

[**2020 PLRonline 5203**](#)

Punjab and Haryana High Court

JUSTICE ANIL KSHETARPAL.

Narinder Kapoor v. Inderjit Since Deceased Thru Lr

CR-1931-2017 (O&M) and CR-3172-2018 (O&M)

12.02.2020

Indian Stamp Act, 1899 (2 of 1899, Section 35(a) - Distinction between the stamp duty payable at the time of execution of the agreement to sell evidencing delivery of possession in the context of the amendment brought in Entry no.5 in Schedule 1-A as applicable to the State of Punjab and Entry no.5, Clause 'CC added by the Indian Stamp (Punjab Amendment) Act 2001 notified on 21.12.2001 - Whereas Entry no.23 was amended by the Indian Stamp (Punjab Amendment) Act, 2007, with effect from 25.01.2008 - 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.

Held,

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 respect 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.

[Para 4, 5, 6]

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