



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

CR-2951-2025

Ram Lubaya (since deceased) through his LRs **Petitioners**

Vs.

Rajesh Kumar Goyal and Another **Respondents**

Date of Decision: 14.05.2025

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present :- Mr. Nipun Bhardwaj, Advocate
for the petitioner (s).

DEEPAK GUPTA, J. (ORAL)

This is plaintiff's revision against order dated 19.03.2025 (*Annexure P-3*) passed by learned Civil Judge (Junior Division), Malerkotla, whereby he (*plaintiff- petitioner herein*) has been directed to pay deficiency of stamp fee on the agreement to sell dated 15.04.2014 along with the penalty of 10 times the deficiency, in Civil Suit bearing CNR N: PBSGC0-001565-2018 titled '*Ram Lubaya vs. Rajesh etc.*'

2. Plaintiff filed a suit for possession/joint possession in respect of a plot measuring 233 sq. yard as per the details provided in headnote of the plaint, based upon an agreement to sell dated 15.04.2014 and the writings dated 16.06.2014, writing dated 15.12.2014, writing dated 27.04.2015 and writing dated 29.10.2015. As per the agreement to sell relied by the plaintiff, total sale consideration is ₹13,00,000/-, out of which an amount of ₹9,00,000/- has already been paid as earnest money. The agreement to sell also stipulates that possession was delivered to the plaintiff at the time of agreement.

3. During his evidence, plaintiff produced the above said agreement to sell dated 15.04.2014 as Ex.P-3 but before the starting of his cross-examina-



tion, objection was raised by defendant No.1 regarding inadmissibility of the said agreement on the ground that it was insufficiently stamped and so, the same was liable to be impounded. Said defendant No.1 also moved a separate application (*Annexure P-1*) for impounding the said alleged agreement to sell dated 15.04.2014 and collecting the deficient stamp duty along with the penalty thereon; and in the alternative to declare the said agreement to be inadmissible in evidence. Plaintiff- petitioner herein opposed the application.

4. However, the trial Court by way of the impugned order has disposed of the application in the following terms:

“Thus, the plaintiffs have to affix the stamp duty on the market value of the property in dispute. But the document is only stamped with Rs. 2000/- stamp fees. Hence, there is deficiency of stamp fees. As per the provisions of Section 35 of Stamp Act 1899, the person, who is relying upon the said document is also required to pay penalty 10 times of the amount of the deficient portion of the stamp duty. Hence, penalty of 10 times of the amount of the deficient portion of the stamp duty is also imposed upon the plaintiff. In view of discussion made above, one opportunity is granted to plaintiff to deposit the deficiency of stamp fee along-with penalty which is 10 times the deficiency as mentioned above up to 28.04.2025 and in case plaintiff does not pay the required stamp duty, the document i.e. agreement to sell dated 15.04.2014 shall be impounded and will sent to Collector for collection of deficiency in stamp duty as per provisions of Section 35 read with Section 47A of Indian Stamp Act 1899 and in case plaintiff fails to make the deficiency in stamp duty good along-with penalty as mentioned above, the document cannot be allowed to be exhibited and will not be relied upon. Application stands disposed of accordingly.”

5. Assailing the aforesaid order, it is contended by learned counsel for the petitioner- plaintiff that application was moved at the belated stage; that defendant No.1 was not the owner of the property in dispute at the time of execution of the agreement to sell dated 15.04.2014 and the outcome of the said agreement is dependent upon the final outcome of the agreement to sell exe-



cuted by defendant No.2 in favour of defendant No.1. In case, defendant No.1 does not succeed in getting the ownership on the basis of agreement to sell dated 15.04.2014 executed by defendant No.2 in favour of defendant No.1, then in such case the petitioner- plaintiff will be entitled only for the alternative relief from defendant No.2 because plaintiff is not privy to the contract between the original owner i.e. defendant No.2. It is further the contention of learned counsel that mere recital of the delivery of possession in the agreement to sell dated 15.04.2014 will not make the said agreement as sale. The direction of the trial Court to pay the penalty of 10 times of the amount of the deficient portion of the stamp duty is alleged to be wrong, illegal and arbitrary and so, liable to be set aside.

6. This Court has considered submissions of learned counsel for the petitioner and has gone through the paper-book.

7.1 A similar question arose before a co-ordinate Bench of this Court in ***CR-4922-2018 titled "Sukhwinder Singh v. Rajinder Kaur" decided on 19.09.2023***. There also the dispute was with regard to the requirement of the plaintiff to pay deficient stamp duty, as the agreement to sell was insufficiently stamped. In that case, the total sale consideration was ₹40,00,000/- out of ₹20,00,000/- had been paid as earnest money. It was recorded in the agreement that possession shall be handed over to the buyer i.e. prospective vendee but it was an admitted fact that plaintiff had already been delivered the possession.

7.2 In these facts & circumstances, this Court referred to amendment in Entry No.5 of Schedule 1A of the Indian Stamp Act, 1899 as applicable to the State of Punjab, which provides that in the case of an agreement to sell followed by or evidencing delivery of possession of immovable property agreed to be sold, the same duty as is leviable under Column No.2 of Entry No.23 of the Schedule shall be payable subject to the adjustment of the duty chargeable at the time of execution of the conveyance deed.

