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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4155-2015

Date of Decision : May 10th, 2016

Balwinder Singh

.... Petitioner

Versus

Tehal Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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?

Present Mr. Ashok Kumar Arora, Advocate,
for the petitioner.

Mr. Bikramjit Aroura, Advocate,
for respondents No. 1 to 8.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India for quashing order dated 19.5.2014 [Annexure P/4] passed by Civil Judge [Junior Division], Amritsar whereby the Court below allowed the application [Annexure P/2] filed by the respondent for rejection of plaint.

2. Learned counsel for the petitioner submitted that the Court below completely ignored the fact that the main civil suit filed by the present petitioner was for seeking decree of declaration to the effect that the petitioner was a co-owner in possession of the suit land and the General Power of Attorney dated 20.06.2003 registered in the office of Sub Registrar, Amritsar was never executed or got registered by the plaintiffs in favour of defendants No.1 to 3 and the same is forged and fabricated

document.

3. Learned counsel for the petitioner further submitted that the present petitioner had not claimed the relief of possession, rather a decree for declaration alone was sought and for that purpose, the required court fee was affixed. The Court below completely ignored this fact while passing the order under challenge and same is liable to be set-aside.

4. Learned counsel for the respondent submitted that in fact, the petitioner has sought relief of possession and he was required to pay the *ad valorem* court fee and the same has not been paid. He has placed reliance on the judgment from a Co-ordinate Bench of this Court in **Smt. Parkasho @ Parkash Kaur Vs. Smt. Surinder Kaur and Others, 2012 (4) Law Hereald 2955**, wherein such a view was taken. The order does not call for any interference by way of present petition and the same is liable to be dismissed.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that for the purpose of affixation of court fee, the Court has to see the relief being claimed by the plaintiff. In the present case, the plaintiffs have claimed the relief of declaration **alone**. They are co-owners in possession of the suit land and the General Power of Attorney dated 20.06.2003 is a forged document. For that purpose, the plaintiff affixed the requisite court fee. No relief of possession was being claimed by the petitioner and as such *ad valorem* court fee was not required to be affixed. Such a view was taken by Hon`ble Full Bench of this Court in **Niranjan Kaur Vs. Nirbigan Kaur, 1982 PLR 427** and co-ordinate Benches of this Court in **Teja Singh Vs. Smt. Amar Kaur & others, 2008(1) CCC 531 [P&H]** and **Ran Singh and another**

Vs. Jai Narain 2011 (2) PLR 176.

6. I have also gone through the judgment cited by learned counsel for the respondent in **Smt. Parkasho @ Parkash Kaur's [supra]** and found that the facts of the said case are distinguishable because in the present case, the relief of possession has not been claimed. Hon`ble Supreme Court in **Surhid Singh @ Sardool Singh Vs. Randhir Singh and others, AIR 2010 SC 2807** took the view that if a person, who is not party to the sale deed, challenges it and does not claim for relief of possession, then *ad valorem* court fee is not payable. The Court below has not cosnidered this aspect while passing the impugned order.

7. In view of the above, the present petition stands allowed and the order dated 19.5.2014 [Annexure P/4] passed by Civil Judge [Junior Division], Amritsar is set-aside.

**(SHEKHER DHAWAN)
JUDGE**

May 10th, 2016
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