
(2013) 09 P&H CK 0521
In the Punjab And Haryana At Chandigarh
Case No : CR No. 5153 of 1996

Kundan Lal and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 24-09-2013

Acts Referred:

Citation : (2014) 174 PLR 16

Hon'ble Judges : Paramjit Singh Patwalia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Paramjeet Singh, J.—Instant civil revision has been filed against the order dated 22.10.1993 passed by the Collector, Bathinda whereby the petitioners have been directed to pay deficient stamp duty u/s 47-A of the Indian Stamp Act, 1899 (hereinafter referred to as "the Act") and the order dated 23.07.1996 passed by learned Additional District Judge, Bhatinda whereby appeal preferred by the petitioner against the order dated 22.10.1993 has been dismissed. Shorn of unnecessary details, the facts relevant for disposal of the present petition are to the effect that Sub Registrar, Talwandi Sabo, vide letter No. 35/RC dated 18.02.1993 reported the matter to the Collector, Bathinda that in the audit report, deficiency of stamp duty to the tune of Rs. 82,800/- has been shown towards the petitioners and recommended for initiating proceedings u/s 47-A of the Act as applicable in the State of Punjab. The Collector, Bhatinda issued notices to the petitioners. The petitioners filed reply contending that the document in question which was registered at serial No. 155-A dated 24.10.1991 is an agreement between the parties and is not a mortgage deed, as such the stamp duty as demanded is not required to be affixed. Vide impugned order dated 22.10.1993, the petitioners have been directed to, pay a sum of Rs. 82,800/- as deficient stamp duty. Feeling aggrieved by the impugned order dated 22.10.1993 passed by the Collector, Bathinda, the petitioners preferred appeal before learned Additional District Judge, Bhatinda which has also been dismissed

vide impugned order dated 23.07.1996. Hence, this revision petition.

2. I have heard learned counsel for the parties and perused the record.

3. It is the case of the petitioners that the document in question is not a mortgage deed, it is only an agreement and proper stamp duty has already been paid.

4. A perusal of document in question reveals that the land measuring 8 kanals along with machinery etc. as detailed in the document was allegedly agreed to be mortgaged for a sum of Rs. 10,37,000/-. It is also mentioned therein that out of total agreed amount, Rs. 3,07,000/- along with interest was deducted as loan payment of State Bank of India, Maur Mandi and the remaining amount of Rs. 7,28,000/- was handed over to Ganesh Oil Mills and the possession was also delivered. On payment of loan of the bank, the mortgage deed was to be executed. Admittedly, the entire payment has been made and the adjustment of loan has been mentioned. The document is read to be as a whole. This Court has to construe the document in question to identify whether it is a mortgage deed or mere an agreement to mortgage. From the perusal of document, it is clear that the entire mortgage consideration has been paid which includes the loan of bank and the possession of the property has already been delivered. It appears to be a deliberate attempt made by the petitioners that document is worded as mere agreement to mortgage to avoid the stamp duty required to be paid by them. The Hon"ble Supreme Court in Puzhakkal Kuttappu Vs. C. Bhargavi and Others, has held that the intention of the parties to execute a document has to be gathered from the terms of the agreement considering the entire circumstances and the surrounding circumstances. From the perusal of document in question and applying ratio of law laid down in Puzikkal Kuttappu (supra), it is clear that the instant document is nothing, but a mortgage deed as entire mortgage consideration has been paid including payment towards the bank loan and the possession has also been delivered.

5. Since the courts below have recorded concurrent finding of fact, it is not desirable that this Court question the finding of fact recorded by a subordinate Court in the exercise of its revisional jurisdiction u/s 115 of the Code of Civil Procedure. It is well settled that revisional jurisdiction can be exercised only in cases involving questions of jurisdiction and error of law. In view of above, I do not find any illegality or material irregularity in the impugned orders so as to justify interference in exercising revisional jurisdiction.

Dismissed.

No order as to costs.