<u>In the Court of Chandan, PCS, Civil Judge Jr.Division, Ludhiana. (UID No.PB0680)</u>

CS-2468-2021
Darshan Singh vs Tharwant Singh

<u>APPLICATION FOR IMPOUNDING THE ALLEGED AGREMENTS TO SELL DATED 09.01.2017 AND 09.02.2017 AS THE SAME ARE NOT ADMISSIBLE AS PER LAW</u>

Present: Sh. K.S. Grewal Advocate for the plaintiffs.
Sh.G.S. Grewal Advocate, for **defendant no.1/applicant**
Defendants no. 2, 3, 5, 6, 7, 11 & 12 exparte.
Defendant no. 8 exparte.
Defendant no. 4 exparte.
Defendant no. 10 died.

<u>Order</u>:-

1. This order of Court shall decide an application for impounding the alleged agreements to sell dated 09.01.2017 and 09.02.2017 as the same are not admissible as per law filed by **applicant/defendant no.1.**

2. The brief facts of the application are that plaintiff in the plaint is alleging two agreements to sell dated 09.01.2017 and 09.02.2017 and duly exhibited on the judicial file. It is further submitted that alleged agreements to sell dated 09.01.2017 and 09.02.2017 is written on a stamp paper of Rs. 500/- each while as per the schedule of the State, the agreement to sell is required to be written on a Stamp Paper for the denomination of at least Rs.2000/- from 03.09.2009 onwards. It is further submitted that alleged agreement to sell is not fulfills the requirement of section 35 of the stamp Act and as such is not

admissible in evidence and as per law the alleged agreement to sell is liable to be impounded. It is further submitted that the order sought for is warranted under law and the same is also in the interest of justice and equity. Hence the application.

3. In reply to the said application, it has been averred by plaintiffs that present application filed by the applicant/defendant no. 1 for impounding the agreements to sell dated 09.01.2017 and 09.02.2017 as the same are not admissible as per law is not maintainable in the present form and the same deserves to be dismissed with heavy cost. Further it is submitted that present application filed by applicant/defendant no. 1 is not maintainable because agreements to sell dated: 09-01-2017 and 09-02-2017 are executed on proper stamp papers, the time of execution of agreements to sell, the prevalent stamp paper in the state of Punjab for execution of agreement is Rs.500/- as such the present application is deserves to be dismissed with heavy cost. Further submitted that insufficient stamp duty on an agreement or document does not automatically render it invalid. Moreover, if this Hon'ble Court considers that if the agreements dated: -09-01-2017 and 09-02-2017 not executed on sufficient stamp papers then Court can permit the rectification of the deficiency by paying the requisite stamp duty, as such the present application filed by the applicant/defendant no.1 for impounding the agreements to sell dated: -09-01-2017 and 09-02-2017 as the same are not admissible as per law is not

maintainable in the present form and the same deserves to be dismissed with heavy cost. It is also submitted that a third party who directly not involved in the original agreement, does not have the standing to raise objections regarding stamp duty deficiency. This is primarily because the third party is not a party to the agreement and does not have direct rights or obligations under in it. Similar in the present case the applicant/defendant no.1 neither is party to the agreement to sell dated 09.01.2017 and 09.02.2017 nor he has any direct right or obligations in the agreements to sell. Rest of the averments made in the application are denied in para wise manner and request has been made to dismiss the present application as it is not admissible as per law.

4. Heard. Perusal of the file shows that original agreement to sell in question is on the file. The agreement to sell has been scribed on the stamp paper of Rs.500/-. A careful perusal of the agreement to sell further shows that there is a specific recital in the agreement to sell that possession has been transferred/delivered by plaintiff Darshan Singh.

5. Before proceeding further it is important to see as to whether the alleged agreement to sell in question is properly stamped as per provisions of Indian Stamp Act. As per **Schedule 1-A** appended to Indian Stamp Act and applicable to **State of Punjab and item no. 5(c),** if an agreement relates to sale of immovable property then the proper stamp duty to be paid was

Rs. 300/- .Now as per **Indian Stamp (Punjab Amendment)Act, 2009 notified vide gazzette notification August 3rd, 2009** it has been enhanced to Rs. 2000/-. **Item 5(cc)** as applicable to Punjab **[Inserted vide Indian Stamp (Punjab Amendment) Act 2001 notified vide gazzette notification December 21st 2001 Punjab Act no.14 of 2001]** says that in case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold the same duty is leviable as is applicable to entry no. 23 of the schedule,subject to the adjustment of duty chargeable at the time of execution of conveyance made in pursuance of such agreement. Meaning thereby the in case of delivery of possession, the duty paid for agreement to sell would be equivalent to the duty as would be payable in case of sale of property. In case of M.P.Act amendment which is similar to Punjab amendment **Hon'ble Supreme Court in Avinash Kumar Chauhan vs. Vijay Krishna Mishra AIR 2009 SC 1489,** while referring section 35 of the Stamp Act has held that an under stamped instrument is neither admissible in evidence nor for any collateral purpose. In this case a suit for recovery was filed on the basis of an agreement to sell where possession was delivered and court ordered to impound the instrument and asked the plaintiff to pay 10 times penalty. The Hon'ble Punjab and Haryana High Court in case titled as "**Binder Singh vs Rajinder Kaur and another CR NO.-**

