the penal charges.

5. I have considered the submissions of the learned counsel for the parties and gone through the paper book.

6. Before I proceed on merits of this petition, it would be appropriate to extract the relevant provisions of Section 2(10) of the Act, which reads as under:-

2(10) "Conveyance"- "Conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I. In the principal Act, in Schedule 1-A, in Entry No. 5 after item (c) following item was inserted:-

	<i>(cc) in the case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold;]</i>	<i>The same duty as is leviable under column 2 of entry No.23 of this schedule, subject to the adjustment of duty chargeable at the time of execution of conveyance made in pursuance of such agreement; and</i>
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7. Now, advertng to the facts of the present case, the copy of plaint (Annexure P-4) would indicate that Rajwinder Kaur filed a Civil Suit against Chhinder Kaur and others for symbolic possession (stating to be already in actual physical possession of the suit property) as owner by way of specific performance of agreement to sell dated 19.08.2021, with further relief of permanent injunction restraining the defendants/agents/ assignees etc. from interfering in the peaceful possession or dispossessing the plaintiff from the suit property illegally or forcibly as detailed in the site plan and shown in the head note of the plaint.

8. She raised specific assertions that earlier that she and Jeet Singh were owner in equal share of the suit property detailed in the plaint, whereas the possession of the whole property remained with her. She is in legal and lawful possession of the suit property as detailed in the plaint for past 40 years. The defendants inherited half share on the death of Jeet Singh and entered into an agreement to sell with her for sale of their half share for total consideration of Rs.25 lakhs. The agreement dated 19.08.2021 was reduced into writing. Further, *inter alia* pleaded that the defendants failed to execute their part of agreement, where as she has always been ready and willing to perform her part of the agreement and get the sale deed executed on payment of balance sale consideration and other expenses but defendants have refused to execute the same and interferes in her possession.

9. It is a matter of record that defendants filed an application under Section 33 and 35 of the Stamp Act and the learned lower Court accepted the application and passed the impugned order. The learned lower Court while passing the impugned order in para No.6 concluded as “adverting to the facts in hand, it clearly transpires that defendant has executed agreement of transfer of immovable property in favour of the plaintiff vide agreement to sell dated 19.08.2021 with the delivery of possession at the spot, yet it is scribed on stamp paper of Rs.500/-. Resultantly, it can be inferred from the agreement that it is insufficiently stamped”. Thereafter, learned lower Court by referring to various provisions of the Stamp Act directed the plaintiff to make up the deficiency and pay penalty.

10. Perusal of agreement to sell(Annexure P-4) shows that apart from the other recitals, it is specifically mentioned in the agreement to sell that possession of the entire property is already with the purchaser (herein the plaintiff). Therefore, it cannot be inferred that possession of the land in question was delivered through the said agreement of which specific performance is sought. The agreement to sell, on face of it, does not evidence delivery of possession of immovable property agreed to be sold. If that is so, agreement to sell does not fulfil basic ingredients of entry No.5 (cc) of schedule 1 A applicable under State of Punjab which lays down that “in case of agreement to sell followed by or evidencing delivery of possession of immovable property agreed to be sold.’ The counsel for the respondents on the other hand, is unable to deny the recital contained in the agreement to sell, referring about the possession already with the purchaser, herein , the petitioner. From the aforesaid recital, it cannot be inferred that execution of document followed by transfer of possession of immovable

property was sought to be sold. The present case is squarely covered by the observations made in Vijay Kumar Goyal (supra).

11. For the reasons aforementioned, it is observed that learned trial Court committed jurisdictional error while holding deficiency in stamp charges and payment of penalty. The impugned order is therefore set aside. Consequently, revision petition is allowed.

12. Pending applications, if any, also stands disposed of accordingly.

(RITU TAGORE)
JUDGE

30.01.2024
Rimpal

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