

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 6538 OF 2022

Vijay Kumar Goyal (Dead) Thr. LR.

...Appellant(s)

Versus

Neena Rani & Ors.

...Respondent(s)

J U D G M E N T

M.R. SHAH, J.

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 the penalty, the original plaintiff has preferred the present appeal.

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 Column No. 2 of Entry No. 23 of Schedule 1-A as amended by the State of Punjab.

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.

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.

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.

.....J.
[M.R. SHAH]

NEW DELHI;
SEPTEMBER 16, 2022.

.....J.
[KRISHNA MURARI]