7.3 It will be relevant to reproduce the observations made by this



Court in the above cited case, which are as under:

“In fact, the liability to pay stamp duty on the agreement to sell, which evidences delivery of possession or where agreement to sell is followed by delivery of possession has been examined in detail by this Court 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.***

On careful reading of phraseology used in the definition of “Conveyance” as defined in Sub-Section 10 of Section 2, it become clear that the word conveyance includes a conveyance on sale and every instrument by which the property is transferred. The definition of the word 'conveyance' starts with word “includes”, however, the significant word used subsequently is “transferred”. User of the word “includes” means that such definition is ordinarily not exhaustive. As per Section 54 of the Transfer of Property Act, contract for sale or agreement to sell is not an instrument of transfer. Section 54 of the Transfer of Property Act, is extracted as under:-

“54. “Sale” defined - “Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made - Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property. Contract for sale - A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties. It does not, of itself, create any interest in or charge on such property.”

Now, let us examine further amendments in Schedule 1-A. Entry No.5 is with respect to agreement of memorandum of an agreement. Clause CC of Entry No.5 clearly takes in its sweep agreement to sell followed by or evi-



dencing delivery of possession of all the immovable property agreed to be sold. Thus, even if the agreement to sell followed by or evidencing delivery of possession of immovable property does not fall within the definition of the word 'conveyance', however, it would not be appropriate to hold that no stamp duty as is leviable under Column No.2 of Entry No.23 of this Schedule is payable. Column No.2 clearly specifies that an agreement to sell followed by or evidencing delivery of possession of immovable property shall be charged same duty as is leviable under Column No.2 of Entry No.23 of this Schedule. However, significance has also to be given to the second part of the sentence which reads as "subject to adjustment of duty chargeable at the time of execution of the conveyance made in pursuance of such agreement". This second part is also to be kept in mind while interpreting the entries. However, this aspect would be discussed in the later part of this judgment, in view of the amendment in entry No.5 for the purpose of determining the amount of stamp duty payable.

Now let us examine Entry No.23 which is with respect to the documents which are conveyance or deemed to be conveyance. Although, as noticed above, the agreement to sell followed by or evidencing delivery of possession does not fall in the definition of the word 'conveyance', however, in view of Entry No.5 for the purpose of stamp duty payable, Entry No.23 is applicable.

However, it is important to note that Column No.2 has been divided in two different sub-columns. Sub-Column No.1 of Column No.2 give the rate at which the stamp duty is payable where the conveyance amounts to sale of immovable property. In other words, the duty payable under Sub-Column No.1 of Column No.2 would be leviable only when the conveyance amounts to sale of property. An agreement to sell does not amounts to sale of immovable property. Thus, the stamp duty payable on agreement to sell followed by or evidencing delivery of possession would be regulated by Sub-Column No.2 of Column No.2. It needs to be clarified that stamp duty shall be payable on the amount paid/payable under the agreement to sell by the intended purchaser (vendee) to the intended seller (vendor) and not on the entire sale consideration. The reason is obvious, because of the language of Column No.2 with re-



spect to Entry No.5. The duty which is to be charged at the time of entering into agreement to sell is subject to the adjustment of duty chargeable at the time of execution of the conveyance made in pursuance of such agreement. If the Court interprets that the same duty shall be charged as is leviable on the total sale consideration agreed to between the parties, the second part of Entry No.5 in Column No.2 would be rendered otiose. Legislature, in the considered view of this Court, never intended that the entire stamp duty as is payable on the conveyance deed, be recovered at the time of agreement to sell. Had this been the intention, then the second part in Column No.2 of Entry No.5, would not have in the statute.

Keeping in view the aforesaid facts, the question, which has been framed is answered in the manner that the agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold, shall be leviable with same stamp duty as is leviable under Sub Column No.2 of Column No.2 of Entry No.23 of Schedule 1-A as amended by State of Punjab.”

8. As in the present case, agreement to sell relied by the plaintiff -,petitioner evidences the delivery of possession, so in view of the aforesaid legal position, the trial Court did not commit any error in ordering the plaintiff to pay the deficient stamp duty, as it is clear that when the agreement to sell is followed or evidences delivery of possession of the immovable property agreed to be sold, then it shall be leviable with same stamp duty as is leviable under sub-column No.2 of Entry No.23 of Schedule 1A as amended by State of Punjab.

9. Apart from above, reliance can be placed upon ***“State of Rajasthan versus Khandaka Jain Jewellers” (2007) 14 SCC 339***, wherein it was held that if possession is delivered, the document is chargeable as conveyance even if it is titled as an agreement to sell. The said judgment of Hon’ble Supreme Court is based upon a similar amendment to the Rajasthan Act as applicable to the Punjab. Besides in ***“Avinash Kumar Chauhan versus Vijay Krishna Mishra” (2009) 2 SCC 532*** as rightly relied on by trial Court, it has been



held that an unstamped and insufficiently stamped instrument is inadmissible in evidence, stressing the necessity of correcting the stamping.

10. In the aforesaid facts and circumstances, the trial Court has not committed any error in ordering the plaintiff- petitioner to pay the deficient stamp duty.

11. Apart from the aforesaid liability to pay the deficiency in the stamp duty, the trial Court has also ordered the plaintiff to pay 10 times the penalty of the deficiency. Though Section 35 of the Stamp Act, 1899, entitles the Court to direct penalty to the extent of 10 times of the amount equivalent to the deficient stamp duty but in this case, there is no allegation that an mala fide intent had been made to defraud the Government revenue. As has been observed by this Court in *Sukhwinder Singh's case (supra)*, by referring to '*Trustee of HC Dhanda Trust V. State of Madhya Pradesh and Others' (2020) 9 SCC 510*, it has been held by Hon'ble Supreme Court that it is not mandatory to impose penalty equivalent to 10 times of deficient stamp duty.

12. In the aforesaid facts and circumstances, 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 the said order, from today.

With the aforesaid observations, present petition stand disposed of.

(DEEPAK GUPTA)
JUDGE

14.05.2025

Neetika Tuteja

Whether speaking/reasoned?

Yes/No

Whether reportable?

Yes/No