

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.1263 of 2015 (O&M)

Date of Decision.17.03.2015

Sajjan Singh s/o Rattan Singh

.....Petitioner

Versus

Chhajju Ram s/o Nandu Ram

.....Respondent

Present: Mr. Rakesh Nehra, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The plaintiff's suit was to set aside two sale deeds which the plaintiff claimed had been brought about by a deception on the part of the respondent in making him believe that he was made to execute mortgage which turned out to be sale deeds. In other words, the plaintiff was contending for a position that the mind did not follow the deed and he did not know even the nature of the document. In such a situation it is not merely an issue of the document being voidable for being set aside but it has to be taken that the plaintiff was contending for a position that it was *non est factum*. The doctrine of *non est factum* operates on a different footing, as has been explained by the decision of the Supreme Court in Smt. Bismillah Vs. Janeshwar Prasad and others (1990) 1 SCC 207 that the common law defence of non est factum to actions on specialties in its origin was available where an illiterate person, to whom the contents of a deed had been wrongly

read, executed it under a mistake as to its nature and contents, he could say that it was not his deed at all. In its modern application, the doctrine has been extended to cases other than those of illiteracy and to other contracts in writing. In most of the cases in which this defence was pleaded the mistake was induced by fraud; but that was not, perhaps, a necessary factor, as the transaction is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign and therefore, in contemplation of law never did sign.

2. The learned counsel refers me to the judgment of the Supreme Court in Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010(12) SCC 112 where the Court was holding that when a person is not an executant to the document and he seeks to operate the same, he is bound to pay the ad valorem court fee. The issue of person having been a party to the document is not the same thing as person who though has signed the document is claiming himself to be not a party stating that he did not know what the document was. That makes the point different of what the Supreme Court was not considering in the judgment in Suhrid Singh's case. The issue of *non est factum* was different from issue where the person is party to the instrument but he seeks that it was a fraud practiced by the defendant.

3. In the matter relating to payment of court fee, it must be remembered that it is the pleading that is essentially to be seen and if the plaintiff makes out the case that he did not know what the document was, the pleadings alone must be taken to be the governing

consideration. Further the matter relating to the court fee is but an issue between the court and the party and if the Court is satisfied that there has been no fraud committed by the petitioner in making some clever pleadings only to avoid payment of court fee, the matter must reside there. There is hardly any justification for the respondent to treat himself as aggrieved for a challenge before this Court.

4. There is no scope for intervention. The order already passed is confirmed and the revision petition is dismissed.

(K. KANNAN)
JUDGE

March 17, 2015
Pankaj*