

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

CR No.1840 of 2013

Date of decision: January 23, 2015.

Savinder Kaur and others

... **Petitioners**

v.

Smt. Kulwinder Kaur and another

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON**

Argued by: Shri Raman Goklaney, Advocate, for the petitioners.

Shri S.K. Arora, Advocate for respondent No.1.

Ms. Tina Garg, Advocate for respondent No.2.

**Dr. Bharat Bhushan Parsoon, J. (Oral):**

A suit for seeking declaration that the land in litigation had wrongly been transferred and such transfer was without any legal necessity even though the land is ancestral and for seeking relief of joint possession filed by the plaintiff, petitioner herein, is pending before the lower court since 10.3.2008.

2. An application was moved by the defendants under Order VII Rule 11 CPC calling upon the plaintiff to fix ad-valorem court fee on the plaint and in case of failure, for rejection of the plaint. This application was strongly resisted by the plaintiff, petitioner herein. The lower court allowed the applicant-defendant's application, calling upon the plaintiff to pay ad-valorem court fee and he was required to make the deficiency in the court fee good. This order of 28.1.2013 passed by the lower court is under challenge in this revision petition.

3. Counsel for the petitioner-plaintiffs has urged that only averments in the plaint, irrespective of the pleadings of the defendants, are

to be taken into consideration for determination of the quantum of court fee payable on the plaint and has further urged that it is a family affair where, no consideration had in fact passed hands and the transfer fee between the family members does not call for payment of any court fee much less ad-valorem.

3. Counsel for the defendants, respondents herein, on the other hand, have urged that irrespective of the nature and purpose of the transaction, ad- valorem court fee is payable. In short, legality and validity of the impugned order has been asserted.

4. Perusal of the paper book reveals that annulment of the transfer deed has not been sought. Only a decree of declaration has been sought. Property involved is ancestral Hindu coparcenary property. Party seeking declaration is not executant of the transfer deed. Only declaratory decree with consequential relief of injunction has been sought. Since it is joint Hindu family coparcenary property, possession of one is taken to be of other co-shareres as well. In short, decree of joint possession has been sought. When the plaintiff is neither executant nor signatory of the transfer deed nor is seeking specific possession nor is even seeking cancellation of the transfer deed but merely declaration is sought, ad valorem court fee is not payable.

5. The impugned order suffers from factual as well as legal infirmity. Consequently, allowing the revision petition, the impugned order is set aside.

**[Dr. Bharat Bhushan Parsoon]**  
**Judge**

January 23, 2015.  
kadyan

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