232 OF 2012 (O&M) Decided on 15-12-2015" observed as under-

> *".....Section 17 (1) (a) of the Registration Act states that the document that contains a contract to transfer for the purpose of Section 53-A shall be registered, if it to take effect. Section 49 of the Registration Act, which shall be read with Section 17 (1A) states specifically that no document requiring registration shall affect immovable property comprised therein. The proviso will be only to protect the prayer for using unregistered document for specific performance and cannot extend to any transaction or relief which is also the relief of specific performance. A document that is required to be registered and which contains a* ***recital for delivery of possession would also require to be stamped as a conveyance as specified in Column 2, Entry 23 of Schedule 1A of the Indian Stamp Act, 1989 and amended by the Punjab.*** *I sought the counsel for assistance, if the agreement provides for a clause of delivery of possession. He makes more or less assertion, it does, but I do not have the benefit of seeing the document. I leave it, therefore, to the trial to see if the document contains reference to delivery of possession and if it does, I direct the trial court to impound the document and collect stamp duty, penalty in the manner provided under the provisions of the Stamp Act. If the stamp duty is not paid, the document shall be eschewed and shall not be admitted in evidence as laid down under Section 35 of the Stamp Act."*

6. The Hon'ble Punjab and Haryana High Court in case titled as Kamal Singh vs Rajinder Kumar Sharma CR NO. -5564 OF 2014 (O&M) Decided on 30-11-2015 observed as under-

> *"......As far as the Stamp Act is concerned, the agreement that contains a recital for delivery of possession does not require to be treated differently for the properties or document executed in the State of Haryana. Some states have brought amendments in the respective stamp law in the Schedule accompanying the provision of the Stamp Act. For instance, in the State of Punjab Article 5 in Schedule IA has been amended to include clause (cc). Clause (cc) provides for the treatment of an agreement for sale with delivery to be leviable as under Column 2 of entry No. 23 of the Schedule which shall be the duty payable for conveyance. However, for the state of Haryana, there is no amendment carried out to the Schedule 1A accompanying the Stamp Act as far as Article 5 dealing with agreement or memorandum of agreement in relation to sale of immovable property, Clause (c) in Haryana amendment provides proper stamp duty to be Rs. 2.50 paise."*

7. The alleged agreements to sell has been scribed on stamp paper of Rs.500/- and is therefore under-stamped in view of Indian Stamp Punjab Amendment Act 2001 as there is specific recital regarding delivery of possession in the agreements to sell in question.

8. The counsel for plaintiff has argued that the defendant has waived his right to raise objection regarding inadmissibility of the alleged agreement to sell in this suit

(present suit) on ground of stamp duty as Tharwant Singh (defendant) is not party to agreement to sell. This argument of plaintiff is again not tenable. The **Hon'ble Supreme Court in case titled as Government of A.P. Vs. P.Laxmi Devi, (2008) 4 SCC 720, has held vide para 16** thereof, that the duty of the Court under Section 33 of the Stamp Act is **mandatory in nature** and the person before whom such insufficiently stamped instrument comes, is **duty bound to impound such instrument.** The said para reads as under:-

> *"**16.** A perusal of the said provision shows that when a document is produced (or comes in the performance of his functions) before a person who is authorised to receive evidence and a person who is in charge of a public office (except a police officer) before whom any instrument chargeable with duty is produced or comes in the performance of his functions, it is the duty of such person before whom the said instrument is produced to impound the document if it is not duly stamped. **The use of the word shall in Section 33(1) shows that there is no discretion in the authority mentioned in Section 33(1) to impound a document or not to do so.** In our opinion, the word shall in Section 33(1) does not mean may but means shall. In other words, it is mandatory to impound a document produced before him or which comes before him in the performance of his functions."*

9. Hence the view taken by Hon'ble High Court that the document can be returned if the party does not want to get it

stamped is not correct " In case titled as **S. Sivalingam vs A.Suryanarayan decided on 30 June, 2017 C.R.P. PD No.1741 of 2014 and M.P.No.1 of 2014 the following question arose before Hon'ble Madras High Court-**

"whether a document already marked can be rejected, pending trial before conclusion of trial and before delivering the judgment"

