

CR No.4208 of 2014

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

**CR No.4208 of 2014
Date of decision:10.02.2015**

Bhor Kali

...Petitioner

Versus

Poonam Rani

...Respondent

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. J.S.Mehndiratta, Advocate,
for the petitioner.

Mr. V.D.Sharma, Advocate,
for the respondent.

Rakesh Kumar Jain, J.

The petitioner has challenged order dated 22.05.2014 by which an application filed by the respondent under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (here-in-after referred to as the "CPC") has been allowed and the petitioner has been asked to affix *ad valorem* court fee on the market value of the suit property, failing which his plaint was ordered to be rejected.

The plaintiff-petitioner, mother of the defendant-respondent, filed a suit for declaration to the effect that she is exclusive owner in possession of House No.3216, measuring 100 sq. yards, constructed on part of khasra no.15//15/2, situated at Mauza Mamidi named Jammu Colony-B, Yamuna Nagar, Tehsil Jagadhri, District Yamuna Nagar and the gift deed

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no.24 dated 04.04.2011, allegedly executed by the petitioner in favour of the respondent, and the mutation no.3426, which was consequently entered and sanctioned in favour of the respondent, are null and void being result of fraud and forgery and also prayed for consequential relief of permanent injunction restraining the defendant from alienating the suit property in any manner and further not to interfere in her peaceful possession.

The respondent filed an application under Order 7 Rule 11 of the CPC for rejection of the plaint on the ground that the petitioner has challenged the registered gift deed and has also prayed for the consequential relief of permanent injunction without affixing the *ad valorem* court fee.

The said application has been allowed by the learned trial Court on the ground that even if the petitioner has not asked for possession in so many words, the delivery of possession is an essential feature of the gift, therefore, she is out of possession and in the suit for declaration, while challenging the gift deed, the relief of possession is inherent.

Learned counsel for the petitioner has vehemently argued that the court fee has to be computed on the averments made and relief sought in the plaint and not on the basis of the written statement and has relied upon a decision of the Supreme Court in the case of **Ram Narain Prasad and another v. Atul Chander Mitra and others**, (1994) 4 Supreme Court Cases 349. He further submitted that the petitioner has claimed that she is in possession of the demised premises and has only challenged the alleged gift deed on the ground of fraud and forgery and as a consequential relief prayed that in the meantime, the respondent may neither alienate the suit

property on the basis of the gift deed nor interfere in her possession. It is thus submitted that in such circumstances, when the petitioner is not claiming any possession and alleging that she is already in possession of the suit property being the house, she is not required to affix *ad valorem* court fee and has further relied upon two decisions of this Court in the case of **Om Parkash v. Smt. Bimla Devi and others**, CR No.5932 of 2012, decided on 22.05.2014 and **Surjit Singh v. Karamjit Kaur**, 2012(3) R.C.R. (Civil) 364.

On the other hand, learned counsel for the respondent has relied upon the following judgments:-

1. **Sohan Singh v. Tan Singh**, 1985 PLJ 396;
2. **Ajmer Singh v. Punjab Singh (minor) and another**, 2007(1) R.C.R. (Civil) 436;
3. **Smt. Shanti Devi v. Smt. Suchitra @ Santosh and another**, 2009(2) PLR 325;

I have heard learned counsel for the parties and examined the available record with their able assistance.

The facts are not much in dispute as the petitioner has challenged the registered gift deed on the ground of fraud and forgery. It is also well settled that in case of computation of the court fee, the Court has to see the averments made and the relief sought in the plaint, as held by the Supreme Court in **Ram Narain Prasad and another's case (supra)** and by this Court in **Sohan Singh's case (supra)**.

The only question is as to whether the petitioner is liable to

affix *ad valorem* court fee on the analogy that she has been out of possession as the delivery of possession is inherent part of the registered gift deed.

In this regard, the decision relied upon by learned counsel for the petitioner in **Om Parkash's case (supra)** comes to her rescue because in that case also, there was a dispute with regard to the registered gift deed, challenged on the ground of fraud and the plaintiff had claimed himself to be in possession. This Court made an extensive reference to the decisions in the cases of **Gobind Kaur v. Pritam Singh**, The Punjab Law reporter, Vol.LXXVII-1975 page 6, **Jagat Singh v. Avtar Singh and others**, 1970 Crl. Law Journal, 80, **Niranjan Kaur v. Nirbigan Kaur**, AIR 1981 (P&H) 368, **Mast. Nand Kaur and others v. Gurdev Kaur and others**, Vol. LXXIX-1977 PLR 500, **Chhota Singh v. Jit Singh and others**, AIR 1975 Punjab and Haryana 316(1), **Kamla Prasad and another v. Jagarnath Prasad**, AIR 1931 Patna, 78, **Sutjit Singh v. Karamjit Kaur**, 2012(3) R.C.R. (Civil) 364 and **Suhrid Singh @ Sardool Singh v. Randhir Singh and others**, 2010(2) RCR (Civil) 564 and ultimately opined that in such circumstances, the plaintiff is not required to pay the *ad valorem* court fee. Similar view has been expressed by this Court in **Surjit Singh's case (supra)**.

Insofar as the judgments relied upon by learned counsel for the respondent is concerned, in **Ajmer Singh's case (supra)**, the suit was filed by the plaintiff for mandatory injunction for setting aside the sale deed, which was allegedly executed by him though the fraud was alleged. This

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Court held that *ad valorem* court fee has to be paid.

In **Smt. Shanti Devi's case (supra)**, this Court had relied upon a decision in the case of **Zora Singh and others v. Kehar Singh and others**, 1981(1) RLR but this decision cannot be followed as the reasoning given in **Om Parkash's case (supra)** are more exhaustive in which the Court had found that in a case where the gift deed is challenged on the ground of fraud and forgery and only injunction is sought being in possession, the Court has to see the averments made in the plaint and the *ad valorem* court fee is not required to be paid.

I concur with the view of this Court in **Om Parkash's case (supra)** and hold that the order passed by the learned Court below is patently erroneous and without jurisdiction.

Consequently, the present revision petition is hereby allowed and the impugned order passed by the Court below is set aside.

February 10, 2015
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(**Rakesh Kumar Jain**)
Judge