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2020 PLRonline 5203

Punjab and Haryana High Court

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JUSTICE ANIL KSHETARPAL.

Narinder Kapoor v. Inderjit Since Deceased Thru Lr

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

12.02.2020

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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]

Mr. Kanwaljit Singh, Sr. Advocate with Mr. Namit Gautam, for the petitioner (In CR-1931-2017). Mr. Abdul Shehzad Thind, Advocate for the petitioner. (In CR-3172-2018) Mr. Aayush Gupta, Advocate for the respondents (In CR-1931-2017) Mr. Abhimanyu Kalsy, Advocate for the respondents. (In CR-3172-2018)

ANIL KSHETARPAL, J.- By this judgment, CR-1931-2017 and CR-3172-2018 shall stand disposed of. An interesting issue arises for consideration. Question is "whether an agreement to sell followed by or evidencing delivery of possession of immovable property agreed to be sold after introduction of Entry No.5 in Schedule 1-A as applicable to the State of Punjab, the stamp duty is leviable under Column No.2 of Entry No.23 or not?

2. Before this Court proceeds to answer the question, it would be appropriate to extract the relevant amendments brought in by the State of Punjab in the Indian Stamp Act, 1899 or the Schedule attached thereto:-

"Sub-Section 10 of Section 2:-

(10) "Conveyance"- "Conveyance" includes a conveyance on sale and every instrument by which property, whether moveable or immovable, is transferred inter vivos and which is not otherwise specifically provided for by Schedule I or by Schedule 1-A [or by (Schedule 1-B or] Schedule 1-C], as the case may be;

SCHEDULE 1-A:-

Entry No.5:-

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| 5 | <i>AGREEMENT OF MEMORANDUM OF AN AGREEMENT-]</i> | |
| | <i>(a) if relating to the sale of a bill of exchange;</i> | <i>Twenty-five rupees.</i> |
| | <i>(b) if relating to the sale of a Government security or share in an incorporated company or other body corporate;</i> | <i>Five rupees for every ten thousand or part thereof, of the value of the security or share.</i> |
| | <i>(c) if relating to the sale of immovable property</i> | <i>Three hundred rupees</i> |
| | <i>(cc) in the case of agreement to sell followed by or evidencing delivery of possession of the immovable property agreed to be sold;]</i> | <i>The same duty as is leviable under column 2 of entry No.23 of this schedule, subject to the adjustment of duty chargeable at the time of execution of conveyance made in pursuance of such agreement; and</i> |

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| | <p>(d) if not otherwise provided for</p> <p>Exemption</p> <p><i>Agreement or memorandum of agreement-</i></p> <p>(a) <i>for or relating to the sale of goods or merchandise exclusively, not being a note or memorandum chargeable under No.43:</i></p> <p>(b) <i>made in the form of tenders to the Central Government for or relating to, any loan;</i></p> <p><i>AGREEMENT TO LEASE – See Lease No.</i></p> <p>(35)</p> | <p><i>Fifteen rupees</i></p> |
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Entry No.23:-

| 23 | CONVEYANCE as defined in Section 2(10) not being a transfer charged or exempted under No.62. | Where conveyance amounts to sale of immovable property | Other conveyances |
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| 1 | | 2 | 3 |
| | where the value or amount of the consideration for such conveyance as set forth therein does not exceed Rs.50 | Two rupees and fifty paise | Two rupees |
| | Where it exceeds Rs.50, but does not exceed Rs.100 | Five rupees | Three rupees |
| | Where it exceeds Rs.100, but does not exceed Rs.200 | Ten rupees | Six rupees |
| | Where it exceeds Rs.200, but does not exceed Rs.300 | Fifteen rupees | Nine rupees |
| | Where it exceeds Rs.300, but does not exceed Rs.400 | Twenty rupees | Twelve rupees |
| | Where it exceeds Rs.400, but does not exceed Rs.500 | Twenty five rupees | Fifteen rupees |
| | Where it exceeds Rs.500, but does not exceed Rs.600 | Thirty rupees | Eighteen rupees |
| | Where it exceeds Rs.600, but does not exceed Rs.700 | Thirty five rupees | Twenty one rupees |