Para No.14 of above judgment is reproduced as under-

> ***"14.*** *The point for consideration arisen in this Civil Revision Petition is whether the documents* ***Exs. A.1 & A.4 can be rejected after the same being marked without any objection by the petitioner*** *Admittedly, both Exs.A1 & A4 are lease deeds for more than one year. As per Indian Stamp Act and Registration Act, both the documents are to be stamped and compulsorily registerable. The documents were marked through P.W.1 and the petitioner did not object to the same at the time of marking of the documents. On the other hand, the learned counsel for the petitioner has cross examined PW1 on these two exhibits. When the trial is pending, the petitioner filed I.A.No.875 of 2013 to reject the documents which were marked as Exs.A1 & A4. According to the petitioner, the documents being unstamped and unregistered cannot be marked and cannot be looked into for any purpose including for collateral purpose. In the circumstances, court has power to reject the documents at any stage of the suit, even if the same was marked without any objection. On the other hand, the learned counsel for*

the respondent submitted that the documents once marked without any objection cannot be objected at a later stage, as there is a prohibition under Section 36 of the Indian Stamp Act. "

10. It was held by **Hon'ble Madras High Court that under order 13 rule 3 CPC Court has power to reject any document already marked at any stage of the suit, if the Court is of the opinion that the document is irrelevant or otherwise inadmissible. If the Court rejects such a document, the Court has to record the reasons for the same. The Hon'ble Madras High Court relied on case titled as "R.Ve.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P.Temple & Anr. 2003 (8) SCC 752 " of Hon'ble Supreme Court of India.**

11. In this case **"R.Ve.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P. Temple & Anr. 2003 (8) SCC 752." Hon'ble Supreme Court held as under-**

" The learned counsel for the defendant-respondent has relied on The Roman Catholic Mission Vs. The State of Madras & Anr. AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the abovesaid case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. **The objections as to**

admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court. "

12. From the above discussed case laws/citations it is clear that, objection with regard to admissibility of the document **(which has already been marked as EXHIBIT)** being under-stamped / unstamped can be raised at any stage of the suit and court has power to reject the admitted document at any stage of the suit **under order 13 rule 3 CPC.** As per the judgment **"R.Ve.Venkatachala Gounder v. Arulmigu Viswesaraswami & V.P.Temple & Anr. 2003 (8) SCC 752" Hon'ble Supreme Court** held that objection with regard to a document sought to be proved as inadmissible can be raised even after the document has been marked as an exhibit, even in the appeal or revision.

An objection not with regard to admissibility of document but with regard to **mode of proof** on the ground of irrelevancy or insufficiency can be raised when the document is tendered as evidence but not after the document was marked as evidence.

13. The **Hon'ble Andhra Pradesh High Court in case "Chintam Kantam vs Dhulipudi Venkateswara Rao and others 2004(1) Andh LD 380 : 2004(1) An.WR 142 para no.11" held as under-**

"11. While deciding the question relating to the payment of stamp duty and penalty on a particular document, the recitals of the document may have to be looked into and not the pleadings of the respective parties. The pleadings of the parties may be in deviation of the document in question. The levy of the stamp duty and penalty is always in relation to the document which is to be marked before the Court and such levy cannot depend upon the pleadings of the parties".

14. The Hon'ble Supreme Court of India in case titled as **"Om prakash vs Laxminarayan & Ors decided on 7 October, 2013 CIVIL APPEAL NO.9032 OF 2013 SPECIAL LEAVE PETITION (C) NO. 20721 OF 2008" has held that** if in a document certain recitals are made then the Court would decide the admissibility of the document on the strength of such recitals and not otherwise. **It was further observed by Hon'ble Apex Court that:-**

"if in a given case, if there is an absolute unregistered sale deed and the parties say that the same is not required to be registered then we don't think that the Court would be entitled to admit the document because simply the parties say so. The jurisdiction of the Court flows from Sections 33, 35 and 38 of the Indian Stamp Act and the Court has to decide the question of admissibility "

15. **The Hon'ble Andhra Pradesh High Court in case titled "T. Bhaskar Rao vs T. Gabriel and others AIR 1981 AP 175 para no.7"** held as under:-

" 7. It is now well settled that there is no prohibition under Section 49 of the Registration Act, to receive an unregistered document in evidence for collateral purpose. But the document so tendered should be duly stamped or should comply with the requirements of Section 35 of the Stamp Act, if not stamped, as a document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act."

16. **The Hon'ble Uttarakhand High Court in case titled "Mahant Krishna Giri ,Chela Mahant Vikram Giri vs Smt. Deepa Devi 2013(4) CCC 463"** held that under stamped document cannot be received in evidence even for collateral purpose unless it is duly stamped or duty and penalty are paid under Section 35 of the Stamp Act. *Accordingly, the alleged agreement to sell in question is ordered to be impounded being*

<u>under-stamped and the plaintiff is directed to pay the deficit amount of the stamp duty on the alleged agreement to sell plus ten times the penalty of deficit amount of stamp duty on the agreement to sell.</u>

(Chandan)
Civil Judge Jr. Division
Ludhiana
*** Directly Dictated***
UID No.PB-0680

Dated:- 10.08.2026

Poonam

Stenographer-II