

VIJAY KUMAR GOYAL (DEAD) THR. LR.

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v.

NEENA RANI & ORS.

(Civil Appeal No. 6538 of 2022)

SEPTEMBER 16, 2022

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[M. R. SHAH AND KRISHNA MURARI, JJ.]

Indian Stamp Act – Entry No.5 of Schedule 1-A as amended by State of Punjab – When not applicable – Suit filed by appellant-original plaintiff for specific performance of Memorandum of Agreement and agreement to sell – Plaintiff was directed to pay the deficient stamp duty with penalty observing that as per Schedule 1-A, Entry No.5, the stamp duty shall be leviable u/Sub-column No.2 of Column No.2 of Entry No. 23 of Schedule 1-A as amended by the State of Punjab – Revision petition, dismissed by High Court – On appeal, held : As per Entry No.5 (cc) of Schedule 1-A applicable under the State of Punjab, “in the case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold”, the stamp duty is leviable under Column No. 2 of Entry No.23 of Schedule 1-A – However, in the present case, the plaintiff was already in possession prior to the execution of the aforesaid agreements as per the recitals therein – Even the plaintiff has also not sought the possession in the suit and has in fact sought permanent injunction restraining the defendants from interfering in his peaceful possession and from dispossessing/causing to dispossess him from the suit property – Thus, it cannot be said that the possession of the land in question was delivered under the agreements of which the specific performance is sought – Therefore, Entry No.5 of Schedule 1-A of the Indian Stamp Act as amended by the State of Punjab shall not be applicable – Order of the High Court and Trial Court set aside – Stamp/Stamp Duty.

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6538 of 2022.

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From the Judgment and Orders dated 12.02.2020 of the High Court of Punjab and Haryana at Chandigarh in Civil Revision Petition No. CR-3172 of 2018 (O&M).

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A Shehbaz Thind, Mrs. Naresh Bakshi, M/s Bakshi & Associates,
Advvs. for the Appellants.

The Judgment of the Court was delivered by

M. R. SHAH, J.

B 1. Feeling aggrieved and dissatisfied with the impugned judgment
and order passed by the High Court of Punjab and Haryana at Chandigarh
in Civil Revision Petition No. CR-3172 of 2018 by which the High Court
has dismissed the said revision application preferred by the appellant
herein and has confirmed the order passed by the Trial Court directing
the appellant – original plaintiff to pay the deficient stamp duty alongwith
C the penalty, the original plaintiff has preferred the present appeal.

D 2. That the appellant herein has instituted Civil Suit before the
Trial Court for specific performance of the Memorandum of Agreement
dated 24.02.1996 and the agreement to sell dated 14.05.2011 with regard
to the suit land. In the said suit, the Trial Court passed an order directing
the original plaintiff – appellant to pay the deficient stamp duty as leviable
under Sub-column No. 2 of Column No. 2 of Entry No. 23 of Schedule
1-A by observing that as per Schedule 1-A, Entry No. 5 with respect to
Memorandum of Agreement or agreement to sell followed by or
evidencing delivery of possession of the immovable property agreed to
be sold, the stamp duty shall be leviable under Sub-column No. 2 of
E Column No. 2 of Entry No. 23 of Schedule 1-A as amended by the State
of Punjab.

F 2.1 Feeling aggrieved and dissatisfied with the order passed by
the Trial Court ordering the deficient stamp duty alongwith the penalty
to be paid, the original plaintiff – appellant preferred the Civil Revision
Petition No. CR-3172 of 2018 before the High Court. By the impugned
judgment and order, the High Court has dismissed the said revision petition,
which has given rise to the present appeal.

3. Though served, none has appeared on behalf of the respondents.

G 4. We have heard learned counsel appearing on behalf of the
appellant. We have considered and gone through the Memorandum of
Agreement dated 24.02.1996 and the agreement to sell dated 14.05.2011
of which the specific performance has been sought.

H 4.1 Having gone through the said agreements, it can be seen that
the possession has not been delivered under the said agreements. In
these agreements, it is specifically mentioned that the possession of the

disputed land in question was already with the appellant – Vijay Kumar. In the Memorandum of Agreement dated 24.02.1996, it is mentioned that “the above said land is already with my brother Vijay Kumar and after today, my brother, Vijay Kumar has become the owner in possession of the above land like me”. In the agreement to sell dated 14.05.2011, in paragraph 2, it is stated that “that the possession of the above land is already with party No. 2 and the party No. 2 is having possession of the same today also”. Thus, it cannot be said that the possession of the land in question was delivered through under the said agreements of which the specific performance is sought. In that view of the matter, Entry No. 5 of Schedule 1-A of the Indian Stamp Act as amended by the State of Punjab shall not be applicable. As per Entry No. 5 (cc) of Schedule 1-A applicable under the State of Punjab, “in the case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold”, the stamp duty is leviable under Column No. 2 of Entry No. 23 of Schedule 1-A. As observed hereinabove, the plaintiff was already in possession prior to the execution of the aforesaid agreements as per the recitals in the aforesaid two agreements. It is to be noted that even the plaintiff has also not sought the possession in the suit filed by him and has in fact sought the permanent injunction restraining the defendants from interfering in the peaceful possession of the plaintiff and from dispossessing or causing to dispossess the plaintiff from the suit property.

5. In view of the above and for the reasons stated above, the order passed by the High Court and that of the Trial Court directing the appellant – original plaintiff to pay the deficient stamp duty with penalty applying Sub-column No. 2 of Column No. 2 of Entry No. 23 of Schedule 1-A as amended by the State of Punjab is unsustainable and the same deserves to be quashed and set aside.

In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court dismissing the Civil Revision Petition No. CR-3172 of 2018 and the order passed by the Trial Court directing the appellant – original plaintiff to pay the deficient stamp duty along with the penalty are hereby quashed and set aside.

Present appeal is accordingly allowed. No costs.