

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

Civil Revision No.528 of 2016 (O&M)

Date of decision : 01.02.2016

Babu Singh

.....Petitioner

Versus

Umed Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

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

Present: Mr. Jatin Hans, Advocate for petitioner.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 03.11.2015 passed by the learned Civil Judge (Junior Division), Bhiwani, whereby the application filed by petitioner-defendant No.1 directing the plaintiffs-respondents to affix the *ad valorem* court fees has been dismissed.

2. Plaintiffs-respondents No.1 and 2 have filed the suit for declaration to the effect that they are having 1/8th share in the land of the defendant No.2 being his legal heirs as the property in dispute in his hand

is ancestral one. They have also challenged the sale deed No.1224 dated 25.10.2013 executed by defendant No.2 being without legal necessity and just a paper transaction. The plaintiffs-respondents have also sought the consequential relief of permanent injunction.

3. During the pendency of the suit, petitioner-defendant No.1 filed an application for directing the plaintiffs to affix the *ad valorem* court fees on the sale consideration of Rs.11,70,000/- as they have sought the cancellation of sale deed dated 1224 dated 25.10.2013.

4. The said application was contested by plaintiffs-respondents.

5. The learned trial court vide impugned order dated 03.11.2015 dismissed the said application.

6. Aggrieved with the aforesaid order, the present revision petition has been preferred.

7. Initiating the arguments, learned counsel for the petitioner contended that the plaintiffs have sought the cancellation of the sale deed dated 25.10.2013, so they were required to affix the *ad valorem* court fees. He further contended that as the plaintiffs are seeking declaration for setting aside the sale deed, so they are also seeking the consequential relief of possession and they are liable to affix the *ad valorem* court fees on the amount of sale consideration i.e. Rs.11,70,000/-. To support his contentions, he relied upon cases ***Duli Chand Vs. Mahabir and others 2000(4) RCR (Civil) 176*** and ***Samsher Singh Vs. Rajinder Prashad and others AIR 1973 SC 2384***.

8. I have duly considered the aforesaid contentions.

9. Even in case ***Samsher Singh Vs. Rajinder Prashad and others*** (supra), relied upon by learned counsel for the petitioner, it has been held that in order to decide the question of court fees, the allegations mentioned in the plaint are to be looked into. Annexure P-4 is the copy of the plaint, filed by plaintiffs-respondents. The perusal of the plaint shows that the plaintiffs have only sought the declaration that the plaintiff is having 1/8th share in the property of the defendant No.2 being his legal heirs and the suit property being ancestral property in his hands. They have also sought the declaration that the sale deed No.1224 dated 25.10.2013 executed by defendant No.2 in favour of defendant No.1 is wrong, illegal, against law and facts and without any legal necessity and is liable to be cancelled. They also sought the consequential relief of permanent injunction. So, in the plaint the plaintiffs-respondents have not claimed any relief of possession.

10. It is not disputed that the plaintiffs-respondents are not the executant of the sale deed. The learned trial court has relied upon case ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010(2) Civil Court Cases 510***, wherein the Hon'ble Supreme Court has laid down that where a non-executant is not in possession and he seeks not only the declaration that the sale deed is invalid but also the consequential relief of possession, he has to pay ad valorem court fees. But in the instant case, the plaintiffs are non-executant of the sale deed. They are seeking declaration to challenge the validity of the sale deed. They had not sought any relief with respect to the possession of the suit land, rather in Para No.6(b) of the plaint, it has been categorically pleaded

by them that the suit land is still in their possession. So, they are alleging themselves to be in the possession of the suit land. Consequently, they were not required to pay the *ad valorem* court fees. The cases relied upon by learned counsel for the petitioner are not applicable to the facts of the case.

11. Thus, keeping in view my aforesaid discussion, the present revision petition has no merits and the same is hereby dismissed.

01.02.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**