

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

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CR 6667 of 2016 (O&M)
Date of decision: 06.10.2016

Harbhagwan Singh

..... Petitioner

Versus

Balwinder Singh and others

.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. J K Singla, Advocate
for the petitioner

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Rekha Mittal, J. (oral)

The present petition has been directed against order dated 07.12.2015 passed by the Civil Judge (Junior Division), Phul whereby application filed by the petitioner/defendant for rejection of plaint for want of payment of requisite Court fee has been dismissed.

Counsel for the petitioner would contend that as the respondent/plaintiff has filed a suit for possession of 5/8 share of land measuring 77 kanals 12 marlas and has also laid challenge to sale deed No. 3832 dated 19.12.2013 executed by defendants No. 2 and 3 in favour of defendants No. 6 and 7 and sale deed No. 3429 dated 26.11.2013 executed by defendant No. 5 in favour of defendant No. 8, the respondent/plaintiff is liable to pay *ad valorem* Court fee on sale consideration of the aforesaid sale deeds. It is further submitted that the trial Court has committed a serious error rather illegality by holding that the respondent/plaintiff is not required to affix Court fee as per Section 7(iv)(e) of the Court fee Act, 1970

and no *ad valorem* Court fee as per consideration of the impugned sale deeds is liable to be affixed. In support of his contention, he has referred to judgments of this Court *Surjit Kaur vs. Tej Kaur and others 2015 (3) RCR (Civil) 75*, *Sanjay Rana vs. Sampat Singh and others 2015 (8) RCR (Civil) 500*, *Surinder Singh and others v. Narinder Singh 2010 (4) RCR (Civil) 139* and *Jaswinder Singh and others v. Jasbir Kaur and another along with connected matters, 2013 (1) RCR (Civil) 727*. Further, reference has been made to judgment of Hon'ble the Supreme Court of India *Suhrid Singh @ Sardool Sinigh v. Randhir Singh and others 2010 (2) RCR (Civil) 564*.

I have heard counsel for the petitioner and perused the paper book particularly the order impugned but find that the petition is devoid of merit and deserves to be dismissed.

It is an admitted position that the respondent/plaintiff has filed a suit for possession of 5/8 share of land by seeking specific performance of agreement to sell dated 03.11.2003, purported to be executed by defendants No. 1 to 5 in favour of the petitioner. Further relief has been sought for permanent injunction restraining alienation of suit property and declaration qua sale deeds dated 19.12.2013 and 26.11.2013.

Perusal of the plaint would indicate that the respondent/plaintiff has affixed Court fee on total sale consideration as per agreement sought to be specifically performed by affixing Court fee of Rs.4540.00 on an amount of Rs.2,25,000.00. As the respondent/plaintiff has filed a suit for specific performance of agreement to sell seeking possession of 5/8 share of land, agreed to be sold to him and further laid challenge to sale deeds of which he is not an executant, contention of the petitioner that he (plaintiff) is required

to pay *ad valorem* Court fee on sale consideration of two sale deeds challenged in the proceedings is highly misconceived and merits outright rejection. In none of the judgments referred to by counsel for the petitioner, the plaintiff has filed a suit for specific performance of an agreement to sell and further challenged the sale deed executed by his vendor in favour of subsequent purchaser, therefore, the petitioner cannot derive any advantage to his contention from the cited judgments. Similarly, the controversy before Hon'ble the Supreme Court in *Surhid Singh alias Sardool Singh's* case (*supra*) was entirely different from the facts of the case in hand. In this view of the matter, no interference in the impugned order is warranted.

For the foregoing reasons, finding no merit, the appeal fails and is accordingly dismissed in limine.

(Rekha Mittal)
Judge

06.10.2016
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No