

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

**CR No.3828 of 2015 (O&M)
Date of Decision: -17.08.2016**

Pushpa Rani and others

.....Petitioners

Vs

Usha Rani and others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. R.S. Longia, Advocate
for the petitioners.

Mr. Vivek Goyal, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. This revision petition is directed against the order dated 04.05.2015 passed by Civil Judge (Junior Division), Yamuna Nagar at Jagadhri vide which application under Order 7 Rule 11 CPC moved by the defendants for rejection of plaint was disposed of by observing that the plaintiffs are bound to affix *ad valorem* court fee as per their share according to market value of the suit property at Collector's rate prevailing in the vicinity of the land.

[2]. Plaintiffs-petitioners filed a suit for declaration to the effect that the decree dated 26.04.1995 passed in Civil Suit

No.166-CS of 23.02.1995 titled as Ashok Kumar Vs. Lajwanti etc passed by the Civil Court and consequential entries on the basis of said civil Court decree were illegal, null and void and were not binding upon the rights of the plaintiff qua the residential house situated within municipal limits of Yamuna Nagar. Permanent injunction was also sought to restrain the defendants from alienating the suit property.

[3]. Plaintiffs alleged that plaintiff No.1 is the wife and plaintiffs No.2 and 3 are real sons of deceased Mangat Ram. Suit property was previously owned and possessed by father-in-law of plaintiff No.1 and grand-father of plaintiffs No.2 and 3 on the strength of sale deed dated 13.07.1966. After the death of father-in-law of plaintiff No.1, the suit property was inherited by Mangat Ram, Ashok Kumar, Lajwanti (widow of Kharati Lal) and Krishna Rani (daughter of Kharati Lal). Plaintiffs claimed 1/4th share in the suit property on the basis of aforesaid relationship.

[4]. Mangat Ram died on 09.05.2005 leaving behind plaintiffs/petitioners as his legal heirs. The claim of the plaintiffs was denied by the defendants/respondents on the basis of civil Court decree dated 26.04.1995 passed in Civil Suit No.166-CS of 23.02.1995. Plaintiffs further alleged that their predecessor viz. Mangat Ram never communicated to them that he had executed any such civil Court decree, rather Mangat Ram had

no right to alienate his share in the suit property as the suit property was the only dwelling unit of the plaintiffs. Plaintiffs also alleged that they came to know about the alleged civil Court decree only in the month of April, 2013. Plaintiffs based their cause of action from the knowledge of civil Court decree and also sought permanent injunction in view of threat perception regarding contemplated alienation of the suit property by the defendants.

[5]. Plaintiffs sought the decree for declaration by alleging that the civil Court decree dated 26.04.1995 passed in Civil Suit No.166-CS of 23.02.1995 titled as Ashok Kumar Vs Lajwanti etc. passed by Civil Judge (Junior Division), Jagadhri and consequential entries in favour of defendants were illegal, null and void and were not binding upon the rights of the plaintiffs. Permanent injunction was also sought to restrain the defendants from alienating the suit property or by creating any encumbrance/charge over the suit property.

[6]. Defendants filed an application under Order 7 Rule 11 CPC for rejection of plaint on the ground that suit has been filed after the lapse of 15 years and plaintiffs were in the knowledge of passing of the decree. Secondly, the plaintiffs have not affixed proper court fee on the plaint as per the market value of the suit property.

[7]. Trial Court vide order dated 04.05.2015 accepted the application on the premise that the plaintiffs have claimed their 1/4th share in the suit property after setting aside the civil Court decree dated 26.04.1995. Apparently, plaintiffs were not parties to the civil suit in which civil Court decree dated 26.04.1995 was passed, nor they have claimed possession. Plaintiffs have sought declaration qua their share in the property. At the stage of rejection of plaint under Order 7 Rule 11 CPC only the averments in the plaint are to be seen.

[8]. I have heard learned counsel for the parties and also perused the record.

[9]. The house was purchased by Kharati Lal i.e. father-in-law of plaintiff No.1 and grand father of plaintiffs No.2 and 3. Plaintiffs claimed themselves to be in joint possession as the property was joint of the parties. In the event of granting declaration on the basis of merits, joint possession is an automatic mechanism vide which every co-sharer would be deemed to be in possession of every inch of land. In the absence of any partition of joint land, no co-sharer can be presumed to be in possession of separate part of joint property unless and until exclusive possession to the ouster of other co-sharer is proved. In a suit for declaration, that the civil Court decree is illegal and is not binding upon the rights of the

plaintiffs, cloud on the title is sought to be removed by way of declaration.

[10]. Since in the suit, possession has not been prayed for, therefore, in the light of observations made in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 (2) RCR (Civil) 564**, the non-executant of the decree, who is in possession, if sues for declaration that decree is not binding upon him, he has to pay court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. But if non-executant of the decree who is not in possession and seeks not only the declaration of the decree being invalid, but also consequential relief of possession, then court fee as required under Section 7(iv) (c) of the Act has to be paid. The court fee is not required to be paid on the consideration.

[11]. In the light of observations made in **Suhrid Singh's case (supra)**, I am of the view that the impugned order is not in consonance with the ratio laid down by Apex Court in the aforesaid case. Learned counsel for the respondents has also argued that the suit is simplicitor suit for declaration and therefore, the same is not maintainable. I am afraid no such application for rejection of plaint on aforesaid premise was moved, nor this ground was adverted to before the trial Court. The impugned order is based upon the factum of non-payment

of court fee as required under Order 7 Rule 11 CPC, therefore, I am constraint to observe anything on this premise, lest it may prejudice the case of either side.

[12]. In view of aforesaid, impugned order dated 04.05.2015 passed by Civil Judge (Junior Division), Yamuna Nagar at Jagadhri is hereby set aside and this revision petition is allowed.

17.08.2016
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No