

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

**CR No.1920 of 2012 (O&M)
Decided on: 03.05.2016**

Vijay Kumar

....Petitioner

Versus

Rashimi and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Surinder Sharma, Advocate
for the petitioner.

Mr. Sandeep Arora, Advocate
for respondent No.1.

None for respondent No.2.

REKHA MITTAL, J.

The present petition lays challenge to order dated 23.08.2011 (Annexure P-4) passed by the Civil Judge (Junior Division) Jalandhar and order dated 02.01.2012 (Annexure P-5) passed by the Additional District Judge, Jalandhar whereby the petitioner has been directed to pay *ad valorem* Court fee while deciding an application filed by Rashimi-respondent No.1 for rejection of plaint by invoking Order 7 Rule 11 of the Code of Civil Procedure (in short 'CPC').

Rashimi-respondent No.1/defendant No.1 filed the application on the plea that the petitioner/plaintiff has challenged the sale deeds dated 07.11.2002 and 13.11.2002 but has not affixed the proper *ad valorem* Court fee on the plaint. It is further pleaded that the sale deeds were executed by the plaintiff for a total sale consideration

of Rs.22,70,000/-.

The learned trial Court after filing of reply in response to the application filed under Order 7 Rule 11 CPC and having heard counsel for the parties has held by relying upon the judgment of this Court ***“Ran Singh and another vs Jai Narin”***, 2011(2) CCC 694, that the petitioner/plaintiff is required to pay *ad valorem* Court fee and accordingly, he was directed to pay proper Court fee. The order passed by the trial Court was challenged in appeal before the First Appellate Court but the same did not find favour with the Additional District Judge, Jalandhar.

Counsel for the petitioner has submitted that the petitioner and his brother suffered huge losses due to slump in their business and sold the suit property to respondent No.1 vide sale deeds bearing No.3327 dated 07.11.2002 and No.3443 dated 13.11.2002 on the terms and conditions stipulated in the sale deeds that respondent No.1 will pay outstanding amount to State Bank of Patiala (Defendant No.2) to discharge the liability outstanding against M/s. Ashoka Leather, as an equitable mortgage was created in favour of defendant No.2 *qua* the loan taken from the bank. It is further submitted that respondent No.1 has not discharged the liability outstanding against the aforesaid firm which has necessitated filing of the suit seeking declaration that the sale deeds in question be declared as null and void. It is further argued that as the petitioner has not claimed consequential relief of possession, he is not liable to pay *ad valorem* Court fee as has been directed by the learned trial Court. In support of his contention, he has referred to

judgments of this Court ***“Tarun Kumar and others vs Pankaj Kapoor and others”***, CR No.3824 of 2014 decided on 03.12.2015, ***“Joginder Singh vs Kulwant Singh and others”***, 2015(5) Law Herald 4090, ***“Harbans Kaur vs Amrik Singh @ Beer Singh”***, 2015(4) RCR (Civil) 770, ***“Rambai vs Kapoori and another”***, 2014(4) RCR (Civil) 376, ***“Ran Singh and another vs Jai Narain”***, 2011(2) RCR (Civil) 525.

Counsel for the contesting respondent has supported the impugned order with the submission that as the petitioner has sought to set-aside the sale deed admittedly executed by him, he is liable to pay *ad valorem* Court fee.

I have heard counsel for the parties, perused the records but find no merit in the petition.

The controversy raised in the present petition is squarely covered by the authoritative pronouncement of Hon'ble the Supreme Court of India ***“Suhrid Singh @ Sardool Singh vs Randhir Singh and others”***, 2010(2) RCR (Civil) 564. A relevant extract from Para 6 of the judgment reads as under:-

“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' – two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of

the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set- aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.”

A perusal of the aforesaid extract makes it apparent that if the executant of the deed seeks cancellation thereof, he has to pay *ad valorem* Court fee on the consideration stated in the sale deed, however, if a non-executant seeks cancellation of a sale deed or wants to avoid it, then his liability to pay the *ad valorem* Court fee would be dependent upon the factum as to whether he is in possession of the suit property or

otherwise. Keeping in view the enunciation of law laid down in *Suhrid Singh @ Sardool Singh's case (supra)*, the petitioner cannot derive advantage to his contention from the judgments passed by this Court, in view of the peculiar facts and circumstances of each case. That being so, I do not find any error much less infirmity in the orders passed by the Courts below holding that the petitioner is liable to pay *ad valorem* Court fee.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed. The petitioner is given ten days time to pay the Court fee in the trial Court.

03.05.2016
yakub

(REKHA MITTAL)
JUDGE