



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6740-2018(O&M)

Date of Decision: August 07, 2025

Parampal Singh and others

...Petitioners

Versus

Rajinder Singh and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Sumeet Mahajan, Senior Advocate with
Mr.Saksham Mahajan, Ms.Shruti Singla, Mr.Shrey Sachdeva
and Ms.Radhika Deekshay, Advocates for the petitioners.

Mr.Akshay Bhan, Senior Advocate, with
Mr. Santosh Sharma, Advocate for respondent No.1.

Mr.Sanjay Kaushal, Senior Advocate, with
Mr.Arjun Kaushal, Advocate for respondent No.2.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 13.07.2018 passed by learned trial Court and order dated 17.03.2018 passed by learned Appellate Court, whereby, two separate applications filed under Section 33 of the Indian Stamp Act read with Section 151 CPC, filed by the petitioners, for impounding of agreement to sell dated 09.10.2006 were dismissed.

For the convenience of discussion, the parties are referred to as making appearance before learned trial Court.

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The facts, as culled out from the paperbook, are hereby given:-

That, plaintiff-Rajinder Singh had filed a suit against defendants No.1 to 3 (who are petitioners before this Court) as well as defendant No.4-Gurnoor Singh, thereby, seeking specific performance of an agreement to sell dated 09.10.2006, with regard to the land measuring 358 Kanals 5½ Marlas out of the land measuring 656 Kanals 5 Marlas, as detailed in the headnote of the plaint, copy whereof is Annexure P-2. As per the version set up by the plaintiff, the defendants, being owners of the aforesaid land, had entered into agreement to sell dated 09.10.2006 with the plaintiff for the sale of said land, on the terms and conditions, as mentioned therein. The rate of the land was settled as Rs.30 lakh per acre and they had received Rs.5 crore from the plaintiff, at the time of agreement to sell, as advance amount, out of the total sale consideration. The time for execution and registration of the sale deed was fixed for 3½ years, from the date, when defendant No.4-Gurnoor Singh, would sign the agreement, as at the time of agreement, it was represented by defendants No.1 and 3 that defendant No.4 is in foreign country and they undertook that they will call Gurnoor Singh from the foreign country after 15.02.2007 and will get the documents completed.

Also, it is asserted that the possession of the total land covered by this agreement was handed over to the plaintiff, at the time of agreement. Further, also it is asserted in the plaint that the defendants had received various amounts from the plaintiff, the detail whereof is given in paragraph No.3 of the plaint and in total, they had received an amount of

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Rs.15,81,00,000/-, out of the total sale consideration of Rs.24,60,93,750/-.

Various sale deeds to the extent of land measuring 297 Kanals 19½ Marlas were executed, detail whereof is given in paragraph No.4 of the plaint. Besides the same, also it is asserted that on 26.11.2010, defendants No.1 and 2 were to execute and get registered other sale deeds, relating to which, the plaintiff had purchased the stamp papers for the value of Rs.3,80,800/-, upon which, four sale deeds, as detailed in paragraph No.5 of the plaint, were executed, but however, the same were not registered as defendant No.1, for himself and as attorney of defendant No.2, took time to get the same registered with the Sub-Registrar and these are lying un-registered, since the date of its execution i.e. 26.11.2010.

Despite request made by the plaintiff, defendant No.1 did not get the sale deed registered, nor defendants No.1 and 3 called upon defendant No.4-Gurnoor Singh, from the foreign country. Hence the suit.

Upon notice, defendants No.1 to 3 had made appearance and filed written statement, copy whereof is Annexure P-3, wherein, they asserted about defendant No.4-Gurnoor Singh, to have never agreed to sell his share, out of the land owned by him nor the agreement was signed by defendant No.4. As such, no terms of sale were ever concluded between the plaintiff and defendant No.4. Even, the plaintiff had not approached the Court with clean hands.

So far as, sale deeds relating to land measuring 297 Kanals 19½ Marlas is concerned, it is asserted that there was no reference to the agreement to sell dated 09.10.2006, having made and non-mentioning of the

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agreement to sell in the said sale deeds, goes a long way to show that the sale deeds were never executed qua this agreement and that the sale deeds are independent transactions, which had no reference to the agreement dated 09.10.2006. As per recitals of the agreement to sell dated 09.10.2006, the possession of the land has been delivered to the plaintiff by the answering defendant and therefore, it had to be compulsorily registered, but however, the agreement, being un-registered document, cannot be used by the plaintiff for protecting the alleged delivery of possession.

