
(2008) 02 P&H CK 0137
In the Punjab And Haryana At Chandigarh

Manoj Kumar

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 2 PLR 84 : (2009) 106 RD 281 : (2009) 1 SLR 420

Hon'ble Judges : Tej Pratap Singh Mann, J;M.M. Kumar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State of Haryana and Others Vs. Manoj Kumar, AIR 2010 SC 1779 : (2010) 2 JT 577 : (2010) 2 SCALE 783 : (2010) 4 SCC 350 : (2010) 4 SCR 175 : (2010) 3 UJ 1386

M.M. Kumar, J.—This petition filed under Article 226 of the Constitution prays for quashing order dated 8.6.2007 (P-3), passed by the Commissioner, Gurgaon Division, Gurgaon-respondent No. 2, whereby appeal filed by the petitioner has been dismissed, as well as order dated 6.12.2005 (P2), passed by the District Collector, Faridabad, whereby order of recovery of stamp duty has been passed in exercise of jurisdiction u/s 47-A of the Indian Stamp Act, 1899 (for brevity, "the Act"), in respect of Sale Deed No. 11200, dated 9.2.2001.

2. Brief facts of the case are that on 10.11.1999, an agreement to sell was executed by Smt. Manjula Gulati in favour of the petitioner in respect of land measuring 788 Sq. Yards, comprised in Khasra No. 26/22, situated in the revenue estate of Mewla Maharajpur. Entire sale consideration was paid by the petitioner to the vendor and actual possession of the land in question was also delivered. However, the sale deed could not be executed because some dispute has arisen between the parties. The petitioner instituted a civil suit for specific performance of the agreement to sell, dated 10.11.1999, executed by Smt. Manjula Gulati, for sale of property measuring 788 Sq.Yards, for a total sale

consideration of Rs. 1,95,000/-. The suit was decreed in favour of the petitioner by Civil Judge (Junior Division), Faridabad, and Reader of the Court was directed to execute decree and to get the sale deed registered with the Sub Registrar on 9.2.2001, for a sale consideration of Rs. 2,00,000/-.

3. The Joint Sub Registrar, Faridabad, made a report that sale deed, dated 9.2.2001, was under valued. For sale of such land the prescribed Collector rate was Rs. 400/- per Sq.Yard and the market value of the plot was Rs. 33,09,600/-. In this manner, Rs. 5,13,050/- were liable to be paid as stamp duty, whereas stamp duty of Rs. 31,000/- was affixed at the time of registration of sale deed. On 6.12.2005, the District Collector, Faridabad, passed an order u/s 47A of the Act and directed the petitioner to make payment of difference of the amount of stamp duty, amounting to Rs. 1,82,050/-(P2). Feeling aggrieved, the petitioner preferred an appeal under the provisions of Section. 47A of the Act, on the ground that the sale deed had been registered at the sale consideration mentioned in the agreement to sell, specific performance of which had been ordered by the Civil Court and no proceedings could be initiated u/s 47A of the Act. However, the Commissioner, Gurgaon Division, Gurgaon, dismissed the appeal, vide order dated 8.6.2007, holding that the Collector rate prescribed for sale of land in village Mewla Maharajpur of commercial nature was Rs. 4,200/- per Sq.Yard and the petitioner was required to pay additional stamp duty.

4. Having heard learned Counsel for the parties we are of the considered view that instant petition deserves to be allowed. In cases where the specific performance of contract in respect of immovable property has been granted, the ostensible sale price given in the transfer deed is to be accepted by the Registering Authority. The authenticity of such sale considerations cannot be doubted firstly, because the Court has accepted that price and has decreed the suit for specific performance. Secondly, there cannot be any opportunity with the vendee to fabricate an agreement of sale for showing the incorrect sale price because litigating parties would not ordinarily reach such an agreement and signed the fabricated document. Thirdly the authenticity of the decree passed by the Court cannot be questioned. Therefore, the genuineness of the sale price has to be presumed.

In view of the above, instant petition is allowed. Impugned orders dated 6.12.2005 and 8.6.2007 (Annexures P2 and P3) are quashed. A copy of this order be sent to the Chief Secretary, Haryana, for intimation to all concerned.