

Civil Revision No.1054 of 2014

In the High Court of Punjab and Haryana at Chandigarh

Date of Decision: 7.12.2016

Civil Revision No.1054 of 2014

TDI Infratech Limited (Formerly known as Intime Promoters Private Limited)

---Petitioner

versus

Jai Narayan and others

---Respondents

Civil Revision No.1055 of 2014

TDI Infratech Limited (Formerly known as Intime Promoters Private Limited)

---Petitioner

versus

Net Ram and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.S.K.Monga, Advocate
for the petitioner
Mr.Sanjay Vashisht, Advocate
for respondent Nos. 1 to 3**

Rekha Mittal, J.

This order will dispose of Civil Revision Nos. 1054 and 1055 of

2014 as common questions of law and fact are involved for adjudication. For brevity, facts are taken from 1054 of 2014.

The sole submission made by counsel for the petitioner is that as the respondents/plaintiffs have challenged sale deed No. 4668 dated 13.7.2005 to be null and void and not binding upon rights of the respondents/plaintiffs, the respondents/plaintiffs are liable to pay ad valorem court fee on sale consideration of the sale deed, sought to be annulled /cancelled. It is further submitted that drafting of the plaint in a clandestine manner seeking declaration to be owner in possession of the suit property is not sufficient to exonerate the plaintiffs from their liability to pay requisite court fee in the light of judgment of Hon'ble the Supreme Court *Suhrid Singh @ Sardool Singh vs. Randhir Singh, 2010(2) RCR (Civil) 564*.

Counsel for the respondents/plaintiffs, on the other hand, has contended that as per plea of the plaintiffs, power of attorney on the basis whereof the sale deed in question has been executed is the result of fraud, respondents/plaintiffs cannot be called upon to pay ad valorem court fee at this stage of the proceedings. Another submission made by counsel is that if the respondents/plaintiffs failed to establish their plea that power of attorney in favour of defendant No. 2 on the basis whereof, he has executed

sale deed in question in favour of defendant No. 1 is not the result of fraud, their suit would eventually fail.

I have heard counsel for the parties, perused the paper book particularly the order impugned.

The learned trial court dismissed the application on three grounds. Plaintiff himself has not executed the sale deed in question as sale deed has been executed by defendant No. 2 in favour of defendant No. 1. The plaintiff is claiming that he is in possession of the suit property. The plaintiff has simply sought a decree for declaration alongwith relief of permanent injunction claiming himself to be in possession of the suit property, therefore, he is not required to pay ad valorem court fee.

The order impugned is the result of complete misunderstanding of the ratio laid down in ***Suhrid Singh @ Sardool Singh's case (supra)*** as well as incorrect appreciation of import of the suit filed by the respondents/plaintiffs. The plaintiffs, admittedly, cannot claim ownership of the suit land until the sale deed executed by defendant No. 2 in favour of defendant No. 1 is set aside/cancelled. As per the settled position in law, a plaintiff cannot avoid payment of requisite court fee by drafting the plaint in a camouflaged manner. Counsel for the respondents has not

disputed that relief of declaration qua ownership cannot be allowed till the sale deed is held to be invalid and consequently set aside. In ***Suhrid Singh @ Sardool Singh's case (supra)***, the Apex Court has held that executant of the sale deed is liable to pay ad valorem court fee on sale consideration disregarding whether he has claimed possession or otherwise. However, position of a non-executant viz-a-viz an executant is different as in the case of a non-executant, if he does not claim possession, he would be liable to pay court fee under Section 7(iv)(c) of the Court Fees Act.

So far as the plea that the petitioner has raised allegation of power of attorney being the result of fraud, same is not sufficient to hold at this state that the respondents/plaintiffs are not executants of the sale deed through their attorney holder. As the plaintiffs are deemed to be executant of the sale deed till it is cancelled/annulled, order passed by the trial court cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petitions are allowed, impugned orders are set aside and applications filed by the petitioner under Order 7 Rule 11 of the code of Civil Procedure are allowed with the finding that the respondents/plaintiffs are liable to pay ad valorem court fee on sale consideration of deed sought to be set aside. The respondents/plaintiffs are

given one month time to pay the requisite court fee failing which adverse consequence qua rejection of plaint would ensue.

(Rekha Mittal)
Judge

7.12.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No