

CR-6333 of 2015

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In the High Court of Punjab and Haryana at Chandigarh

CR-6333 of 2015

Date of Decision:20.12.2016

Ashwani

---Petitioner

vs.

Murti Devi and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Silak Ram Hooda, Advocate
for the petitioner

Mr. Deepak Sabherwal, Advocate
for respondent No.1

Rekha Mittal, J.

The present petition directs challenge against order dated 2.9.2015 (Annexure P-4) passed by the Additional Civil Judge (Senior Division), Sonapat whereby application under Order 7 Rule 11 of the Code

of Civil Procedure (in short “CPC”) has been accepted and the plaintiffs have been directed to make the deficiency of court fee good by affixing ad valorem court fee on sale consideration of Rs. 23,12,500/- mentioned in the sale deed bearing wasika No. 3227 dated 17.2.2014.

The sole submission made by counsel for the petitioner is that as the petitioner and his co-plaintiffs are not the executant of the sale deed dated 17.2.2014 that was executed by defendant Kalu Ram their father in favour of Smt. Murti Devi defendant No. 1 and they have only claimed joint possession as a consequential relief, they are not liable to pay ad valorem court fee. It is further submitted that the court below has taken an erroneous view of what has been held by Hon'ble the Supreme Court of India in **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others 2010 (2) Civil Court Cases 510** wherein even a non-executant who is claiming possession is liable to pay court fee under Section 7(iv)(c) of the Court Fees Act, 1870 (in short “the Act”).

Counsel for the contesting respondents has supported the impugned order by referring to judgment **Suhrid Singh @ Sardool Singh's case (supra)**.

I have heard counsel for the parties, perused the paper book and the judgment **Suhrid Singh @ Sardool Singh's case (supra)**.

Indisputably, the petitioner and his co-plaintiffs are not executant of the sale deed, therefore, they are not liable to pay ad valorem court fee on the sale consideration mentioned in the sale deed required to be paid by executant of a sale deed who seeks to get it cancelled/anulled. A non-executant who seeks declaration that the sale deed is invalid but also a consequential relief of possession, he is to pay ad valorem 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 value of the property as calculated in the manner provided for in clause (v) of Section 7 of the Act. In this context, reference can be made to a Division Bench judgment of this Court ***Tarsem Singh and others vs. Vinod Kumar and others 2014(1)ICC 1054.***

When the facts and circumstances of the present case are examined in the light of ratio laid down in **Suhrid Singh @ Sardool Singh's case (supra)** as well as **Tarsem Singh and others' case (supra)**, the order impugned cannot be allowed to sustain and accordingly set aside.

For the foregoing reasons, the petition is allowed, the impugned order is set aside and the application filed by the respondents/defendants for rejection of plaint for want of payment of requisite court fee is ordered to be dismissed.

(Rekha Mittal)
Judge

20.12.2016
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No