

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.2075 of 2015

Date of decision : 08.09.2015

Raj Kumar

...Petitioner

Versus

Jai Bhagwan and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

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

Present: Mr. Vijay Kumar, Advocate for
Mr. Vivek Goyal, Advocate for the petitioner.

Mr. Ajay Kumar Gupta, Advocate for respondents.

Mr. Karan Singh, Advocate for respondent No.4.

Mr. Ashwani Kumar, Advocate for respondent No.7.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the impugned order dated 30.01.2015, whereby application filed under order 7 Rule 11 of the Code of Civil Procedure seeking dismissal of the suit, on the ground that respondents-plaintiffs have cleverly sought the relief of declaration, instead of seeking cancellation of the sale deed, alleged to have been executed by Harnam Singh predecessor-in-interest of the plaintiffs, by paying the fixed court fees, has been dismissed by the trial Court.

It has been submitted, that suit as framed, amounts to cancellation of the sale deed and since sale deed had been executed by the predecessor-in-interest i.e. father, they were required to pay advalorem court fees. Plaintiffs, in order to avoid the payment of advalorem Court fees, have intentionally not sought the cancellation of the deed and thus impugned order is not sustainable and liable to be set aside.

Learned counsel for respondents submits that respondents-plaintiff are not party to the sale deed and they are seeking declaration of sale deed to be null and void though at the moment, the land in dispute had been acquired by defendant No.9 but the matter with regard to the release of the property, is pending adjudication in this Court and they are positive and hopeful in achieving the success. He further submits that respondents-plaintiffs are liable to pay fixed courts fees. Since they are not signatory to the sale deed, therefore, indulgence of trial for declaration the relief of injunction, is inherent.

I have heard learned counsel for parties and appraised the paper book.

Noticing, aforementioned contention/rival contentions, as well as on seeing the averments in the plaint dated 29.01.2011 (Annexure P-2), relief of declaration of the sale deed 12.01.2009 to be null and void along with consequential relief for injunction has been sought. The plaintiffs are not the party to the sale deed, but sale deed, as admittedly, been executed by Harnam Singh, on the basis of General Power of Attorney dated 09.01.2009 executed in favour of one Ravinder Kumar, who is being agent sold the land to defendant Nos.2 to 6.

It would be apt to reproduce the relief clause, culled out in the
plaint:-

“It is, therefore, prayed that a decree for declaration to the effect that General Power of Attorney dated 9.1.2009, got fraudulent, from Sh. Harnam Singh, father of the plaintiff, in favour of defendant No.1, in respect of the suit land, and the sale deed dated 12.1.2009, bearing 7127, executed on the basis of the forged General Power of Attorney by defendant No.1 in favour of defendants No.2 to 6 in respect of the suit land, are illegal, null and void, ineffective, inoperative, honest, are illegal, null and void, ineffective, inoperative, hones, fraudulent and binding on the rights of the plaintiffs, alongwith the decree for permanent injunction restraining the defendants No.2 to 6 from alienating the suit land further in favour of any person, through any mode of transfer, forcibly and illegally, be passed, with costs, in favour of the plaintiffs and against the defendants.

Any other relief to which the plaintiffs are found entitled to may also be granted.”

From the perusal of the aforementioned relief clause, it is manifest that plaintiffs have sought declaration of the sale deed dated 12.01.2009 to be null and void, ineffective and inoperative being based on fraud and misrepresentation played upon Harnam Singh by his agent defendant No.1 who on the basis of attorney dated 09.01.2009 executed aforementioned sale deed.

The plaintiffs as noticed above are not party to the sale deed. In my view, fixed court fees has to be paid and not advalorem, as there is no relief vis-a-vis to the cancellation of the sale deed has been sought, much

less, plaintiffs are not party to the sale deed.

There is no illegality and perversity in the order under challenge.

Revision petition is devoid of merits.

Same is accordingly, dismissed.

08.09.2015

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**(AMIT RAWAL)
JUDGE**