

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.7239 of 2015
Date of decision: 31.10.2015

Sudhir

... Petitioner

Versus

Udey Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Parmod Parmar, Advocate for the petitioner.

1. Whether reporters of local papers 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?

ARUN PALLI J. (Oral)

Vide order being assailed, dated 07.07.2015, rendered by Civil Judge (Jr. Divn.), Jhajjar, application moved by the petitioner-defendant, under Order 7 Rule 11 of the Code of Civil Procedure, for rejection of the plaint on the ground of non-payment of adequate court fee, has since been dismissed. The conclusion recorded by the trial court in support of its order reads as thus:

“In the humble opinion of this court the question of bar of ad valorem court fee ordinarily should be decided looking in to the contents of the plaint and real intention of the plaintiff is to be found from the contents of the plaint itself. If the executent of the sale deed seeks cancellation he has to pay ad valorem court fee on the consideration stated in the sale deed. It was held

by hon'ble Supreme Court of India in Suhrit Singh Vs. Randhir Singh and others 2010, 158 PLR 757 (Supreme Court) that where the plaintiff is seeking cancellation of sale deed along with consequential relief of possession he is required to pay ad valorem court fee.

Coming to the facts of the case the plaintiff does not seek possession of suit land as admittedly the possession is still with the plaintiff. Moreover, the payment or non payment of ad valorem court fee arises when cancellation or declaration is sought of sale deed to which the plaintiff is a party however in the present case the plaintiff only seeks declaration to the extent that agreement to sell is null and void on the grounds of non readiness and willingness of the defendant. In the considered view of this court the distinction have to be drawn between declaration as to a sale deed and declaration as to an agreement to sell. In the later case if no possession is sought by the plaintiff ad valorem court fee is not payable.”

Needless to assert, payment of ad valorem court fee would arise when the plaintiff seeks cancellation or assails a sale deed to which he is alleged to be a party. However, in the matter in hand, plaintiff has only sought a declaration that the agreement in question was null and void, as defendant had not been ready and willing to perform his part of the contract.

Learned counsel for the petitioner could not point out as to how the conclusion that has been arrived at by the trial court was either contrary to the position on record or suffered from any material illegality.

That being so, no interference is warranted in exercise of revisional jurisdiction, under Article 227 of the constitution of India. Petition being devoid of merit is accordingly dismissed.

October 31, 2015
Rajan

(Arun Palli)
Judge