

Mohinder Singh and others *v.* Samir Singh (Mehtar Singh, C.J.)

whether the reference in question should be sent to the Labour Court which has now been constituted as we understand Shri Hans Raj Gupta is no longer the Presiding Officer of the Labour Court at Rohtak. In the circumstances of this case, we make no order as to costs.

MEHAR SINGH, C.J.—I agree.

K.S.K.

REVISIONAL CIVIL

Before Mehtar Singh, C.J.

MOHINDER SINGH AND OTHERS,—*Petitioners.*

versus

SAMIR SINGH,—*Respondent.*

Civil Revision No. 908 of 1967

April 5, 1968

Stamp Act (II of 1899)—S. 2(5)—‘Bond’—Meaning of—Document providing refund of purchase price paid and payment of a stipulated sum as damages—Whether a ‘bond’ or an ‘agreement’.

Held, that an instrument to be a ‘Bond’, a person must oblige himself to pay money or to deliver certain goods to another. Where the primary object of such an instrument is to incur an obligation to pay, it comes within the definition of a bond. An instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages, is not a bond.

[Para 3].

Held, that a document providing for (a) refund of part of the purchase price paid; and (b) payment of a stipulated sum as damages in case of breach of contract, is an agreement and not a bond because there is no obligation to pay a stipulated sum and if the intending seller fails to perform the contract, he is under a duty to refund the amount he has received as a part of the price for the sale.

[Para 4].

Revision petition under section 115, Civil Procedure Code for revision of the order of Shri Pawan Kumar Garg, Sub-Judge, 1st Class, Mansa, dated the 26th October, 1967 holding that document D.A. is a bond and not an agreement and it was liable to payment of stamp duty and penalty as a bond.

HARBANS LAL, ADVOCATE, for the Petitioners.

NEMO for the Respondent.

JUDGMENT

MEHAR SINGH, C.J.—On January 12, 1966, an agreement was entered into between Bir Singh vendor and Ajit Singh vendee, whereby the former agreed to sell certain part of his land to the latter. The vendee advanced Rs. 1,000 as part of the price of the land, the recital in the agreement, marked D.A. being that Bir Singh vendor had acknowledged receipt of Rs. 1,000 towards the price of the land before the Panchayat. The other term of the document was that if Bir Singh failed to perform the contract, he was not only to refund Rs. 1,000 received by him but also to pay another sum of Rs. 1,000 as damages for breach of contract and, on the other hand, if the vendee did not perform the contract, he was to forfeit the amount of Rs. 1,000 given by him to the vendor. This document was executed by the parties and attested by one witness, but it is unstamped. Subsequently; pursuant to this document D.A. a sale-deed of the land was executed by Bir Singh vendor in favour of Buta Singh, son of Ajit Singh and one Hari Singh. The sale-deed was registered.

(2) One Samir Singh then brought a suit to pre-empt the sale, to which the vendees Hari Singh and Buta Singh are party defendants. During the trial of the suit, Ajit Singh, the original party to the document D.A. was examined as D.W. 3. He stated that the sum of Rs. 1,000 was paid to Bir Singh vendor as advance at the time of striking the bargain, and Bir Singh had undertaken to pay the vendees a stipulated amount of Rs. 2,000, Rs. 1,000 being the advance money and Rs. 1,000 as damages for non-performance of the contract. The vendees wanted by the document D.A. to prove payment of Rs. 1,000 to the vendor. The learned trial Judge was of the opinion that this document D.A. is a bond and not an agreement and so it was liable to payment of stamp duty and penalty as a bond under the provisions of the Indian Stamp Act, 1899 (Act 2 of 1899). It is against the order of the trial Court in this respect that the vendees have filed this revision application. Nobody appears, in spite of service of notice, to oppose it from the side of the plaintiff.

(3) Clause (5) of section 2 of Act 2 of 1899 gives the definition of 'Bond,' but it is an inclusive definition. On this definition for an instrument to be a bond, a person must oblige himself to pay money or to deliver certain goods, as given in the definition, to another. Where the primary object of such an instrument is to incur an obligation to pay, it comes within the definition of a bond. The

Mohinder Singh and others *v.* Samir Singh (Mehtar Singh, C.J.)

difference between an 'agreement' and a 'bond' has been considered by Garth, C.J., in *Gisborne and Company v. Subal Bowri* (1), in which the learned Chief Justice held that an instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages, is not a bond. In the present case the primary purpose of the document D.A. was an agreement between the parties for purchase of land and then it provides for two things—

- (a) refund of part of the purchase price paid; and
- (b) payment of a stipulated sum as damages in case of breach of contract.

(4) In so far as (b) is concerned, it obviously comes under section 74 of the Indian Contract Act, 1872 (Act 9 of 1872), and the party making a claim under this can only have reasonable damages in terms of section 74 of that Act. Therefore so far as this part is concerned, it is obvious that there is no obligation to pay a stipulated sum and it cannot be considered to be a bond. Question remains with regard to the first part, i.e., (a) and in my opinion there also there is no obligation incurred to pay, but when the intending seller of the land fails to perform the contract, he is under a duty to refund the amount which he has received as a part of the price for the sale. So this also does not bring in the question of his having incurred an obligation to pay any amount to the other side. On this consideration the document D.A. is an agreement and not a bond. The learned trial Judge relied upon *In the matter of Hamdard Dawakhana (Waqf), Delhi* (2), but there the learned Judges found that there was a stipulation in the instrument considered by them to pay a fixed sum or a stipulated sum and an obligation to pay money arose under the instrument. That case is not helpful in the present case.

(5) In the result this revision application is accepted and the order of the trial Judge that the vendees have to pay stamp duty and penalty on the document D.A. considering it as a bond is set aside. As nobody appears on the other side, there is no order in regard to costs of this revision.

K.S.K.

(1) (1892) 8 Cal. 284.

(2) 1967 P.L.R. (Delhi) 270.