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| | Where it exceeds Rs.700, but does not exceed Rs.800 | Forty rupees | Twenty four rupees |
| | Where it exceeds Rs.800, but does not exceed Rs.900 | Forty five rupees | Twenty seven rupees |
| | Where it exceeds Rs.900, but does not exceed Rs.1000 | Fifty rupees | Thirty rupees |
| | And for every Rs.500 or part thereof in excess of Rs.1000 | Twenty five rupees | Fifteen rupees |
| | Exemption Assignment of copyright under the Copyright Act, 1957, Section 18 Co-Partnership-Deed – See Partnership (No.46) | | |

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Entry No.62:-

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| 62 | TRANSFER (whether with or without consideration)- | |
| | (a) of shares in an incorporated company or other body corporate; | As in Schedule I |
| | (b) of debentures, being marketable securities, whether the debenture is liable to duty or not, except debentures provided for by Section 8; | One-half of the duty payable on a debenture (No.27) for a consideration equal to the face amount of the debenture. |
| | (c) of any interest secured by a bond, mortgage-deed or policy of insurance; | The duty with which such bond, mortgaged deed or policy of insurance is chargeable subject to a maximum of five hundred rupees. |
| | (d) of any property under the Administrator General's Act, 1918, Section 25; | Fifty rupees |
| | (e) of any trust-property without consideration from one trustee to another trustee, or from a trustee to a beneficiary. | Fifty rupees |

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| | <p>Exemption</p> <p>Transfers by endorsement</p> <p>(a) of a bill of exchange, cheque or promissory note;</p> <p>(b) of a bill of lading, delivery, order, warrant for goods, or other mercantile document of title to goods;</p> <p>(c) of a policy of insurance;</p> <p>(d) of securities of the Central Government See also Section 8; and</p> | |
| | <p>[(f) by way of assignment of debt or securitization of loans.</p> | <p>0.1% of the amount, subject to a maximum of one lakh rupees.]</p> |

In Entry No.5, Clause CC was added by the Indian Stamp (Punjab Amendment) Act, 2001 notified on 21.12.2001. Entry No.23 was amended by the Indian Stamp (Punjab Amendment) Act, 2007 w.e.f. 25.01.2008.

3. On careful reading of phraseology used in the definition of "Conveyance" as defined in Sub-Section 10 of Section 2, it becomes 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 the word "includes", however, the significant word used subsequently is "transferred". Use 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."

4. 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 evidencing 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.

5. 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.

6. 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.

6. 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.

7. 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. Let us now examine the facts of each case.

9. In CR-1931-2017, the learned Court has rejected the application filed under Section 33 of the Indian Stamp Act, for impounding the alleged agreement to sell dated 25.04.2009 by directing payment of Rs. 2200/- by assuming that the stamp duty is not payable as is payable on the conveyance deed. The order is erroneous. Accordingly, the order dated 21.02.2017 is set aside while directing learned Civil Judge (Junior Division) to pass fresh order.

10. Now let us examine the impugned order passed in CR-3172- 2018. In this case, the Court has ordered that the deficient stamp duty alongwith the penalty be paid. In view of the interpretation, there is no error in the impugned order passed in CR-3172-2018. Hence, the revision is dismissed.

11. At this stage, it would be important to note that counsels have also argued with respect to Section 36 of the Indian Stamp Act, 1899, by contending that once the document has been exhibited without any objection, the party is debarred from questioning the admission of the instrument. However, since, the im-

pugned orders do not deal with the aforesaid contentions, therefore, it shall be open to the trial Court to adjudicate thereupon, if any of the party to the litigation moves an application in this regard.

12. Keeping in view the aforesaid facts, CR-1931-2017 is allowed whereas CR-3172-2018 is dismissed.

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13. All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

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