

CR No. 6716 of 2013

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

CR No. 6716 of 2013

Date of Decision : 09.09.2016

Ved Parkash

...Petitioner

Versus

Smt. Naraini Devi and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Manoj Makkar, Advocate for the petitioner.

Mr. Ramesh Hooda, Advocate for the respondents.

Rekha Mittal, J.(Oral)

The present petition lays challenge to order dated 17.10.2013 passed by the District Judge, Rohtak, whereby the petitioner has been directed to affix ad-valorem Court fee on the value of sale deed on the plaint as well as memorandum of appeal.

Counsel for the petitioner has submitted that the petitioner filed a suit for declaration with consequential relief of injunction and laid challenge to sale deed bearing No. 14414 dated 25.03.2010 executed by Smt. Naraini Devi and Poonam defendants No. 1 and 2 in favour of Sumitra defendant No. 3. In the suit, an application was filed by respondent/defendant No. 3 under Order 7 Rule 11 of the Code of Civil Procedure (for short 'the CPC') for rejection of plaint for want of payment of requisite Court fee and the same was dismissed by the trial Court vide order dated 26.07.2011 (Annexure P-1) and the same has attained finality. The suit filed by the petitioner was dismissed vide judgment and decree dated

30.09.2013 (Annexure P-2) passed by the trial Court, therefore, the petitioner preferred an appeal to assail judgment and decree dated 30.09.2013 (Annexure P-2) and the court of appeal passed the impugned order. It is vehemently argued that as the petitioner is neither executant of the sale deed in regard whereof he sought declaration nor he claimed relief of possession, he is not liable to pay ad-valorem Court fee.

Counsel for the respondents, on the contrary, has supported the impugned order with the submission that plea of the petitioner that he is in possession of the suit property was found to be false by the trial Court, therefore, he is liable to pay ad-valorem Court fee.

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

Before advertng to the rival submissions made by counsel for the parties, it is appropriate to extract relevant part of the impugned order, reads as follows :-

“-----Keeping in view the provisions of section 7(iv)(c) and Article 1 of Schedule 1 of the Court fees Act, 1870 the plaintiff-appellant was required to affix Advalorem Court fees on the value of the sale deed on the plaint as well as on the memorandum of appeal. Now, to come upon 24.10.2013, for making the deficiency of Court fees.”

Concededly, the petitioner is not executant of the sale deed that has been sought to be set-aside. He has not sought the relief of possession and has merely sought consequential relief of injunction. The court of appeal has not directed him to pay ad-valorem Court fee on the ground that he has failed to prove his possession over the suit property. On the

contrary, the Court has directed him to affix ad-valorem Court fee on the value of the sale deed, on the plaint as well as memorandum of appeal. When the facts and circumstances of the present case are examined in the light of enunciation of law laid down by Hon'ble the Supreme Court of India in *Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others*, 2010(2) RCR(C) 564 and a Division Bench judgment of this Court in Civil Revision No. 4753 of 2005, titled *Tarsem Singh and others Vs. Vinod Kumar*, decided on 15.07.2011, the order passed by the court of appeal directing the petitioner to pay ad-valorem Court fee on sale consideration of sale deed cannot be allowed to sustain and accordingly set-aside.

In view of what has been discussed here-in-above, the petition is allowed. The impugned order is set-aside and the court of appeal is directed to decide the appeal in accordance with law.

September 09, 2016.
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(REKHA MITTAL)
JUDGE

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No