

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

-.-

Civil Revision 6768 of 2015
Date of decision: 21.11.2016

Shanti Devi and others

..... Petitioners

Versus

Phool Chand and others

..... Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Madan Gupta, Advocate
for the petitioners

Mr. D K Tuteja, Advocate
for respondent No. 1

-.-

Rekha Mittal, J. (Oral)

The present petition directs challenge against order dated 21.08.2015 (Annexure P5) whereby application filed by the petitioners/defendants No. 5 to 9 for rejection of plaint for want of payment of requisite Court fee, has been dismissed.

Counsel for the petitioners has submitted that the respondent/plaintiff Phool Chand has filed a suit for declaration and joint possession and has assailed sale deed No. 1871 dated 24.09.1986 executed in favour of Kaushalya Devi wd/o Kailas Chander on the basis whereof, mutation No. 3441 was sanctioned. He has further challenged sale deeds No. 752 dated 25.06.1993 and 2616 dated 02.03.1994 whereby defendants No. 2 and 3 have sold the land in question to defendant No. 4 - Dalip Singh on the basis whereof, mutation Nos. 3528 and 3627 have been sanctioned.

It is argued with vehemence that as the first sale deed dated 24.09.1986 was executed by the respondent/plaintiff through his attorney, the respondent/plaintiff being executant of the sale deed is liable to pay *ad valorem* Court fee on the sale consideration of sale. It has further been submitted that as the subsequent sale deeds of the year 1993 and 1994 have been executed by vendees of the respondent/plaintiff and those sale deeds have been challenged in the suit, the respondent/plaintiff is also liable to pay *ad valorem* Court fee qua those sale deeds.

Counsel for the respondent/plaintiff, on the contrary, has supported the impugned order primarily on three counts. The first submission made by counsel is that for deciding an application for rejection of plaint only the averments raised in the plaint are to be taken into consideration and any plea raised by the defendants in the written statement or in the application for rejection of plaint cannot be taken into consideration. Another submission made by counsel is that in the plaint, the respondent/plaintiff has denied that sale deed of the year 1986 has been executed by him. The last submission made by counsel is that as the trial Court, in view of objection raised in the written statement, has already framed the issue in regard to Court fee, the application filed by the petitioners has rightly been dismissed.

I have heard counsel for the parties and perused the paper book particularly the order impugned.

The respondent/plaintiff has challenged sale deed dated 24.09.1986 purported to be executed by him through his attorney (his brother). The sale deed is a registered document and the same makes reference to a general power of attorney dated 25.10.1984. Prima facie, the

sale deed is to be treated having been executed by the respondent/plaintiff. As the respondent/plaintiff is executant of the sale deed dated 24.09.1986, in the light of enunciation of law laid down in ***Suhrid Singh alias Sardool Singh vs. Randhir Singh and others, 2010(4) SCC (Civil) 585***, the respondent/plaintiff is liable to pay *ad valorem* Court fee on the sale consideration mentioned in the sale deed, sought to be annulled.

So far as plea of the petitioners with regard to liability of the respondent/plaintiff to pay *ad valorem* Court fee on the subsequent sale deeds executed by his vendees, the same is not tenable because once the respondent/plaintiff has alienated the property by way of sale deed dated 24.09.1986, he is neither competent to alienate the same property again nor can he be deemed to be an executant of the sale deeds executed by his vendees.

This brings the Court to examine as to 'what is the affect of framing an issue, in the given scenario?. Contention of the respondent/plaintiff that as the trial Court has already framed the issue regarding Court fee, the present petition is not required to be decided on merit, is fallacious and misconceived. Once the trial Court vide impugned order has decided the question of Court fee, there is no question of the trial Court taking a contrary view at later stage of the proceedings. Under the circumstances, the correctness and legality of the impugned order is required to be examined by this Court.

For the foregoing reasons, the instant petition is partly allowed, the impugned order is set aside by holding that the respondent/plaintiff shall be liable to pay *ad valorem* Court fee on sale consideration mentioned in the sale deed dated 24.09.1986. However, the respondent/ plaintiff is given two

months time to pay the requisite Court fee, failing which adverse consequence of rejection of plaint would ensue.

(Rekha Mittal)
Judge

21.11.2016
mohan bimbra

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