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

Civil Revision No. 1965 of 2014

Date of Decision: December 04, 2015

Phool Singh

-Petitioner

Vs.

Jeet Singh @ Jeeta and Ors.

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. R. K. Gupta, Advocate
for the petitioner.

Mr. Gaurav Gaur, Advocate for
Mr. S. M. Sharma, Advocate
for respondent No.5.

RAJ MOHAN SINGH, J. (ORAL)

{1}. Plaintiff has assailed order dated 07.11.2013 passed by Civil Judge (Junior Division), Panchkula allowing the application under Order 7 Rule 11 CPC filed by defendant No.4. Plaintiff filed suit for declaration to the effect that sale deed No.388 dated 23.07.2007 executed by defendant No.1 in favour of defendant No.2 in respect of 22 Kanals 9 Marlas of land and

sale deed No.484 dated 06.09.2010 executed by defendant No.1 in favour of defendant No.2 and 4 in respect of 7 Marlas of land are wrong, illegal, null and void and are sham transactions without consideration and without any legal necessity. Transactions are not binding upon reversionary rights of the plaintiff and other coparceners of the ancestral Joint Hindu Family property. Consequent mutations have also been challenged to be null and void. Plaintiff has pleaded in para No.5 of the plaint that the property is coparcenary property and defendant No.1 has alienated the same without there being any legal necessity and the alleged sale deeds are without consideration and are fraudulent in nature.

{2}. The application under Order 7 Rule 11 CPC filed by the defendant No.4 has been entertained by the trial Court on the premise that the plaintiff has asked for setting aside of sale deeds dated 23.07.2007 and 06.09.2010 on the ground of the transactions being sham transaction without consideration. Since, the validity of sale deeds has been challenged, therefore, plaintiff was held liable to pay requisite Court fee as per value of the property in question.

{3}. Learned counsel for the petitioner contends that the plaintiff is not a party to the sale deed. Sale deeds have been executed by the father in favour of his son and daughter-in-law.

Plaintiff being non-executant of the instrument only seeks

declaration and joint possession would be the consequential relief of such declaration in the event of acceptance of plea of declaration of the plaintiff. Since the pleadings are to the effect that the property is coparcenary property of Joint Hindu Family, competence of defendant No.1 has been assailed in the context of legal necessity and receiving of consideration, therefore, at this stage of the suit, only allegations in the plaint are to be seen. Learned counsel further contends that the plaintiff-petitioner has pre-existing rights in the property and he is not bound to pay the Court fee as alleged in the impugned order particularly when he is not the executant of the sale deeds.

Learned counsel cites **Jaswinder Singh and others vs. Jasbir Kaur and another, 2013 (1) R.C.R (Civil) 727.**

{4}. On the other hand, learned counsel for respondent No.5 vehemently contends that the plaintiff is required to pay Court fee in terms of Section 7(5) of the Court Fee Act. The concept of Court fee even on the basis of ten times of the land revenue, in the considered opinion of this Court is not attracted because the claim of the plaintiff is based on coparcenary nature of property of Joint Hindu Family. In such a claim in the main suit, Court fee is not required to be paid as the sale deeds stand in the way of the plaintiff to seek declaration in respect of his claim in the Joint Hindu Family property.

{5}. Having considered issue in detail, this Court finds that

the impugned order does not survive on the threshold of requirement of Order 7 Rule 11 CPC. Resultantly, the impugned order is set aside and the revision petition is allowed. Trial Court is directed to proceed with the suit without insisting upon payment of Court fee in the impugned order.

December 04, 2015

jyoti

**(RAJ MOHAN SINGH)
JUDGE**