

Civil Revision No.7569 of 2015

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.7569 of 2015(O&M)
Date of Decision:04.08.2016

Shakuntla and another

---Petitioners

vs.

Ishwar Devi and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Gurinder Pal Singh, Advocate
for the petitioners

Mr. Abhishek Yadav, Advocate
for respondent Nos. 1 and 2

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition has been directed against order dated 25.9.2015 (Annexure P-5) passed by the Civil Judge (Senior Division), Rewari vide which the petitioners/plaintiffs have been directed to pay ad valorem court fee on the sale consideration of sale deed Vasika No. 2250 dated 13.6.2011.

Shakuntla and Naveen successors-in-interest of Sh. Randhir Singh son of Udai Ram have filed a suit that the plaintiffs and Smt. Usha, Pushpa and Seema daughters of Sh. Randhir Singh have been recorded to be owner in possession of suit land measuring 39 kanals 04 marlas as 1/3rd share. Rajbir @ Rajvir defendant No. 2 is a partner with Sh. Raj Kumar Yadav son of Sh. Daya Ram (brother in law (Jija) of plaintiff No. 2). The plaintiffs and his family members had faith on defendant No. 2. Defendant No. 2 fraudulently in collusion with Sh. Amar Singh Yadav, Advocate, Rohtash Namberdar and Amarjit son of Dharam Pal got prepared and forged sale deed No. 2250 dated 13.6.2011 regarding 1/3rd share of land and the said sale deed is liable to be set aside being without consideration and

fraudulent. The plaintiffs are still in actual physical possession of the suit land and cultivating the same.

An application under Order 7 Rule 11 of the Code of Civil Procedure (in short “CPC”) was filed by the defendants for rejection of plaint on the plea that the plaintiffs have not affixed ad valorem court fee on the market value of the suit land. After seeking reply of the petitioners/plaintiffs and having heard counsel for the parties, the learned trial court by relying upon judgments of this Court **Surinderpal vs. M/s Rainbow Promoters Private Limited 2011(2) CCC 223 , Khajan vs. JSR Land Developers Private Limited and others 2011(4) CCC 44** held that in a suit for declaration to declare a sale deed as null and void and not binding upon rights of the plaintiff, in case the plaintiff is a party to the sale deed and has not even claimed relief of possession, he is required to pay ad valorem court fee on the amount of consideration, mentioned in the sale deed to be cancelled.

Counsel for the petitioners has submitted that as the petitioners/plaintiffs are in possession of the suit property and they have filed a suit for declaration with consequential relief of permanent injunction,

the present case would be covered by the provisions of Section 7(iv)(c) of the Court Fees Act, 1870 (in short “the Act”) and the court fee is liable to be computed in view of the provisions of Section 7(v) of the said Act. It is further argued that for seeking declaration and consequential relief, there is no other provision in the Act except Section 7(iv), therefore, the learned trial court has committed a gross error rather illegality in directing the petitioners to pay ad valorem court fee on sale consideration of the sale deed, challenged in the suit. In addition, it is submitted that the petitioners shall be liable to pay court fee in view of provisions of Section 7(iv) of the Act amended by Act No. 22 of 1974 by the State of Haryana. In support of his contention, he has referred to judgments of Single Benches of this Court ***Smt. Beena and others vs. Rajinder Kumar and others, 2006(2) RCR (Civil) 449*** and ***Sohan Lal vs. Manjula Mittal 2010(1) Law Herald 298***.

Counsel for the respondents, on the contrary, has supported the impugned order with the submissions that as the petitioners are the executants of the sale deed, they shall be liable to pay ad valorem court fee on sale consideration disregarding the fact whether they have claimed possession or not.

I have heard counsel for the parties, perused the paper book and the judgments cited at Bar.

The controversy raised in the present petition is squarely covered by judgment of Hon'ble the Supreme Court of India ***Suhrid Singh@Sardool Singh vs. Randhir Singh and others 2010(2) RCR(Civil)***

560. A relevant extract from para 6 of the judgment, reads as under:-

“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 non-est/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.”

A plain reading of the aforesaid extract would make it evident that if the executant of the deed seeks cancellation thereof, he is to pay ad valorem court fee on the consideration stated in the sale deed. If a non-executant is in possession and sues for declaration that the deed is null and 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. The provisions of Section 7(iv)(c) would be attracted in case 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. Further in cases where the provisions of Section 7(iv)(c), as discussed above, would be attracted, valuation for the purpose of court fee shall not be less than the

value of the property calculated in the manner provided for by clause (v) of Section 7. As in the case at hand, the petitioners are admittedly the executants of the sale deed in question, they cannot escape their liability to pay court fee on the sale consideration mentioned in the sale deed.

A similar matter came up for consideration before a Division Bench of this Court *Tarsem Singh and others vs. Vinod Kumar and others 2014(1) ICC 1054* wherein this court after taking into consideration the various judgments referred to in para 2 of the judgment and by relying upon the judgment in *Suhrid Singh@Sardool Singh's case (supra)* has clearly laid down that if the executant of a document wants a deed to be annulled, he has to seek cancellation of the deed and pay ad valorem court fee on the consideration stated in the sale deed. In view of the enunciation of law laid down by Hon'ble the Supreme Court and by Division Bench of this Court, the petitioners cannot derive any advantage to his contention from the judgment in *Smt. Beena and others' case (supra)* decided by a Single Bench which became subject matter of reference decided by the Division Bench in *Tarsem Singh and others' case (supra)*. The judgment in *Sohan Lal's case (supra)* does not make it clear if the petitioner therein was the

executant or non-executant of the sale deed sought to be set aside, therefore, the petitioners cannot derive any advantage to their contention from the judgment in *Sohan Lal's case (supra)*.

No other point has been raised.

In view of discussion made hereinbefore, finding no merit, the petition fails and is accordingly dismissed leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

04.08. 2016
paramjit

Whether speaking/reasoned :Yes

Whether reportable :Yes