

Civil Revision No.4690 of 2014

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.4690 of 2014

Date of Decision: July 8th, 2016

Hasti Devi

---Petitioner

vs.

Rajinder and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Kulbhushan Sharma, Advocate for the petitioner

Mr. Arun Yadav, Advocate for the respondent

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 27.5.2014 passed by the Civil Judge (Junior Division), Kosli dismissing application under Order 7 Rule 11 of the Code of Civil Procedure (in short "CPC") filed by the petitioner.

Rajinder Singh son of Ram Kanwar respondent No. 1 has filed a suit for declaration and permanent injunction on the plea that agricultural land measuring 7 kanals 11 marlas situated within the revenue estate of Mauja Bohtawas Bhondu, Tehsil and District Rewari, detailed in para 1 of the plaint is the ancestral coparcenary property of the plaintiff, Ram Kanwar (defendant No. 1), Mahender and Sumitra son and daughter respectively of Ram Kanwar. The plaintiff and the proforma defendants have pre-existing right in the suit land to the extent of 1/4th share each. Defendant No. 1 has wrongly and illegally sold the suit land vide registered sale deed No. 3640 dated 18.2.2013 in favour of respondent No. 2 and the sale deed is wrong, illegal, null and void, not binding upon right of the plaintiff and proforma defendants and deserves to be set aside inter alia on the grounds raised in sub paras (a) to (e) of para 3 of the plaint.

The petitioner/defendant (purchaser under the sale deed in question) filed the application for rejection of plaint primarily on the ground that the plaintiff has not affixed ad valorem Court fee on market value of the suit property as he has challenged sale deed No. 3640 dated 18.2.2013.

After filing of reply by the contesting respondent/plaintiff and

having heard counsel for the parties, the learned trial court dismissed the application by relying upon judgment of this Court **Ravinder Singh and another vs. Darshan Singh and others 2013(3) LJR 291** and held that the plaintiff was not required to affix ad valorem court fee and the application deserves to be dismissed being devoid of merit.

Counsel for the petitioner has submitted that as the sale deed in question has been executed by Ram Kanwar, father of the respondent/plaintiff and *karta* of the alleged joint Hindu family, the sale by *karta* is deemed to be a sale by all the members of the coparcenary, therefore, the respondent/plaintiff being one of the executants of the sale deed has to pay ad valorem court fee for seeking cancellation of the sale deed in question. In support of his contention, he has referred to judgment of this Court **Jagdish vs. Jagat Pal 2003(2) Civil Court Cases 635 (P&H)**.

Counsel for the contesting respondent has supported the impugned order with the submissions that in view of Division Bench judgment of this Court **Tarsem Singh and others vs. Vinod Kumar and others 2014(1)ICC 1054** wherein the Court has also dealt with judgment of this Court **Bagrawat vs. Mehar Chand 2001(4) RCR(Civil) 94** relied

upon in **Jagdish's case (supra)** and the latest judgment of the Hon'ble Supreme Court of India **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, AIR 2010 SC 2807**, the petitioner cannot derive any advantage to her contentions from the judgment in **Jagdish's case (supra)** nor any fault can be found in the order passed by the learned trial court. In support of his contention, further reference has been made to judgments of this Court **Dr. Ashok Kumar Goyal vs. Arya Mittar and others 2007(2) RCR (Civil) 798**, **Alka Dhawan @ Shashi and others vs. Sunil Dhawan and another 2009 (5) RCR(Civil) 786**, **Prince, minor through his mother and natural guardian Smt. Rekha vs. Suresh Kumar and others 2008(4) RCR(Civil) 430** and **Niranjan Kaur vs. Nirbigan Kaur 1982 PLR 127 (FB)**.

I have heard counsel for the parties, perused the paper book and the judgments cited at Bar.

In **Jagdish's case (supra)** heavily relied upon by counsel for the petitioner, the Court has placed reliance upon the judgment in **Bagrawat's case (supra)** and held that in view of law laid down in **Bagrawat's case (supra)**, that Article 1 of Schedule 1 of the Court Fees

Act is applicable and the respondents are required to pay ad valorem court fee on the sale consideration mentioned in the sale deed. On the contrary, a Division Bench of this Court in **Tarsem Singh and others' case (supra)** while answering a reference made by a single Judge in view of contradiction noticed in the judgments of this Court **Smt. Beena and others vs. Rajinder Kumar and others 2006(2) RCR(Civil) 449** and **Bijender Singh vs Chand Singh, 2009(1) RCR (Civil) 270** and after taking into consideration the judgments referred to in para 2 of the judgment has recorded its findings in para 5, read thus:-

“In view of the said example given an example in para No. 6 of the judgment and the finding recorded in para No. 7, we hold as follows:-

- i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.
- ii) ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or

that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act”.

In this judgment, a relevant extract from the judgment in **Suhrid Singh @ Sardool Singh's case (supra)** was quoted, reads as follows:-

“7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the coparcenary” and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the Court fee was computable under

Section 7(iv)(c) of the Act. The trial Court and the High Court were therefore, not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore, Court fee had to be paid on the sale consideration mentioned in the sale deeds.”

In view of enunciation of law laid down in **Suhrid Singh @ Sardool Singh's case (supra)** and the Division Bench judgment of this Court, I find myself unable to accept the submissions made by counsel for the petitioner that either the respondent/plaintiff is liable to pay advalorem court fee or the order passed by the trial court dismissing the application filed under Order 7 Rule 11 CPC warrants intervention.

In view of what has been discussed hereinabove, finding no merit, the petition fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

July 8th, 2016
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