

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

CR No.8462 of 2015(O&M)

Date of decision:25.5.2016

Renu and another

....Petitioners

VERSUS

Geeta Sharma and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

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

Present: Mr. Sudhir Kumar Hooda, Advocate for the petitioners.

None for the respondents.

REKHA MITTAL, J.

The present petition has been directed against order dated 18.11.2015 (Annexure P-4) passed by the Civil Judge (Senior Division), Rohtak, whereby application filed by Geeta Sharma - respondent No.1/defendant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (in short 'CPC') has been allowed and the petitioners have been directed to pay ad valorem Court fee according to the sale consideration mentioned in the sale deed bearing No.3460/1 dated 01.07.2013 executed by Smt. Geeta Sharma in favour of Suman Gupta and Babita Gupta, respondents No.4 and 5, respectively.

Counsel for the petitioners would contend that the suit property measuring 191.33 square yards bearing plot No.104, Janta Colony, Rohtak was owned by Sh. Ramdhan and he passed away in the intervening night of 31.12.2011/01.01.2012 leaving behind the plaintiffs

(daughters) Smt. Geeta Sharma (widow), Sudhir Kumar and Anil Kumar (sons), parties to the suit. Smt. Geeta Sharma executed sale deed dated 01.07.2013 in favour of defendants No.4 and 5 for an amount of Rs.11,95,000/- in respect of area measuring 119.5 square yards which is in excess of her share in the suit property and that too without partition of the suit property. It is argued that as the petitioners are neither the executant of the sale deed in question nor they have sought consequential relief of possession, they are not liable to pay ad valorem Court fee on sale consideration of the sale deed dated 01.07.2013.

Another submission made by counsel is that as the petitioners are co-owners of plot No.104, Janta Colony, Rohtak, they are deemed to be in possession of every inch of joint land and thus they are not liable to pay ad valorem Court fee in view of enunciation of law laid down by Hon'ble The Supreme Court of India Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010 (2) RCR (Civil) 564. In support of his contention, he has placed reliance upon judgment of this Court Bant Singh vs. Noble Trade Cone Pvt. Ltd. and others, 2014 (1) PLR 713.

There is no representation on behalf of the respondents despite service and as a result, there is no contest to the petition filed by the petitioners/plaintiffs.

I have heard counsel for the petitioners and perused the paper-book particularly the order impugned.

The learned trial Court in the concluding para of the impugned order has held, a relevant extract therefrom reads thus:-

“.....the respondents have challenged the legality of the sale deed bearing No.3460/1 dated 1.7.2013 executed by their mother Smt. Geeta Sharma and perusal of the impugned sale deed reveals that Smt. Geeta Sharma had purchased part of the suit property and that being so, she

being absolute owner of the suit property was competent to execute the sale deed and when the property has already been sold by dint of registered sale deed, then the present suit cannot be considered to be a suit for partition only as perusal of the contents of the plaint establishes that practically legality of the sale deed in question has been challenged for which respondents are liable to affix the ad volarum court fee according to the sale consideration....”

Firstly, the learned trial Court has recorded certain observations on merits of the suit when otherwise as per settled position in law, the trial Court should refrain from commenting upon merits of the controversy while dealing with interlocutory applications. Any observations made by the trial Court qua merits of the suit would not cause prejudice to either of the parties at the time of final disposal of the suit.

Counsel for the petitioners has made submissions to assail the impugned order by considering that the sale deed dated 01.07.2013 executed by their mother is under challenge in a suit filed for partition of the suit property by metes and bounds. The petitioners are claiming their right in the suit property being class –I heir of Sh. Ramdhan, erstwhile owner of the plot in question. Nothing has been mentioned in the application filed under Order 7 Rule 11 CPC that the petitioners are not entitled to a share in the suit property on the basis of natural succession to the estate left behind by Sh. Ramdhan. A co-owner is deemed to be in possession of every inch of the joint land unless it is proved that there is a complete ouster of the co-owner by conduct of another co-owner in exclusive possession of the joint property. As in the case in hand, no such plea was raised in the application, the petitioners being the joint owners shall be deemed to be in possession of the joint land. It is also an admitted position of the case that the petitioners have not claimed any consequential

relief of possession in their suit for partition of the joint property. When the facts and circumstances of the present case are examined in the light of judgment of this Court in Bant Singh's case (supra) wherein the Court has also relied upon judgment of Hon'ble the Supreme Court in Suhrid Singh @ Sardool Singh's case (supra), the controversy raised in the present petition is squarely covered by Bant Singh's case (supra) in favour of the petitioners that they are not liable to pay ad valorem Court fee on the sale consideration of the sale deed dated 01.07.2013.

In view of the above, I find merit in the contentions of the petitioners that the impugned order is wrong and illegal and cannot be allowed to sustain.

For the foregoing reasons, the petition is allowed and the impugned order is set aside. As a natural corollary, the application filed by the respondent/defendant No.1 under Order 7 Rule 11 CPC is ordered to be dismissed.

MAY 25, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE