

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

Civil Revision No.2237 of 2013 (O&M)

Date of decision: 17.07.2015

Smt. Urmila

.... Petitioner

versus

Smt. Savitri Devi and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Manjeet Singh, Advocate,
for the petitioner.

Mr.H.N. Mehtani, Advocate,
for respondent No.1.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The revision petition is against the order dismissing an application for rejection of a plaint on the ground that the plaintiff has sought for setting aside a sale executed in favour of the defendant by one Bharat Singh as null and void and for injunction that she is in possession. There is an alternative prayer for recovery of possession if the defendant were to trespass into the property during the pendency of the suit.

2. The contention in the application for rejection of the plaint brought by the defendant set forth the fact that the defendant's vendor Bharat Singh was a purchaser from the plaintiff herself through a power of attorney. The power was executed in favour of one Kailash Chand on 05.09.1990 and Kailash Chand has executed a sale in respect of the property on 29.10.1991 to Bharat Singh. In respect of another portion of the property, the plaintiff herself has executed a sale in favour of Bharat Singh on 21.04.1995. The plaint conceals the fact regarding the transactions of sale to which she herself was a party and picks up the sale only by Bharat Singh as incompetent. The contention in defence was that the defendant is in possession of the property and the plaintiff has fraudulently incorporated the averment that she is herself in possession but has asked for the alternative relief for recovery of possession cleverly, all the same that if the defendant were to trespass into the property during the pendency of the suit. The trial court dismissed the petition.

3. I find the order of the court below to be erroneous. If the plaintiff is herself a party to the transactions of sale, one by herself and another through a power of attorney and the defendant traces his own title only to the plaintiff, she cannot merely pick that the last transaction terming it to be invalid and citing the instance that she is herself not a party to the transactions of sale for the

defendant's vendor. I asked the learned counsel appearing on behalf of the respondent as to how the defendant's sale can be singularly picked up for assailing its validity if his own purchase is from the person who traces his title to the plaintiff as a purchaser under two transactions, one by herself through a document dated 21.04.1995 and another through a document executed by an alleged power of attorney on 29.10.1991. The counsel argues that the validity of these transactions will be considered only at the time of trial and it is not necessary for him to seek to set aside the same. I find the argument to be specious, for, he cannot have an adjudication on the validity of the transactions indirectly by deliberately introducing only a prayer for assailing the last transaction of sale by the purchaser from her to the defendant. The prayer in the suit will involve predictably an adjudication regarding the validity of two transactions to which she has been a party. If the plaintiff would seek for a declaration that the defendant's vendor had no competency to sell, she is literally asking for the sales in favour of the defendant's vendors themselves to be declared as not valid.

4. It has been held in several judgments that the court fee issue will be always considered from the perspective of what the true content of the plaint is. The import of the prayer in the plaint is too obvious to be missed. The plaintiff is seeking to have an adjudication with respect to two transactions made in favour of

defendant's vendor but without stating so in so many words.

5. Further, the prayer for injunction is accompanied with a contention that in the event of the defendant committing trespass into the property, he should be granted the decree for recovery of possession. This must be taken to be an alternative relief and the plaintiff is bound to value the alternative relief, if that involves payment of higher court fee. There cannot be a relief of recovery of possession by paying fixed court fee and even apart from the requirement of having to set aside the sale in favour of the defendant's vendor through transactions to which the plaintiff herself was a party, the prayer for recovery of possession would also involve similar valuation.

6. The valuation as regards the property shall be on the date of the suit and the ad valorem court fee has to be calculated and paid after valuation. I direct the plaintiff to submit the valuation of the property within 2 weeks from the date of receipt of copy of this order and pay appropriate court fee. If the valuation is not forthcoming, the court below may appoint the bailiff as a Commissioner or any other suitable officer to inspect the property, assess its value and give a report within 2 weeks from the last date when the plaintiff is required to furnish the details. The plaintiff will have a further period of 4 weeks to pay court fee on the value as assessed by the court appointed officer. If the court fee is still not

paid, the plaint is ordered to be rejected. The impugned order is set aside and the revision petition is allowed with the above directions.

(K.KANNAN)
JUDGE

17.07.2015
sanjeev