

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

CR No.6223 of 2013

Date of Decision: November 30, 2015

Kati

.... Petitioner

vs.

Bara Singh and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sherry K. Singla, 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 09.09.2013 (Annexure P-1) passed by learned Civil Judge (Jr. Divn.), Talwandi Sabo, vide which the petitioner-plaintiff was directed to pay the advalorem court fee on the market value of the suit property.

Briefly stated, the plaintiff has filed a suit for declaration that the sale deed No.276, dated 17.04.2003 executed by defendant No.2 in favour of defendant No.1 on the basis of power of attorney No.29 dated 05.08.2002 is illegal. The sale deed is sought to be cancelled on the ground of fraud. The power of attorney has also been challenged. In an application filed by the defendants-respondents under Order VII, Rule 11 CPC, the lower court has held that the plaintiff is liable to pay the advalorem court fee on the market value of the suit property.

Learned counsel for the petitioner has argued that in this case possession is not sought but the sale deed and power of attorney have been challenged on the ground of fraud. Therefore, advalorem court fee is not required to be paid.

In this regard, reliance has been placed upon the authorities of this Court delivered in “**Smt. Santosh Malhan & Another vs Naina Devi & Others**”, 2014(1) PLJ 237 and “**Surjit Singh vs Karamjit Kaur**”, 2012(3) R.C.R.(Civil) 364.

It comes out that the authority of **Surjit Singh's** case (*supra*) was produced before the lower court but the lower court relied upon some other authority of “**Satwinder Kaur @ Satinder Kaur vs Surjeet Singh & Others**”, 2007(3) Civil Court Cases 055 (P&H).

The authority of **Sujit Singh's** case (*supra*) was dealt with **Smt. Santosh Malhan's** case (*supra*), in which it was observed as under:

*“An identical question came to be decided by Hon'ble Apex Court in a recent judgment in case **Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors.**, 2010 AIR (SC) 2807. Having interpreted the relevant provisions of Section 7 of the Act, it was ruled that if the plaintiff is not executant of the sale deed, then, he is not required to pay the ad valorem court fee. It is not a matter of dispute that plaintiffs are not executants and they have challenged the sale deed on the ground of fraud and misrepresentation. Therefore, they are not required to pay ad valorem court fee. Thus, the ratio of law*

laid down in Suhrid Singh's case (supra) "mutatis mutandis" is applicable to the facts of the instant case and is the complete answer to the problem in hand."

Consequently, it was held that the ad valorem court fee is not payable.

In view of the matter and the view taken by this Court in **Surjit Singh's** and **Smt. Santosh Malhan's** cases (supra) and considering the previous case law, I am of the view that in the present case, the power of attorney of the sale deed has been challenged on behalf of the plaintiff and the cancellation of the sale deed is claimed on the basis of fraud and the possession of the suit land is not sought. Therefore, the ad valorem court fee is not liable to be paid. Thus, the impugned order is set aside.

Accordingly, the present revision petition stands allowed.

November 30, 2015
sarita

(KULDIP SINGH)
JUDGE