

21CS DJ ADJ 583/19

SUSHILA DEVI Vs. KRISHAN KUMAR

13.01.2023

Present: Sh. Naval Kautsa, Ld. Counsel for plaintiff.

Ld. Counsel for defendant.

Arguments heard on the application moved on behalf of the defendant u/s. 33 of the Indian Stamp Act for impounding of alleged agreement to sell and Power of attorney.

It is stated on behalf of the defendant that the alleged agreement to sell is not duly stamped as the stamp duty on such agreement to sell is 90% of the value of consideration amount as per Article 23A of the Schedule-I of Indian Stamp Act as applicable to Delhi. But, only stamp duty of Rs. 50/- has been paid by the plaintiff on the alleged agreement to sell.

It is further stated that the alleged power of attorney is also not duly stamped as the stamp duty on such power of attorney, which given ownership rights by allowing the attorney to sell the immovable property by virtue of Article 48(f) of the Indian Stamp Act as applicable to Delhi will have the same duty as on conveyance deed as per Article 23 of the Indian Stamp Act.

It is further mentioned in the application that as per Section 33 of Indian Stamp Act, this Hon'ble Court has power and shall impound the agreement to sell and power of attorney, which are not duly stamped.

Reply to the aforesaid application has been filed on behalf of the plaintiff wherein it has been mentioned that the provisions of Section 33 of Stamp Act are not applicable in the present suit for specific performance, therefore, the application of the defendant is not tenable in law. It is stated that as per Section 17 of the Indian Registration Act, the agreement to sell does not require registration for the relief of specific performance.

It is further submitted on behalf of the plaintiff that she has paid the requisite stamp duty on the document i.e. power of attorney at the time of its execution.

It is further submitted that the plaintiff has paid the requisite stamp duty on the aforesaid documents i.e. agreement to sell and power of attorney at the time of execution of the said documents. It is stated that it is the defendant who ran away from the liability of executing the sale deed in favour of the plaintiff as the defendant had taken the consideration amount at the time of execution of the aforesaid documents and assured the plaintiff that he will execute the sale deed in favour of the plaintiff but same has not been done by the defendant.

In view of aforesaid, plaintiff prays that the application of the defendant u/s. 33 of the Indian Stamp Act be dismissed with heavy cost.

Heard. Perused.

Ld. Counsel for the plaintiff in support of his contentions has also relied upon a judgment of the Hon'ble Delhi High Court in case titled as *Vinod Kumar & Anr. vs. Ajit Singh* in IA no. 20617 of 2012 and In CS (OS) no. 2661 of 2012 DOD 01.10.2013. Relevant extracts of said judgment are as follows :

Civil Procedure Code, 1908, Order 7 Rule 11- Agreement to sell – Unregistered – Specific performance – Suit for – No relief sought based on part performance under Section 53A of Transfer of Property Act, 1882 – Section 17 (1-A) of Registration Act, 1908 was not attracted – Thus, agreement did not require registration – Such an agreement falls under mischief of Section 17(2) (v) of Registration Act, and it itself doe not create, declare, assign, limit or extinguish any right, title or interest in property -Rather, it creates a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish right, title or interest in property – Such document is receivable in evidence in a suit for specific performance under Chapter-II of Specific

Relief Act, 1877 – Such an agreement to sell cannot be termed as conveyance as defined in Section 2(10) of I.S.T.A – Article 23A was not attracted and thus, provisions of Sections 33 of I.S.T.A is not attracted – Mandatory impounding of unstamped documents do not apply to instant case – Application made under Order 7, Rule 11 of CPC is dismissed.

Also, Section 17 of The Registration Act, 1908 reads as under :

“17. Documents of which registration is compulsory

-(Inserted by Act 48 of 2001, S-3

(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration Act and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said Section 53-A”.

Section 49 of Registration Act, 1908, further provides as under:

“49. Effect of non-registration of documents required to be registered – No document

required by section 17 (or by any provision of the Transfer of Property Act, 1882) to be registered shall :-

(a) affect any immovable property comprised therein, or

(b) confer any power to adopt, or

(c) be received as evidence of any transaction affecting such property or conferring such power, unless it has been registered.

(Provided that an unregistered document affecting immovable property and required by this Act, or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of any collateral transaction not required to be effected by registered instrument)".

Here, it is apposite to mention that the present suit has been filed by the plaintiff for specific performance of the agreement to sell and possession etc wherein the plaintiff is stated to be not in possession of the suit property, therefore, the relevant Section is the Proviso of Section 49 of the Registration Act and not Section 17 (1-A) of the said Act.

In view of aforesaid discussions, the application of the defendant u/s. 33 of the Indian Stamp Act is hereby dismissed.

Pleadings in the present matter are complete. From the

pleadings of the parties, following issues are framed as under :

(1) *Whether the plaintiff is entitled to a decree of specific performance of Agreement to sell dated 23.07.2018 alongwith possession in her favour and against the defendant, as prayed? OPP.*

(2) *Whether the plaintiff is entitled for a decree of possession in her favour and against the defendant thereby directing him to handover the vacant, peaceful and physical possession of the built up property measuring 107 sq. yards (out of total measuring area 407 sq. yards) bearing Plot no. 11-A, Out of Khasra no. 21/1/2 & 20/1, situated in the Revenue Estate of village Haibatpura, Delhi, as prayed?OPP.*

(3) *Whether the plaintiff is entitled to a decree of permanent injunction, as prayed?OPP.*

(4) *Relief.*

No other issue arises or pressed.

Put up for **PE** on **08.05.2023**. List of witnesses be filed by both the parties within 15 days, after exchanging copies thereof. The copies of evidence by way of affidavit of the witnesses be supplied to opposite side atleast 15 days prior to the NDOH.

(MOHINDER VIRAT)
ADJ-05 (SW):Dwarka Courts
New Delhi:13.01.2023