

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

**CR No. 662 of 2005 (O&M)
Date of decision: 13.01.2016**

Karan Pal Singh and others

... Petitioners

versus

Smt. Lakshmi Devi and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Sachin Mittal, Advocate for the petitioners.

K.Kannan, J. (ORAL)

The petitioners are purchasers from the brother and the defendants in suit. An unfair conduct of a brother for an injunction brought at the instance of the sister on an objection regarding adequacy of Court fee has stalled the disposal of the suit for a decade or more. The sisters have filed the suit for injunction on a plea that their brother has fabricated the power of attorney by impersonation and has purported to have effected the sale.

The plaintiffs were, therefore, literally contending that there was no sale by them in the eye of law and they were not parties in any sense to such a transaction.

The issue of Court fee is invariably to be tested on the plaint averments assuming the averments to be correct. If a plea of impersonation is made, if the defendant is able to bring the genuineness of the sale deed, since the burden is on the defendant and the competency of the brother to execute the sale on behalf of the sisters then the suit would have failed. Even if the plaintiff was asking for setting aside the sale, such a prayer must be understood that the sale was not binding on the plaintiffs. There was, therefore, no requirement

to pay any ad valorem Court fee on the value of the subject matter. The relief in the suit again is only that the plaintiff in is possession and the defendant shall be prevented from interfering with the plaintiff's possession qua their share of the land mentioned in the plaint. The alternative prayer is only in the event of the plaintiffs dispossessing them after the suit or when the Court holds the defendant are in possession of the property. Such a contingency has not arisen and the Court had at all times the discretion to call upon the plaintiff to pay Court fee for the relief of possession if a decree were to be granted for possession. It could be done before the decree is drawn up.

The suit which is framed was correct in the manner it was done and there was simply no justification for the defendant to move to this Court after the plea for rejection of the plaint was dismissed.

The revision petition is dismissed with costs of Rs. 3,500/- against the plaintiff-respondent. The Court shall deliver the judgment if the trial has completed within the period of four weeks and report to this Court. If the trial is not completed he shall make haste to conclude the same by setting dates to the convenience of the parties and enlist from them the total number of witnesses which each party would like to examine and make endeavour to dispose of the case within a period of 3 months.

(K.KANNAN)
JUDGE

13.01.2016

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