

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

CR No. 5656 of 2015 (O&M)

Date of decision: 19.02.2016

Virender

... Petitioner

versus

Satbir and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Mani Ram Verma, Advocate for the appellant.

Mr. Sudhanshu Makkar, Advocate

for respondent Nos. 1 & 2.

K.Kannan, J. (ORAL)

The revision petition is against the order rejecting an objection taken by the defendant that the suit has not been properly valued for the purpose of court fees. The defendant's objection was that the prayer in the suit for declaration included a prayer to cancel the gift purported to have been executed by the 3rd defendant, acting on a power of attorney for the plaintiff. The averment in the plaintiff was that the 3rd defendant had made misrepresentation and fraud and committed a breach of trust in the confidence reposed in him in securing a power of attorney not merely for defending some litigation, but for stating objection to the execution of the power of attorney but the 3rd defendant

had introduced recitals authorizing him to transfer the property on the basis of which a gift deed had been made. In effect, the plaintiffs knew the nature of documents as a power of attorney but he did not know the nature of power granted under the document as empowering his attorney to make transfer of the property. According to the plaintiff he was under the impression that he was merely authorizing him to carry on some litigation on behalf of the plaintiff and 4th defendant.

If the plaint contains the recitals that the gift deed is not valid, the plaintiff cannot escape the consequences of such gift deed unless it is set aside by decree of court. Although not personally a party to the transaction, he is deemed to be a party for the person who was executing the document, since the 3rd defendant was purporting to act on behalf of the plaintiff in the capacity as a power of attorney of the plaintiff. If the nature of document as power of attorney had been known to the plaintiff but the plaintiff would contend that the recitals were not known to him and he had been made a victim of fraud, neither the power of attorney nor the gift deed are void but only voidable. A voidable transaction that would require to be set aside by treating the plaintiff as a party would require a valuation to be made on the market value of the property on the date of suit and *ad valorem* court fee is required to be paid under Article 1 Schedule 1 of the Court Fees Act. It has been laid down by the full Bench of this Court in Niranjan Kaur Vs. Nirbigan Kaur, 1982 PLR 127 that the valuation ought to be adopted on the market value of the property on the date of the suit and *ad valorem*

court fee paid under Section 7(IV) treating it as merely a declaratory suit when the notional valuation could be adopted cannot be applied. The order passed by the Court below is set aside and the revision petition is allowed. The plaintiff shall be called upon to pay the Court fee in the manner referred to above, within a period of 6 weeks from the date of the receipt of the copy of the order and if the Court fee is not paid within the time as granted, the suit is ordered to be rejected in the manner contemplated under Order 7 Rule 11(b) of the Civil Procedure Code.

The civil revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

19.02.2016

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