

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 3450 of 2015 (O&M)
Date of decision: 16.7.2015

Chander Bhaga

.. Petitioner

v.

Parveen Kumar and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Rajesh Bansal, Advocate for the petitioner.

...

Rajesh Bindal J.

Challenge in the present petition is to the order dated 20.4.2015, whereby in an application filed by defendant No. 1 under Order 7 Rule 11 CPC, the petitioner has been directed to pay *ad valorem* court fee.

In the case in hand, the petitioner-plaintiff filed the suit challenging the sale deed executed by power of attorney holder on her behalf on 24.1.2011. While filing the suit, fixed court fee of ₹ 25/- was affixed. On an application filed by defendant No. 1, the court below directed the petitioner-plaintiff to pay *ad valorem* court fee. Hon'ble the Supreme Court in Suhrid Singh @ Sardool Singh v. Randhir Singh and others, 2010 (2) RCR (Civil) 564, opined that if an executant of a sale deed seeks cancellation thereof, he is required to pay *ad valorem* court fee on the consideration stated in the sale deed. Relevant para thereof is extracted below:

“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on

him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B'- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently, 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17 (iii) of Second Schedule of the Act. But if 'B', a nonexecutant, 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 under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.”

As in the case in hand, the petitioner has challenged the sale deed executed by him through his power of attorney holder, considering the judgment of Hon'ble the Supreme Court in Suhrid Singh @ Sardool Singh's case (supra), in my opinion, no illegality has been committed by the court

below in directing the petitioner to pay *ad valorem* court fee.

The petition is, accordingly, dismissed.

(Rajesh Bindal)
Judge

16.7.2015
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