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

CR-123-2014

Date of decision : 03.03.2016

Balwinder Kaur

...Petitioner

Versus

Harjodh Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.S. Momi, Advocate
for the petitioner.

Mr. Anil Kshetarpal, Senior Advocate with
Mr. Rohit Nagpal, Advocate
for respondent Nos.1 and 2.

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?

AMIT RAWAL, J. (ORAL)

The petitioner-plaintiff is aggrieved of the order dated 07.12.2013, whereby she has called upon to pay the Court fees in a suit seeking declaration that the Will dated 03.11.2003, executed by the father in favour of respondent Nos.1 and 2, is not binding with consequential relief of joint possession.

Mr. S.S. Momi, learned counsel for the petitioner submits that prayer of suit reads thus:

“It is, therefore, respectfully prayed that a Decree for declaration to the effect that the plaintiffs and defendants are joint owners in joint possession in equal shares of the all the land and properties detailed in para No.1 and its sub paras of the plaint and they are

entitled to receive in equal shares all the deposits in the concerned Banks in the name of their parents S. Jagjit Singh Garewal and Smt. Harbhajan Kaur as fully detailed in paras 1(f) to 1(k) of the plaint and the alleged Will dated 03.11.2003 as well as mutation No.3998 on the basis of the alleged Will regarding the land, are illegal, null and void and not binding on the rights of plaintiff, may kindly be passed in favour of the plaintiff and against the defendants with costs of the suit, in the interest of justice and the defendants No.1 & 2 may kindly be restrained from alienating the suit land, creating any charge thereon and mortgaging or transferring the same, in any manner and further restraining the defendants No.1 and 2 from receiving any of the deposits with the concerned Banks and post office as fully detailed in paras 1 (f) to 1 (k) of the pliant, by passing a decree for permanent injunction as consequential relief, in the interest of justice.

Any other relief for which this Hon'ble Court deems fit may also be awarded to the plaintiff.”

He further submits that the impugned order, under challenge, calling upon the plaintiff to pay the Court Fee, is not sustainable in the eyes of law.

Mr. Anil Kshetarpal, learned Senior Counsel, assisted by Mr. Rohit Nagpal, learned counsel appearing on behalf of respondent Nos.1 and 2, submits that there is no illegality and perversity in the order and is sustainable in the eyes of law, as the petitioner-plaintiff is seeking the possession, she has rightly been called upon to pay the Court fee, viz-a-viz the market value of the property.

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

On going through the prayer clause, it is evident that the suit is for

declaration challenging the Will executed by the father allegedly not binding upon the petitioner-plaintiff and the claim is for joint possession. In such a situation, it is now settled law where the petitioner-plaintiff is not seeking separate possession nor challenges the sale deed being party to it then ad valorem court fee on market value of property is not liable to be paid, and therefore, the order, under challenge, is not sustainable in the eyes of law.

Keeping in view the aforementioned facts and circumstances, the impugned order dated dated 07.12.2013, under challenge, is hereby set aside and accordingly, the revision petition is allowed.

03.03.2016
yogesh

(AMIT RAWAL)
JUDGE