

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

Civil Revision No.4067 of 2012 (O&M)

Date of decision:12.03.2015

Dharam Singh son of Shri Tokh Ram, resident of Village Shahpur Turk, Tehsil and District Sonapat.

... Petitioner

versus

M/s Omax Construction Limited, having registered office at7, Local Shopping Complex, New Delhi, through its Director/Managing Director, and others.

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sushil Jain, Advocate,
for the petitioner.

Mr. Munish Gupta, Advocate,
for respondents 1 and 2.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ?No.

K.Kannan, J. (Oral)

1. The revision petition is against the order allowing an objection brought by the defendant to prevail as regard the issue of court fee. The suit was filed by the plaintiff on a plea that the defendant was setting up a sale deed purported to have been executed within the State of Haryana acting on a power of attorney said to have been executed by the petitioner in favour of a particular person who, in turn, has sold the property to the contesting

defendant. The express averment in the plaint is that he has never gone to M.P. at any time to execute the power of attorney and the power of attorney is a forgery and consequently, the transaction of sale also is *void ab initio* and not binding on him. He has claimed that he is in possession of property and has sought for injunction apart from the prayer for annulling the sale on the ground that it is void.

2. The contention taken in defence was that if there was a prayer for setting up the sale, it would require to be set aside and the ad valorem court fee to be paid.

3. I have gone through the plaint and I find that there is a denial of execution of the power of attorney and the invalidity of the sale in favour of the defendant on the basis of such power of attorney. The interpretation regarding the provisions of the Court Fees Act in cases relating to immovable property for partition and for other related aspects was considered by the Supreme Court in

Suhrid Singh @ Sardool Singh Versus Randhir Singh and others-

AIR 2010 (SC) 2807 and the court held as follows:-

“If a non-executant, is in possession and sues for 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.”

This judgment itself was relied on and considered by a Division Bench of this Court in **Tarsem Singh and others Versus Vinod Kumar and others in Civil Revision No.4753 of 2005, decided on 15.07.2011.** The court has held and explained as follows:-

“i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.

ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv) (c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.”

Clause (ii) extracted above arises only in situation where there is no

consequential relief which is asked. The reference to Article 17(iii) of the Second Schedule can apply only to a situation where in terms of the said provision, the suit shall be “to obtain a declaratory decree where inconsequential relief is paid”. This clause will not arise in a situation where the consequential relief is sought for injunction. This is again not a suit for recovery of possession of property. The plaintiff, on the other hand, states that he is in possession. Therefore, the 3rd clause which was contemplated by the Division Bench also does not apply. It will take us back only to a situation of the plaintiff asking for the relief of declaration where the relief of injunction is sought.

4. If the plaintiff says that he is not a party to the document and the document brought about by the defendant was forgery or not valid for the reasons that he was not himself a party, there is no requirement in law to pay ad valorem court fee. That shall be taken to be the position of law obtaining from the decision of the Supreme Court interpreting the provisions of the Court Fees Act and as affirmed by the Division Bench of this Court. Any other interpretation to hold that a prayer for setting aside must be taken as requiring a ad valorem court fees to be paid on the market value is erroneous.

5. The counsel refers me to the judgment of single Judge in

Dalbir Singh Versus Ranjit Singh and others-2006(2) RCR (Civil)

762, where the court was considering the sale deed executed through the power of attorney where the court held that the vendor cannot allege that he was not a party to the sale deed. That was a case where the court found that the conduct of the plaintiff showed that he was executing several sale deeds through the very same power of attorney and he was contending a particular sale deed executed to be a forged document and not binding upon him to evade ad valorem court fee. This judgment was making an inference from certain particular set of facts that when the plaintiff was admitting transactions done through a particular power of attorney as binding, he cannot selectively pick a transaction to say that the sale which was challenged in suit was a forgery. This judgment cannot be understood that if a power of attorney is stated to be forgery in transaction by such power of attorney was not binding on him, ad valorem court fee would always require to be paid. Yet another judgment that the counsel refers in **Satwinder Kaur @ Satinder Kaur Versus Surjeet Singh and others-2007(2) RCR (Civil) 195**, that was a suit for a declaration of sale deed to be invalid being executed through power of attorney. This judgment also does not lend support to a plea which is made by the counsel for the respondents and the interpretation given to the judgment is off the mark. There is a wide observation that the plaintiff has alleged that the transactions were brought by fraud and forgery. It is not like the

present case where there is an emphatic denial of his presence in a place in MP to execute the power of attorney and where he denies that he was a party to the transaction. It must be taken as a position of law to be well established that a person is required to set aside a transaction only if he is a party. If he is not a party, it is not required to set aside. If there is such a prayer, it must be taken as euphemism for a transaction as not binding on him and not a transaction that is required to be set aside. So read, I will not find **Satwinder Kaur** (**supra**) lends support to an argument placed by the counsel for the respondent.

6. Civil revision is allowed on the above terms.

(K.KANNAN)
JUDGE

12.03.2015
sanjeev