

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.4023 of 2013
Date of Decision: 13.01.2015

Navdeep Singh Birdi

. . . .Petitioner

Versus

Rupinder Kaur and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vikas Mohan Gupta, Advocate,
for the petitioner.

Mr.N.S. Bhinder, Advocate,
for respondents No.1 to 3.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is directed against the order dated 29.5.2013 by which the application filed by the petitioner/defendant No.3 under Order 7 Rule 11 of the CPC on the ground that the plaintiffs, not in possession, challenged the sale deed and gift deed, are liable to pay the *ad valorem* Court fee even if they are non-executants of the sale deed and gift deed.

In this regard, he has relied upon a judgment of the Supreme Court in the case of **“Suhrid Singh Vs. Randhir Singh”** 2010 (2) CCC 510. However, the learned Court below has dismissed the application of the petitioner on the ground that the Court would find out later on as to whether the plaintiffs are required to pay the *ad valorem* Court fee or not.

Learned counsel for the respondents has submitted that they are not liable to pay *ad valorem* Court fee because they are not asking for possession and have filed suit for declaration and permanent injunction restraining the defendants from transferring or alienating the suit property any further.

Faced with this argument, learned counsel for the petitioner has submitted that even a simple suit for declaration is not maintainable under Section 34 of the Specific Relief Act.

Be that as it may, if the plaintiffs are claiming the declaration only that the gift deed and the sale deed are illegal and are not asking for possession, the trial Court would not order for possession of the properties in dispute even if the sale deed and gift deed are held to be illegal. Even otherwise, the petitioner is still having a right to file an appropriate application for dismissal of the suit on the ground that the simple suit for declaration is not maintainable.

Disposed of.

13.01.2015

Vivek

(RAKESH KUMAR JAIN)
JUDGE