

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

Civil Revision No.5816 of 2015

Date of decision : 07.11.2016

Raman Jaggi

.....Petitioner

Versus

Surjit Singh and others

...Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Deepak Sharma, Advocate for petitioner.

Mr. Kulwant Singh, Advocate for respondent No.1.

Mr. Nitin Jain, Advocate for respondent No.2.

DARSHAN SINGH, J.

The present revision petition has been preferred against the order dated 08.07.2015 passed by the learned Civil Judge (Junior Division), Ambala whereby the petitioner-plaintiff has been ordered to pay the *ad valorem* court fees.

2. Learned counsel for the petitioner-plaintiff contended that the petitioner-plaintiff has sought the cancellation of the sale deeds dated 03.09.2008 and 04.08.2010 being illegal and ineffective on the title of the plaintiff qua the suit property. He contended that the petitioner-plaintiff has got the possession of the suit property by virtue of the sale deed dated

24.06.1986. Since then he is in possession of the suit property and has not sought the possession thereof. He contended that due to some typographical mistake in the head-note and prayer clause of the plaint, the plaintiff has been directed to pay the *ad valorem* court fees, whereas the contents of the body of the plaint has not been taken into consideration by the learned trial Court. He further contended that the petitioner-plaintiff has already moved an application for amendment of the plaint to correct the clerical/typographical mistake in the head-note and prayer clause of the plaint.

3. On the other hand, learned counsel for the respondent-defendant contended that in the head-note and prayer clause of the plaint the petitioner-plaintiff has sought the consequential relief of physical possession, so the learned trial court has rightly ordered the petitioner-plaintiff to affix the *ad valorem* court fees.

4. I have duly considered the aforesaid contentions.

5. The Hon'ble Apex Court in case ***Suhrid Singh @ Sardool Singh and others Vs. Randhir Singh and others 2010 (2) RCR (Civil) 564*** has laid down that where the non-executant is in possession and sues for a declaration that the deed is null and void and does not bind him, he has to merely pay a fixed court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Court-fees Act, 1870. But if a non-executant is not in possession and he also seeks the consequential relief of possession in addition to the declaration, he has to pay the *ad valorem* court fees as provided under Section 7 (iv) (c) of the Court-fees Act.

6. In the instant case, there is a contradiction in the head-note,

prayer clause and the body of the plaint. No doubt in the head-note and in the prayer clause the consequential relief of physical possession has been mentioned, but at the same time in para No.2 of the plaint it has been categorically pleaded by the petitioner-plaintiff that Janki Dass vendor has delivered him the physical possession of the suit property. Again in para No.6 of the plaint it has been mentioned that Amarjit Singh the original owner of the suit plot had sold it to the vendor of the petitioner-plaintiff vide registered sale deed dated 02.09.1981 who had legally sold it to the petitioner-plaintiff and deliver its possession as owner having been purchased from him vide sale deed dated 24.06.1986. So, in both these paras of the plaint, the petitioner-plaintiff has categorically pleaded that he is already in possession of the suit property. This fact is also not disputed that the petitioner-plaintiff has already filed an application for amendment of the plaint to remove the aforesaid contradictions.

7. At the time of the arguments, Mr. Deepak Sharma, Advocate, learned counsel for the petitioner-plaintiff has made the following statement:-

“That the consequential relief regarding possession has been mentioned in the head-note and prayer clause of the plaint due to bona fide typographical mistake. As per the recitals in the body of the plaint, the plaintiff-petitioner is already in possession of the disputed plot and the plaintiff-petitioner is not claiming any relief of possession in the present suit.”

8. In view of the aforesaid statement made by Mr. Deepak Sharma, Advocate as well as the averments in paras No.2 and 6 of the plaint

the petitioner-plaintiff is alleging himself to be in possession of the suit property. Learned counsel for the petitioner-plaintiff has categorically stated that the petitioner has not claimed any relief of possession. Learned counsel for the respondent-defendant has contended that the petitioner-plaintiff is out of possession. This is a disputed question of fact and has to be decided by the learned trial Court on appreciation of the evidence at the appropriate stage. For the purpose of the disposal of the present revision petition, it is suffice to mention that in paras No.2 and 6 of the plaint the petitioner-plaintiff has claimed himself to be in possession of the suit property and as per the statement made by Mr. Deepak Sharma, Advocate, learned counsel for the petitioner-plaintiff, the plaintiff is not claiming any relief of possession in the present suit so the petitioner who is the non-executant of the sale deeds challenged in the suit is not required to affix the *ad valorem* court fees regarding the relief of possession.

9. Consequently, the present revision petition is hereby allowed and the impugned order dated 08.07.2015 passed by learned Civil Judge (Junior Division), Ambala is hereby set aside.

07.11.2016

sunil yadav

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No