IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CR-2311-2026(O&M)
Date of decision: 11.03.2026

Bhupinder Singh

...Petitioner(s)

Vs.

Isher Singh & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Parunjeet Singh, Advocate
for the petitioner.

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NIDHI GUPTA, J.

Present Revision Petition has been filed by the plaintiff against the order dated 28.11.2025 (Annexure P1) passed by the learned Civil Judge (Junior Division), Ludhiana whereby application filed by the defendants/respondents under Section 35 of the Indian Stamp Act for determining the correct stamp duty payable by the petitioner on the Agreement to Sell dated 11.12.2020 (Annexure P2), has been allowed.

2. Brief facts of the case in chronological order are as under: -

12.07.2021:- The petitioner had filed Civil Suit dated 12.07.2021 (Annexure P3) against the respondents/defendants seeking specific performance of the Agreement to Sell dated 11.12.2020 (Annexure P4) and permanent injunction.

<u>06.05.2022:-</u> The defendants had filed written statement dated 06.05.2022 (Annexure P4) to the said Civil Suit.

<u>24.09.2025:-</u> Thereafter, the respondents had filed application dated 24.09.2025 (Annexure P5) under Section 35 of the Indian Stamp Act for determining the correct stamp duty payable on the Agreement to Sell dated 11.12.2020.

<u>18.10.2025:-</u> The petitioner had filed reply dated 18.10.2025 (Annexure P6) to the above-said application of the respondents.

<u>28.11.2025:-</u> Vide impugned order dated 28.11.2025 (Annexure P1), the application (Annexure P5) filed by the respondents has been allowed.

3. It is inter alia submitted by learned counsel for the petitioner that a perusal of the Agreement to Sell dated 11.12.2020 (Annexure P2) shows that it has been categorically stated therein that possession is still with the vendors. Learned counsel contends that in view of the fact that the possession of the suit property was still with the vendors i.e. the respondents, the petitioner could not have been called upon to file stamp duty. It is submitted that as per the provisions of the Indian Stamp Act and the Punjab Stamp Rules, an Agreement to Sell *without* delivery of possession is chargeable only with a stamp duty of Rs.500/- under Article 23A or 5C of Schedule 1A. Petitioner had appropriately paid the stamp duty of Rs. 500/-, which is the legally requisite amount for an Agreement to Sell without possession under Article 23A / 5(c) of Schedule 1-A of the Punjab Stamp Rules. It is reiterated that from the

Agreement, it is clear that the actual possession of the suit property was not transferred to the petitioner; and therefore, the petitioner was not liable to pay the stamp duty.

4. It is submitted that however, the Ld. Civil Judge (Junior Division), Ludhiana, completely ignored the above factual matrix, including the explicit "Note" in the agreement, and the categoric admissions in the Respondents' Written Statement, and passed the impugned order dated 28.11.2025. The Ld. Trial Court erroneously held that Ex. P2 contains a recital of delivery of possession, deemed it a conveyance deed, and directed the Petitioner to pay deficient stamp duty along with an exorbitant penalty equivalent to ten times the deficiency by 08.12.2025.

5. Ld. Counsel contends that the Ld. Trial Court failed to appreciate that the Respondents cannot blow hot and cold simultaneously. In their Written Statement, they vehemently pleaded that they reside in the property and that the Petitioner is not in possession. Yet, for the purpose of the Section 35 application, they argued the Petitioner was given possession. The Court erred in relying on the Respondents' contradictory and mala fide application.

6. It is further submitted that in any event, whether or not possession has been actually delivered to the petitioner is a mixed question of fact and law which can only be determined upon leading of evidence and conclusion of trial. It is contended that therefore, in the interregnum, impounding the document and imposing a severe ten times penalty at the

evidentiary stage without determining the factual reality of possession, has caused grave injustice to the petitioner. In support, ld. counsel relies upon judgment of this Court in **Ram Lubaya (since deceased) v. Rajesh Kumar Goyal, (Punjab And Haryana) : Law Finder Doc ID # 2735139.** It is accordingly prayed that present Revision Petition be allowed and the impugned order be set aside.

7. No other argument is raised on behalf of the petitioner. I have heard learned counsel and perused the record in detail.

8. It has been contended on behalf of the petitioner that vide Agreement to Sell dated 11.12.2020, possession of the suit property has not been delivered to the petitioner. However, a perusal of the said Agreement shows that in the column of "Financials" it has been clearly recorded that the respondents have received an amount of Rs.4 lakh out of total sale consideration of Rs.7 lakh. It is further recorded that "*possession of the house has been handed over to the buyer.*". However, simultaneously, in the same column, there is the following: "*Note: I, Ishar Singh, have to receive Rs. 3,00,000/- (Three Lakhs) from the buyer (Bhupinder Singh) as rent for this property. I will collect this amount through rent starting 01-12-2020. Until I collect three lakhs through rent, the possession will remain with me (Ishar Singh). I will provide written details to Bhupinder Singh as I collect the rent. (Signatures: Sellers: Mohinder Kaur & Ishar Singh; Buyer: Bhupinder Singh; Date: 11-12-2020)*". Clearly therefore, there is a material ambiguity in the

Agreement itself in respect of whether the possession was delivered to the petitioner at the time of execution of Agreement, or not.

9. Nonetheless, on a Court query, learned counsel for the petitioner has very candidly admitted that since 01.12.2020, the petitioner has paid Rs.3 lakh to the respondents by the way of rent and possession has thereafter been delivered to the petitioner.

10. Thus, in this view of the matter, no error can be found in the impugned order passed by the learned trial Court directing the petitioner to pay the deficient stamp duty. However, simultaneously, in view of the inherent ambiguity/discrepancy in the Agreement, no mal-intent can be attributed to the petitioner that the stamp duty has been deliberately withheld by the petitioner to cause wrongful loss to the government. In the present case, there is no allegation that the petitioner had deliberately sought to default the Government revenue. Thus, keeping in mind the aforesaid extenuating circumstance, the direction of the trial Court to pay ten times the penalty of the deficiency was not called for. The Hon'ble Supreme Court in "**Trustee of HC Dhanda Trust v. State of Madhya Pradesh and Others" (2020) 9 SCC 510,** has held that it is not mandatory to impose penalty equivalent to ten times of deficient stamp duty. The above said view has been followed by a coordinate Bench of this Court in case of **Ram Lubaya (supra)** relied upon by learned counsel for the petitioner.

11. Accordingly, in the afore-noted facts and circumstances as also in view of the above-noted legal position, it is my clear view that the ends of justice would be met, if the plaintiff-petitioner is directed to make good the deficiency in the payment of stamp duty along with the penalty equivalent to the amount of deficient stamp duty, within a period of one month from the date of delivery of the certified copy of this order, from today. With the aforesaid observations, present petition stand **disposed of.**

12. Pending application(s) if any also stand(s) disposed of.

(Nidhi Gupta)
Judge

11.03.2026
Sunena

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