

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

CR No.5382 of 2015 (O&M)

Date of Decision: November 16, 2015

M/s Ananya Build Home Pvt. Ltd.

.... Petitioner

vs.

Ramesh Chander and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Jai Vir Yadav, Advocate for the petitioner.

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 petition is the order dated 17.07.2015 (Annexure P-4) passed by learned Civil Judge (Jr. Divn.), Rewari, vide which the application filed by the present petitioner-defendant No.2 under Order VII, Rule 11 CPC read with Section 151 CPC for directing the plaintiff to pay advalorem court fee, was dismissed.

Brief facts of the case are that the plaintiff has filed a suit against the defendants, stating that defendant No.1 along with her daughter Jyoti entered into an agreement to sell dated 17.02.2012 in favour of the plaintiff. Jyoti died and has been succeeded by defendant No.1. Defendant No.1 did not execute the sale deed and later on turned out that defendant No.1 along with her son Sohan Lal had sold the land to defendant No.2 vide sale deed bearing vasika

No.784, dated 17.07.2013. Therefore, the plaintiff has sought a decree for specific performance with possession of the suit land against both the defendants, praying that sale deed dated 17.07.2013 be declared being illegal, null and void.

The plea of learned counsel for the petitioner is that in fact the plaintiff wants the sale deed dated 17.07.2013 to be set aside and he also seek delivery of possession. Therefore, advalorem court fee is not required to be affixed. He has placed reliance upon the authority of Hon'ble the Supreme Court delivered in “**Suhrid Singh @ Sardool Singh vs Randhir Singh & others**”, 2010 AIR (SC) 2807, wherein following observations were made:

“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 non-executant, 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."

A perusal of the said authority shows that in that case, the suit property was claimed to be coparcenary property by the plaintiff and a Will was also set up and sale deeds by the father of the plaintiff were challenged. The present suit is for specific performance. No prayer has been made for cancellation of the sale deed dated 17.07.2013 but the plaintiff merely wants declaration that the said sale deed be set aside. He had got prepared the agreement to sell in his favour. Therefore, the case of the plaintiff is not covered by the said authority. Defendant No.2 being the subsequent purchaser is a necessary party. Therefore, he has been impleaded as defendant. The main prayer is regarding the specific performance of the agreement to sell in his favour.

Therefore, there is no illegality or infirmity in the impugned order.

Hence, the present revision petition stands dismissed.

November 16, 2015
sarita

(KULDIP SINGH)
JUDGE