Further, also it was asserted that no entry in the revenue record was made, with regard to delivery of possession. In fact, land is still in the possession of the answering defendants.

During the pendency of the suit before the trial Court, an application under Order 39 Rule 1 and 2 CPC was decided and being aggrieved, both the sides had filed the appeals. During the pendency of the said appeals before the Appellate Court, an application was filed by the defendants No.1 to 3, for impounding of the agreement to sell dated 09.10.2006, being not duly and adequately stamped. However, the said application was dismissed, being devoid of any merits, vide order dated 17.03.2018, wherein, it was observed, as herein given:-

“10. In the light of case laws referred to above and in the light of above mentioned detailed discussion of mine, this court is of the considered opinion that application in hand is devoid of any merits as even the trial before the learned trial court is at its initial stage and both the parties are yet to lead their



respective evidence in order to prove their contradictory versions qua the suit property. Accordingly, the application in hand is hereby dismissed being devoid of any merits.”

During the conducting of the proceedings by the trial Court thereafter, on 03.04.2018, part statement of PW-1 Palwinder Singh was recorded, wherein, he tendered into evidence his affidavit alongwith document Ex.P1. For conducting of the cross-examination, it was deferred to 24.04.2018. On the subsequent date, an application under Section 33 of the Indian Stamp Act was filed by the defendants No.1 to 3 and after seeking reply and hearing counsel for the parties, the application was dismissed vide impugned order dated 13.07.2018, while observing, as herein given:-

“4. After hearing the contentions raised by the learned counsel for both the parties and going through the case file, I am of the view that the similar application filed by the defendant no.1 to 3 before the Ld. Appellate Court had already been decided vide order dated 17.03.2018. The similar application on the same grounds is not maintainable as the application of the defendant no.1 to 3 had already been decided. Thus, the second application on the same facts is not maintainable and the same is hereby dismissed.

However, these observations of mine shall have no effect on the merits of the present case.

Now case is adjourned to 17.08.2018 for evidence of plaintiff at own responsibility.”



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Being aggrieved, petitioners-defendants No.1 to 3, have filed the present revision petition.

Upon notice, the respondents made appearance through their respective counsel.

Learned counsel for the parties heard.

Close perusal of the impugned order dated 13.07.2018 reveals that the question with regard to admittance of the agreement to sell in evidence was never adjudicated on merits by the trial Court. The Appellate Court, where the appeals were pending to assail the order passed on the application under Order 39 Rule 1 and 2 CPC, had observed that the trial before the trial Court, is at initial stage and both the parties are yet to lead their respective evidence, in order to prove their contradictory versions, qua the suit property. Therefore, the application was dismissed, being devoid of merits. Learned Appellate Court never touched the merits. In the subsequent application, the trial Court, while taking into consideration the dismissal of the application by the Appellate Court vide order dated 17.03.2018, had observed that the similar application, on the same grounds, is not maintainable, as the application of defendants No.1 to 3 had already been decided. This observation made by the trial Court is palpably erroneous.

Learned Appellate Court had not decided the application on merits. Rather, it was observed that it has been filed at too early a stage. In the given circumstances, when the evidence began, an application was filed before trial Court. It was incumbent upon the trial Court to have decided the

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application under Section 33 of the Indian Stamp Act, on merits. However, the trial Court, in the impugned order, had never touched the merits and had simply dismissed the application, being not maintainable, as the previous application was dismissed by the Appellate Court. This is not appropriate and justified order and same calls for intervention.

It was subsequent to the order passed by the Appellate Court that fresh application was filed before the trial Court and considering the tone and tenor of the order passed by the Appellate Court, it was required, on the part of the trial Court, to adjudicate the question, with regard to impounding of the questioned agreement. However, the trial Court did not touch the merits and had simply dismissed the same, on the ground of it being not maintainable, as the application had already been decided.

Considering this manner of disposal of the application, the impugned order calls for interference. Hence, the revision petition is allowed and the impugned order dated 13.07.2018 is set aside. The matter is remitted to the trial Court, with a direction to adjudicate on the application under Section 33 of the Indian Stamp Act, on merits.

August 07, 2025
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No