

139

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

CR-4264-2016

Date of decision : 14.07.2016

Surjit Kaur (deceased) through LRs

... petitioner(s)

Versus

Vilayat Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kanwardeep Singh, Advocate
for the petitioner(s).

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(s)-plaintiff(s) are aggrieved of the impugned order dated 20.05.2016, whereby the application of the respondent(s)-defendant(s) under Order 7 Rule 11 CPC for dismissal of the suit for want of ad valorem court fee, has been allowed and called upon to pay court fee as per the value fixed in the release deed and the sale deed sought to be declared null and void.

Mr. Kavardeep Singh, learned counsel appearing on behalf of the petitioner(s) in support of his submissions, has raised the following multi-fold arguments:-

The petitioners are the co-sharers as per the provisions of sub-Section 2 of the Section 15 of the Hindu Succession Act (hereinafter called

'the Act') and therefore, in view of the provisions of sub-Section (iv) (c) of Section 7 of the Court Fees Act 1870, the petitioner(s) are not liable to pay the ad valorem court fee. The injunction has been sought as consequential relief. There is a categorical pleading in the plaint that earlier the release deed was effected from the erstwhile owner, namely, Surjit Kaur-plaintiff since deceased, thereafter, the sale deed was executed, thus, the sale deed could not have been executed as she has having no title and interest in the property in view of the release deed and thus, the ratio decidendi culled out by Hon'ble Supreme Court in “Suhrid Singh @ Sardool Singh V/s Randhir Singh and others” 2010 (2) RCR (Civil) 564, is not applicable to the facts and circumstances of the present case.

I have heard the learned counsel for the petitioner(s) and appraised the paper book and of the view that the petitioner(s) are stepped in as substituted LR's of Surjit Kaur as Surjit Kaur and Amrik Singh had died issueless. The petitioner(s) are none-else, but are brother of Amrik Singh being Class II heirs. The suit was filed by Surjit Kaur, who was the executant of the release deed and the sale deed sought to be challenged. For the sake of brevity, the prayer clause reads thus:-

“It is, therefore, humbly prayed that a decree for declaration with joint possession may kindly be passed in favour of the plaintiff and against the defendants thereby declaring the plaintiff to be the owner of the suit land detailed in para No.2 of the plaint thereby setting aside the Release Deed No.803/1 dated 24.06.2009; registered Sale Deed bearing vasika No.799/1 dated 24.06.2009 and sale deed No.5260/1 dated

02.11.2011, registered Sale Deed bearing vasika No.627/1 dated 28.05.2012 being illegal, null & void ab-initio, invalid, nonest, ineffective, inoperative in the eyes of law and not binding upon the rights of the plaintiff and further a decree for Permanent Injunction thereby restraining the defendants No.3 and 4 from alienating the suit land detailed in para No.2 of the plaint by way of sale/mortgage/charge/lien/gift etc., may kindly be passed in favour of the plaintiff and against the defendants, with costs, in the interest of justice.”

On perusal of the prayer clause, Surjit Kaur was executant of the aforementioned documents. In view of the ratio decidendi culled out by the judgment of Hon'ble Supreme Court in “Suhrid Singh's case (supra), an executant is required to seek the cancellation of the document by fixing court fee, rightly so, the application under Order 7 Rule 11 CPC has been allowed.

Keeping in view the facts and circumstances of the case, I do not find any illegality and perversity in the impugned order, under challenge, much less, no ground is made out for interference.

Accordingly, the revision petition is dismissed.

14.07.2016
yogesh

(AMIT RAWAL)
JUDGE