

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

**CR No.2612 of 2016
Decided on: 26.04.2016**

Kuldeep Kaur

....Petitioner

Versus

Amarjit Singh and another

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Rajesh Duhan, Advocate
for the petitioner.

REKHA MITTAL, J.

Challenge in the present petition has been directed against order dated 02.03.2016 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Samana, allowing application under Order 7 Rule 11 of the Code of Civil Procedure (in short 'CPC') whereby the petitioner has been directed to pay *ad valorem* Court fee.

Counsel for the petitioner would contend that as the suit property is a co-parcenary property in which the petitioner has a right by way of birth, she filed the suit for declaration claiming 1/3rd share out of share of defendant No.1 from agricultural land measuring 184 kanals 16 marlas situated at village Jaikhar, Tehsil Patran, District Patiala and for correction of revenue entries accordingly without opening challenge to transfer of the suit land by way of a sale deed or mutation No.773 dated 13.03.2015 entered on the basis of said transfer. It is further submitted that as the petitioner has not assailed transfer of the suit land, she is not liable to pay *ad valorem* Court fee on sale

consideration of Vasika No.2851 dated 13.03.2015. It is further submitted that the judgment ***“Harinder Singh and others vs Gurminder Kaur”***, 2012(2) CCC 258 (P&H), relied upon by the learned trial Court cannot be applied in the circumstances of the present case to accept plea of respondent-Manpreet Kaur that the plaint is liable to be rejected for want of payment of *ad valorem* Court fee on the amount of sale consideration of Rs.42,10,000/-.

I have heard counsel for the petitioner, perused the paperbook particularly the application filed under Order 7 Rule 11 CPC for rejection of the plaint (Annexure P-2), reply thereto (Annexure P-3) and the order impugned.

The petitioner has filed a suit for joint possession by way of declaration to the effect that she is the owner in possession of 1/3rd share out of share of defendant No.1 in agricultural land detailed in headnote of the plaint. In Para 4 of the plaint, it has been averred that defendant No.1 has transferred land in favour of defendant No.2 and the same is illegal, null and void without consideration, ineffective *qua* rights of the petitioner and has no binding effect on her rights as the suit property is a Joint Hindu Family ancestral and co-parcenary property. It has further been averred that as defendant No.1 has got no right to alienate the suit property as such, the transfer is liable to be ignored and mutation No.773 dated 13.03.2015 entered and sanctioned on the basis of said transfer is liable to be discarded. Manpreet Kaur in whose favour the transfer has been made by Amarjit Singh-defendant No.1, father of the petitioner has been arrayed as defendant No.2 in the suit.

Counsel for the petitioner has fairly conceded that without

avoiding the sale deed Vasika No.2851 dated 13.03.2015 executed by defendant No.1 in favour of defendant No.2 admittedly for a sale consideration of Rs.42,10,000/-, the petitioner cannot seek the relief as prayed for. The mere fact that the petitioner cleverly drafted the suit in a manner that she has not specifically given challenge to the sale deed executed by defendant No.1 in favour of defendant No.2, she cannot escape her liability to pay *ad valorem* Court fee on the sale consideration of Vasika No.2851 dated 13.03.2015 in view of authoritative enunciation of law laid down by Hon'ble the Supreme Court of India “**Suhrid Singh @ Sardool Singh vs Randhir Singh and others**”, 2010(2) RCR (Civil) 564. In this view of the matter, I do not find any error much less the impugned order being perverse or absurd.

For the foregoing reasons, finding no merit, the petition is dismissed *in limine*. No order as to costs.

26.04.2016
yakub

(REKHA MITTAL)
JUDGE