

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

C. R No. 3180 of 2015 (O&M)

Date of decision : 14.12.2015

Krishan Devi

...Petitioner

versus

Sahab Singh and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.S. Hooda, Advocate
for the petitioner.

Mr. Navenet Singh, Advocate
for respondent No. 1.

RITU BAHRI , J.

Challenge in this petition is to order dated 25.03.2015 passed by learned Civil Judge (Jr. Divn.), Sonapat, vide which the application filed by the petitioner/defendant under Order 7 Rule 11 CPC, has been dismissed.

Respondent No. 1/Plaintiff Sahab Singh filed a suit for declaration with consequential relief of permanent injunction alleging that an agreement to sell dated 05.06.2010 was executed in favour of the defendant-petitioner in respect of property in dispute and the vacant possession was handed over to the plaintiff in the presence of defendant No. 2 and since then, the plaintiff is in possession of the suit property. Thereafter, defendant Nos. 1 and 2 in collusion with defendant No. 3 fraudulently got executed a registered sale deed bearing No. 9299 dated

GAURAV ARORA
2016.01.28 10:38
I attest to the accuracy and
integrity of this document

03.10.2013 in favour of defendant No. 3 and also got the mutation sanctioned in the revenue record.

Subsequently, the petitioner/defendant filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground of insufficiency of Court fees as also on the ground that the plaintiff has no cause of action. This application was dismissed on the ground that the plaintiff is seeking merely a relief of declaration and consequential relief of possession was not being claimed by him. The Court below had relied upon the judgment of Hon'ble the Supreme Court in a case of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, AIR 2010 SC 280*** wherein it has been held that where the executant of deed wants it to be annulled, he has to seek cancellation of the deed, if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid or no est or illegal or that it is not binding on him. It has further been held that if a non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem Court fee, as provided u/s 7 (iv) © of the Act.

The application has rightly been dismissed by the Court below, as the plaintiff is seeking merely a relief of declaration and consequential relief of possession was not being claimed by him.

The petition is dismissed accordingly.

14.12.2015

G Arora

(RITU BAHRI)
JUDGE