

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5842 of 2013

Date of decision : January 22, 2016

Balwinder Singh and another

..... Petitioners

Versus

Sheela Rani and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R. P. Daria, Advocate
for the petitioners.

Mr. Vishal Sharma, Advocate
for respondent Nos. 5 to 7.

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 petitioners-plaintiffs are aggrieved of the order dated 20.7.2013 whereby the application filed by the defendants-respondents under Order 7 Rule 11 CPC for rejection of plaint on account of non-payment of ad valorem court fee has been allowed.

Mr. R. P. Daria, learned counsel appearing on behalf of the petitioners submits that as per the averments made in the plaint Annexure P-1 the suit has been filed claiming declaration that they are owners in possession of land as described therein and as well

as for setting aside of the sale deeds allegedly executed by their father Bachan Singh, their predecessor in interest. In essence, the relief is also for permanent injunction, therefore, the ratio decidendi relied upon by the trial court in Yuvraj and others Vs. Balwant Singh and others 2006 (3) PLR 209 would not be applicable whereas that of Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010 AIR (SC) 2807 shall be applied and thus, prays for setting aside of the order.

Mr. Vishal Sharma, learned counsel appearing on behalf of the respondents submits that the sale deed has been executed by none else but by father of the plaintiffs. It tantamounts for setting aside of the sale deed since father was predecessor in interest, therefore, the plaintiffs would be party to the sale deed, therefore, are required to pay ad valorem court fee, thus, prays for dismissal of the revision petition.

I have heard learned counsel for the parties and appraised the paper book.

The Hon'ble Supreme Court in Suhrid Singh @ Sardool Singh's case (supra) has culled out the principles where the parties are required to pay ad valorem court fee. For the sake of brevity paragraph 6 of the aforementioned judgment reads thus:-

“Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a

deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and nonest/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7."

I am of the view that the petitioners seeking declaration that they are owners and cancellation of the sale deeds

and that they are not party to the sale deeds, therefore are not required to pay the ad valorem court fee.

Accordingly, the impugned order calling upon the petitioners-plaintiffs to pay ad valorem court fee is hereby set aside. The revision petition stands allowed.

(AMIT RAWAL)
JUDGE

January 22 , 2016
archana