

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

**CR No.6277 of 2013 (O&M)
Date of decision: 21.08.2015**

Smt. Mahadevi ... Petitioner
Vs.

Hari Kishan and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Amit Jain, Advocate
for the petitioner.

Mr. Himanshu Puri, Advocate, for
Mr. J.S.Ghumman, Advocate
for respondent No.1.

Mr. Gunjan Mehta, Advocate
for respondent No.3.

AMIT RAWAL J. (Oral)

Challenge in the present petition is to the impugned orders dated 27.04.2011, (Annexure P-5), and 28.09.2013 (Anneuxre P-7), whereby, the application filed by defendant/respondent No.3 under Order 7 Rule 11 Code of Civil Procedure, for rejection of plaint due to non-payment of ad valorem Court fee on the market value of the suit property, has been allowed and the petitioner-plaintiff has been called upon to pay the ad valorem Court fee.

Mr. Amit Jain, learned counsel appearing on behalf of the petitioner-plaintiff submits that relief sought is for cancellation of the

sale deed executed by defendants No.1 and 2 in favour of defendant No.3, thus, the petitioner is not a party to the sale deed and therefore, ad valorem Court fee is not required to be paid. In support of his contention, he relied upon the Full Bench judgment of this Court in **Niranjan Kaur vs. Nirbigan Kaur 1982 PLR 127.**

Mr. Himanshu Puri and Mr. Gunjan Mehta, learned counsel appearing on behalf of respondents No.1 and 3, respectively, submit that the petitioner-plaintiff, in essence, is asking for possession and therefore, is required to pay the ad valorem Court fee, thus, impugned orders are sustainable in the eyes of law and have been passed by the trial Court, while exercising jurisdiction vested in law.

I have heard learned counsel for the parties and appraised the paper book.

The petitioner has sought the following relief:-

"It is therefore, the plaintiff humbly prayed that a decree for declaration that the mutation No.1393 is illegal and unlawful null, void and abinitio and not binding upon the interest of the plaintiff and the plaintiff is legally and lawfully entitled to inherit the 1/4th share of deceased Sanwalia out of the suit land, fully detailed and described in para No.1 of the plaint and further plaintiff is entitled to the decree of permanent injunction restraining the defendants No.1 and 2 from further alienating the suit

land on the basis of the alleged false mutation and also restraining the defendants No.3 and 4 from changing the nature of the suit land in any manner, be passed in favour of the plaintiff against the defendant with costs.

Any other order with this Hon'ble Court feel fit and proper be also passed in favour of the plaintiff."

On perusal of the relief sought, challenge is to the sale deed executed by defendants No.1 and 2 in favour of defendant No.3. The petitioner-plaintiff has not asked for any physical possession of the property and has only sought cancellation of the sale deed aforementioned, as well as, permanent injunction restraining defendants No.1 and 2 from alienating the suit property on the basis of the false mutation, as well as, from changing the nature of the suit property. Thus, in essence, petitioner is neither a executant to the sale deed nor a party. The facts and circumstances of the present case are squarely covered by the ratio decidendi culled out by the Full Bench of this Court in Niranjana Kaur's case (supra). Plaintiff is not required to pay ad valorem Court fee on the market value and the impugned orders, in my view, are illegal, perverse and the same are set aside.

Accordingly, the revision petition is allowed.

(AMIT RAWAL)
JUDGE

August 21, 2015
savita