

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.5213 of 2013

Date of decision: 03.11.2015

Dharambir and others

.....Petitioners

versus

Sohan Lal and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Pankaj Jain, Advocate for the petitioners
Mr.Sanjay Vij, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 3.8.2013 (Annexure P4) passed by learned Civil Judge, Senior Division, Gurgaon, vide which, in an application filed under Order 7 Rule 10 CPC by the defendant No.6, the plaintiffs have been ordered to pay ad valorem Court fee on the market value of the suit land as mentioned in the sale deed.

Brief facts necessary for the purpose of disposal of the present revision are that the plaintiffs-petitioners have filed a suit for declaration that the Will dated 26.8.1987 and the sale deeds bearing vasika Nos.15388, 17130 and 19595 dated 24.10.2007, 21.11.2007 and 12.12.2007 respectively along with consequential mutations are illegal and not binding on the rights of the plaintiffs and are liable to be

cancelled and set aside and that the plaintiffs are co-owners in possession to the extent of 1/4th share equally in the suit land. Permanent injunction was also sought against the defendants.

Plaintiffs claim that the suit property was ancestral and co-parcenary property of Tej Ram. Tej Ram left behind four legal heirs i.e. Sohan Lal, Phool Singh, Hari Singh sons and Smt.Nangi daughter. Tej Ram executed a will dated 26.8.1987 on the basis of which, mutation of inheritance was sanctioned in favour of three sons of Tej Ram, on the basis of which, the sale deeds have been executed.

The lower Court has taken a view that in fact the plaintiffs are claiming relief of possession by way of consequential relief. They also seek cancellation of sale deed. Therefore, they are required to pay the ad-valorem Court fee on the plaint.

I have heard learned counsel for the parties and have also carefully gone through the file.

Learned counsel for the petitioners has argued that the petitioners were not party to the sale deeds. Therefore, as held in Suhrid Singh @ Sardool Singh v. Randhir Singh and others, 2010(2) RCR (Civil) 564, they are not required to pay the ad valorem Court fee.

The contention has been countered by the opposite counsel, stating that the suit property is claimed to be ancestral and co-parcenary property. Tej Ram died on 16.6.1994, when the amended provisions of Hindu Succession Act, 2005 had not come into force. Therefore, Smt.Nangi was not a co-parcener in the said

property. Smt.Nangi during her lifetime did not challenge the will executed by her father. Unluckily, date of death of Smt.Nangi has not been mentioned in the plaint. Smt.Nangi during her lifetime did not challenge the will and consequential sales as well. It is further claimed that it is a pleasure litigation and that since the plaintiffs claim their rights over the property and claims cancellation of the sale deed, therefore, they should be required to pay the ad valorem Court fee. Reliance has been placed on authority of this Court in Bagrawat v. Mehar Chand, 2001(1) RCR 95.

After considering the submission of both the parties, I am of the view that the relief clause of the plaint shows that the suit is for declaration and setting aside of the will and sale deeds. Plaintiffs claim the declaration that they are co-owners in possession. It will be matter of evidence as to in which right the plaintiffs can claim declaration and cancellation of the sale deeds. Therefore, in such circumstances, it is proper that question of payment of the Court fee should be decided after framing issues and allowing the party to lead evidence and should not be summarily decided under Order 7 Rule 10 CPC.

It being so, the impugned order is set aside. The lower Court is directed to frame issue on the point of payment of Court fee and decide the same after allowing the parties to lead evidence. In case the lower Court comes to the conclusion that the Court fee is required to be paid, the issue regarding Court fee shall be decided first and remaining issues will be decided only after the plaintiffs pay the Court fee in terms of the order of the Court.

Keeping in view of the nature of the suit, discussed above,
the trial Court is directed to dispose of the matter expeditiously
preferably within one year.

03.11.2015

gk

**(Kuldip Singh)
Judge**