

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 682 of 2016

Date of decision : February 1, 2016

Priyanka

..... Petitioner

Versus

Pooja Rani

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Shalender Mohan, Advocate
for the petitioner.

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 petitioner-plaintiff is aggrieved of the order passed in an application filed under Order 7 Rule 11 CPC for dismissal of plaint for want of court fee.

Learned counsel for the petitioner-plaintiff submits that the suit is for declaring sale deed dated 5.1.2015 being null and void on the ground of fraud and mis-representation, much less non-payment of any sale consideration.

The possession of the property is with the plaintiff and therefore, she cannot be called upon to pay the court fee. In support of his contentions, he has relied upon the judgment of this Court in **Rambai Vs. Kapoori and another 2014 (4)RCR (Civil)376** and submits that the order under challenge is not sustainable in the eyes of law.

I have heard learned counsel for the petitioner and

appraised the paper book.

Even if the petitioner-plaintiff is in possession of the property and sought cancellation of the sale deed being party, she has to pay the court fee in view of the full Bench judgment rendered by this Court in Niranjan Kaur Vs. Nirbigan Kaur, 1982 PLR 127 and of the Hon'ble Supreme Court in Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010 AIR (SC) 2807. The judgment rendered by this Court in Rambai's case(supra) as per the peculiar facts and circumstances of the case, would not apply to the present case. As per the ratio decidendi culled out in paragraph 6 of the judgment of Hon'ble Supreme Court in Suhrid Singh @ Sardool Singh's case (supra), the plaintiff is required to pay court fee. The same 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."

In view of above, I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

February 1 , 2016
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