

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

C.R. No.7803 of 2016

Date of Decision.21.11.2016

Subhash Chander Chugh

.....Petitioner

Vs

Chander Mohan and another

.....Respondents

Present: Mr. Rakesh Gupta, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner-plaintiff is aggrieved of the impugned order whereby the application of the respondent-defendant moved under Order 7 Rule 11 CPC for filing the court fee, has been allowed.

Mr. Rakesh Gupta, learned counsel appearing for the petitioner submits that as per the amendment caused by the Haryana Legislature in Section 7(v) of the Court Fees Act, the court fee on the value of the property and as well as the sale consideration of the sale deed, would not be proper one. In support of his contention, he relies upon the judgment of this Court in Smt. Beena and others Vs. Rajinder Kumar and others 2006(2) RCR (Civil) 449.

I am afraid that the aforementioned argument is not sustainable as the Division Bench of this Court in Minder and others Vs. State of Haryana and others 2014(3) RCR (Civil) 563 after relying upon the decision of Supreme Court in Suhrid Singh @ Sardool Singh Vs. Randhir Singh (2010) 12 SCC 112 held that the decision rendered by this Court in Smt. Beena's case (supra) is not longer a good law. Even if the sale deed

for setting aside the same and the specific relief of possession, the plaintiff is required to pay the court fee. The relevant paragraph 6 of the judgment rendered by Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh's case** (supra), reads as under:-

“6. 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](#).”

In view of the principles culled in the judgment of Hon'ble

aforementioned order under challenge is perfectly legal and justified, much less, cannot be said to be passed without jurisdiction. No ground for interference is made out. The revision petition is dismissed.

(AMIT RAWAL)
JUDGE

November 21, 2016
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No