

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

C.R. No.1517 of 2015

Date of Decision.03.03.2015

Ram Kaur

.....Petitioner

Versus

Sandeep and another

.....Respondents

Present: Mr. Jitender Nara, 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 petition for rejection of a plaint filed by the respondent on the ground that the plaintiff has not paid the correct court fee was accepted by the Court and there was a direction to the plaintiff to pay the court fee on the consideration recited in the sale deed executed by the plaintiff in favour of one of the defendants. The contention is that the plaintiff has only sought for cancellation of the document that it is a void transaction and it is the plaintiff's own averment in the plaint that must determine the issue of court fee. The counsel would also argue that the plaintiff is already in possession of the property and since he has not sought for ancillary relief of possession, the Court fee, if required to be paid, would be paid only fixed court fee and the ad valorem court fee that was directed to be paid was erroneous. The counsel would refer to me a judgment of this Court in Surjit Singh Vs.

Karamjit Kaur 2012(3) PLR 790 to state that the petitioner was

seeking for cancellation of the sale deed on the ground that he was an old man and the deed was got executed under undue influence and fraud and where he was not claiming possession, he was not required to pay ad valorem court fee.

2. I would find that under normal circumstances it is the plaintiff's averment in plaint to determine what should be the court fee payable. However, the Court has the power to see what is true content of the plaint or whether the plaintiff is making any attempt to get over the law of court fee by clever pleadings. In this case, the plaintiff has been party to the document of sale executed in favour of the defendant. The plaintiff wants to contend that it was brought out by fraud and coercion and no consideration was actually paid. When an executant of a document seeks to assail the document, it is another way of seeking for cancellation of the document which a person will be otherwise bound if such a relief is not sought for. Where the plaintiff is a party to the document which was required to be set aside, ad valorem court fee is bound to be paid as per the Court Fees Act. The reliance on judgment in Surjit Singh's case (supra) is in my view not proper, for the learned judge with respect, who has relied on a judgment of the Supreme Court in Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010(2) RCR (Civil) 564, has not correctly applied the same. The reference to the above said judgment of the Supreme Court is the law governing the subject and it sets down the distinction between an executant who seeks to assail the document and non-executant who seeks for cancellation. The illustration given clearly points out to the fact that if he is an executant and wants to avoid it, the ad valorem

court fee is bound to be paid. Only in a case where the person is non-executant and wants to contend that particular sale deed is not binding and seeks for cancellation of such a sale, the fixed court fee would be paid. The distinction was somehow missed in the said judgment and I, am therefore, with respect, unable to follow the same. The direction given by the trial court for payment of court fee is perfectly justified.

3. The learned counsel for the petitioner states that if ever it turns out at the trial that consideration was received, the plaintiff could be called upon to pay the court fee. It will amount to putting the cart before the horse in trying to find whether consideration was received or not to find whether the court fee could be directed to be paid or not. The answer to the question which is raised will result in an ultimate decision of whether the sale deed could be cancelled or not. He cannot choose a convenient time to pay the court fee unless there are circumstances as set down under Order 33 Rule 1 CPC to exempt the payment of court fee.

4. I find no cause for intervention. The civil revision is dismissed.

(K. KANNAN)
JUDGE

March 03, 2015
Pankaj*