

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

**CR No.5347 of 2013 (O&M)
Date of decision: 07.12.2015**

Bharpur Singh

....Petitioner

Versus

Amrik Singh and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sukhbir Singh Tiwana, Advocate
for the petitioner.

Mr. Divanshu Jain, Advocate
for respondents No.1 and 2.

Mr. P.S. Mattewal, Addl. A.G., Punjab.

RITU BAHRI J. (Oral)

The petitioner has come up in revision for quashing of the order dated 19.07.2013 (Annexure P-5) passed by Civil Judge (Sr. Division), Mohali, vide which the application dated 10.07.2013 (Annexure P-3) moved by the petitioner-defendant for rejection of the plaint of the respondent-plaintiff, on account of fixing insufficient amount of Court fee, has been dismissed.

The respondent-plaintiff had challenged the gift deed which is alleged to be executed by the defendant No.1 in favour of

defendant No.2, who is the wife of defendant No.1, and this gift deed was executed by defendant No.1 being attorney of the plaintiff-respondent in favour of defendant No.2. The gift deed was without any consideration and the plaintiff-respondent was not party to the said gift deed. The application of the defendants asking the plaintiff to affix ad valorem Court fee on the value of the property as per the gift deed dated 03.10.2011, has been dismissed as the plaintiff was only seeking the declaration for declaring the gift deed as null and void and he was not required to affix ad valorem Court fee on the value of the said gift deed.

Learned counsel for the petitioner has referred to the judgments ***“Bagrawat vs Mehar Chand”***, 2001(4) RCR (Civil) 94 and ***“Lakhwinder Singh vs Kulwant Singh”***, 2014(1) Law Herald 616.

On the other hand, learned counsel for the respondents has argued that the revision petition is not maintainable against the order rejecting the application under Order 7 Rule 11 CPC for inadequate Court fee and has further referred to the judgments ***“K.C. Gupta and another vs Rajat Gupta and others”***, 2015(10) ICC 523 and ***“Arun Kumar Goyal vs Payal Aggarwal”***, 2013(4) RCR (Civil) 93.

Heard learned counsel for the parties.

The first question for consideration would be, whether a revision petition would be maintainable against the decision of

the trial Court on account of non-payment of Court fee.

In case of ***“Arjan Motors vs Girdhara Singh and others”***, 1978 PLJ 36, the Full Bench of this Court has held that the question of Court fee cannot be agitated by the litigants in a petition under Section 115 CPC. In ***“Gokul and others vs Durgalal and others”***, 2002 AIR (Raj) 367, the Rajasthan High Court has held that there is no provision for the defendants to move revision petition against the decision of the trial Court on the question of inadequate Court fee. In case of ***“Krishan Kumar Grover vs Parameshri Devi”***, (1966) 68 PLR 54, this Court has held that the revision would be maintainable at the instance of the plaintiff against an order directing payment of addition Court fees. However, as per ***Arjan Motor's case (supra)***, the defendants had no right to file a revision.

Further in case of ***“Shamsher Singh vs Rajinder Prashad”***, 1973 PLJ 686, it was held that the revision or appeal can be filed if there is a dispute of jurisdiction and in case the question of jurisdiction is not involved, then revision cannot be filed. On this ground alone, the revision petition is liable to be dismissed.

Moreover, the second ground is to be examined in view of the judgment of ***“Suhrid Singh @ Sardool Singh vs Randhir Singh and others”***, 2010(12) SCC 112. This was a case, where sale of co-parcenary property had been made by father of

the plaintiff and the son i.e. plaintiff had filed a suit for declaration that sale deeds were void and not binding on the co-parcenary property with consequential relief of joint possession. The plaintiff was not the executant of the sale deed and was merely seeking declaration that the sale deeds could not be made by his father beyond his share. There was no prayer made for cancellation of the sale deeds and the hence, the Hon'ble Supreme Court has held that Section 7(iv)(c) provides that in suits for 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 proved for by Clause (v) of Section 7.

In the facts and circumstances of the present case, the plaintiff is challenging the gift deed executed by his father in favour of his wife. There is no exchange of sale consideration in gift deed and neither the plaintiff is party to the suit and thus, he is not the executant of the gift deed. Hence, he is seeking mere declaration for declaring the gift deed as null and void and in view of the judgment mentioned-above, he is not required to affix the ad valorem court fee on the value of the gift deed and thus, the order passed by the trial Court dismissing the application for fixing ad

valorem court fee does not call for any interference.

Dismissed.

(RITU BAHRI)
JUDGE

07.12.2015
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