

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

CR No.6613 of 2013 (O&M)

Date of decision : 24.09.2015

Sunita Devi

...Petitioner

Versus

M/s Fine Pearls Constructions Pvt. Ltd.

...Respondent

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. V.B. Aggarwal, Advocate for the petitioner.

Mr. Vivek Goyal, Advocate for the respondent.

AMIT RAWAL, J. (Oral)

Challenge in the present petition is to the impugned order dated 30.09.2013, whereby application filed under Order 7 Rule 11 CPC at the instance of the respondent-defendant seeking rejection of the plaint for want of payment of advalorem Courts fees, has been allowed.

Mr. V.B. Aggarwal, learned counsel appearing on behalf of the petitioner-plaintiff submits that trial Court has committed illegality and perversity in not noticing the amendment caused by the State of Haryana vide Act No.22 of 1974, whereby in suit challenging the sale deed even if the petitioner-plaintiff is party, he is required to pay advalorem court fees

i.e. 10 times of the land revenue and not the market value. In support of his contention, he has relied upon judgment rendered by this Court in *Smt. Beena and ors. Vs. Rajinder Kumar and ors. 2006(2) RCR (Civil) 449*.

Mr. Vivek Goyal, learned counsel appearing on behalf of respondent-defendant submits that petitioner is party to the sale deed and the suit is for declaration and as well as for joint possession and, therefore, ratio decidendi culled out by this Court in *Niranjan Kaur Vs. Nirbigan Kaur, 1982 PLR 127*, would apply and the plaintiff is required to pay the advalorem Court fees as per the market value of the property or the one mentioned in the sale deed, therefore, there is no illegality and perversity in the order under challenge.

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

On going through the impugned order, it is evident that trial Court was totally oblivious of the amendment, noticed above and has been swayed away by relying upon the judgment which pertain to the challenge of the sale deed in respect of the agricultural land situated in Haryana.

It would be apt to reproduce the relevant portion of the judgment rendered by this Court in *Smt. Beena and ors (Supra)*:-

“13. After observing so, the Full Bench has found that since the sale is sought to be avoided on the ground of fraud and the plaintiff being party to such instrument, the court fee payable would be under residuary provisions contained in Article 1 Schedule 1 of the Act. Therefore, the judgment of the Full Bench in Niranjan Kaur's case is not helpful to the petitioners which stands on different footing.

14. *It may be noticed that in Gurjeewan Singh Vs. Jagar Singh and ors. 1990(2) RRR 291 it has been held that where the challenge is under the Hindu Law to the alienation made by his father on the ground the same being without legal necessity and without consideration, the suit for declaration and the possession is by way of consequential relief, wherein it was held to the following effect:*

“The present suit has been filed by the plaintiff under the Hindu Law challenging the alienation made by his father on the ground of being without legal necessity and without consideration. The plaintiff being the member of the joint family has a right to have the transactions declared null and void, if they are not justified. That being so, the question of paying ad valorem court fee on the sale price did not arise. For all intents and purposes, the suit is for declaration and the possession is by way of consequential relief.”

15. *Prior to the said judgment, this Court in Anup Kumar v. Bhagwal etc. (1972) P.L.R. 156 has held that in a suit challenging the alienation of joint Hindu Family property effected by the father of the plaintiff as not binding on him, with a prayer for grant of decree for possession of the property in dispute jointly with the father falls under Section 7(iv)(c) of the Act. It was held that the remedy of possession is essentially a consequential relief following from and arising of the declaration sought by the plaintiff. It was held to the following effect:*

“Section 7(iv)(c) of the Act is applicable to a case where a declaration is sought and as a consequential relief some other relief is also prayed for. The case directly on the point, referred to by the learned Counsel

for the petitioner before me, is Harkishan Lal v. Barkat Ali. That was an exactly similar case in which it was held that "asuit by a son for a declaration that the sale of joint Hindu family property effected by his father had not been made for family necessity and was not binding on him, and for joint possession of the property sold along with his father, falls under Section 7(iv)(c) in as much as an alienation by the father of a Hindu joint family is not void but is only avoidable at the instance of his sons, for the alienation may be binding on the sons if it was made for necessity or for the benefit of the joint Hindu family or for any other reason by which under Hindu law such an alienation may bind the sons. It is, therefore, necessary for the plaintiff to get rid of the voidable document by having the Court declare that in the circumstances of the case it should be avoided at the plaintiffs request. The possession which he then claims flows from and is a necessary consequence of the relief claimed, namely, that the document does not stand in the way of the plaintiff. The remedy of possession, therefore, is essentially a consequential relief flowing from and arising out of the declaration sought by the plaintiff."

16. Attention was drawn to two judgments of this Court reported as *Jagdish v. Jagat Pal and ors.* 2002(2) P.L.J. 268 and *Bagrawat v. Mehar Chand and Ors.* 2001(2) P.L.J. 204 to contend that *ad valorem* as per sale consideration in sale deed is required to be affixed. The conclusions drawn in the said judgments that court fee in terms of Article 1 of Schedule I of the Court Fees Act is payable or as per sale consideration in the sale deed runs counter to the judgment in *prabhu's Shamsher Singh's and Niranjana Kaur's case (supra)*. Therefore, bound by the said

judgments, it is held that the court fee is required to be paid in terms of Section 7(iv)(c) of the Act as quantified under Section 7(v) of the Act.

17. However, it appears that the learned Trial Court has not taken into consideration the amendment made in the State of Haryana vide Act No. 22 of 1974, therefore, the learned Trial Court shall redetermine the amount of court fee payable in terms thereof.

18. Civil Revision stands disposed of accordingly.”

As per, ratio decidendi culled out by this Court, impugned order is not sustainable and is hereby set aside. The plaintiff is required to pay the advalorem courts fees i.e. 10 times of the land revenue. He is directed to pay the aforementioned court fees, within two weeks from the date of receipt of certified copy of this order.

With the abovesaid direction, revision petition is allowed.

24.09.2015

pawan

**(AMIT RAWAL)
JUDGE**