

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

CR No.8851 of 2015

Decided on: 22.07.2016

Tarun Gupta

....Petitioner

Versus

Rishi Ram Aggarwal

....Respondent

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

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

Mr. Deepak Jindal, Advocate
for the respondent.

- 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?*

REKHA MITTAL, J.

The present petition directs challenge against order dated 17.03.2015 passed by the trial Court whereby the application filed by the petitioner under Order 7 Rule 11 of the Code of Civil Procedure (in short 'CPC') for rejection of plaint for want of payment of *ad valorem* court fee has been dismissed.

Counsel for the petitioner has submitted that as the respondent/plaintiff – Sh. Rishi Ram Aggarwal has filed a suit for declaration and injunction and challenge has been laid to the gift deed No.652/1 dated 23.04.2014 and no relief *qua* ownership of the suit property can be granted without cancellation of the gift deed executed by the respondent/plaintiff, the respondent is liable to pay *ad valorem* court fee on the amount of Rs.22,54,000/- mentioned as such in the gift

deed (Annexure P-2), therefore, the plaint is liable to be rejected unless the respondent pays the requisite court fee. It is further submitted that the learned trial Court committed a serious error rather illegality and has passed the impugned order by disregarding authoritative pronouncement of Hon'ble the Supreme Court "***Suhrid Singh @ Sardool Singh vs Randhir Singh and others***", 2010(4) SCC (Civil) 585.

Counsel for the respondent/plaintiff, on the contrary, has supported the impugned order with the submissions that as the gift deed in question is the result of fraud played upon the respondent at the behest of the petitioner and his father and the respondent has not claimed any relief of possession *qua* the suit property, he is not liable to pay court fee more than what has already been paid as the gift deed cannot be for a valuable consideration. In support of his contention, he has relied upon the judgment of this Court "***Om Parkash vs Smt. Bimla Devi and others***", 2014(3) Law Herald 2238.

I have heard counsel for the parties and perused the paperbook with their able assistance.

The copy of the registered gift deed dated 23.04.2014 has been placed on record wherein value of the subject-matter of the gift deed is stated to be Rs.22,54,000/- and a stamp worth Rs.1,12,700/- was affixed at the rate of 5%. There is no denial that the gift deed in question has been challenged by its executant by raising a plea that the petitioner and his father by playing fraud and by giving false assurance got transferred the suit property in favour of defendant vide registered

gift deed dated 23.04.2014. The respondent has claimed declaration that the gift deed is illegal, null and void and not binding upon rights of the plaintiff and he be declared owner of the suit property. Counsel for the respondent has not disputed that till the gift deed is set-aside/cancelled, claim of the respondent seeking declaration of ownership of the suit property cannot be allowed.

The respondent is the executant of the gift deed which is sought to be cancelled being null and void and not binding upon the rights of the respondent/plaintiff. As the respondent is the executant of the gift deed and has sought cancellation thereof coupled with the factum that the valuation of the property in question has been made at Rs.22,54,000/- for the purpose of registration of gift deed, the respondent cannot escape his liability to pay court fee on the basis of valuation of the property in the gift deed, in the light of enunciation of law laid down in *Suhrid @ Sardool Singh's case (supra)* by Hon'ble the Apex Court and a Division Bench judgment of this Court "*Tarsem Singh and others vs Vinod Kumar and others*", CR No.4753 of 2005 decided on 15.07.2011.

To be fair to the respondent, counsel has relied upon the judgment of a Co-ordinate Bench in *Om Parkash's case (supra)* which has further relied upon judgment of another Co-ordinate Bench "*Surjit Singh vs Karamjit Kaur*" 2012(3) RCR (Civil) 364. Though, in the judgment in *Surjit Singh's case (supra)* there is reference to the judgment in *Suhrid @ Sardool Singh's case (supra)* and para 6 therefrom has been reproduced in verbatim, this Court accepted claim

of the respondent/plaintiff of her being not liable to pay *ad valorem* court fee by holding that no sale consideration has been paid by the defendants and possession has also not been claimed by the plaintiff/respondent.

Keeping in view the discussion made hereinbefore, the respondent cannot derive advantage to his contentions from the judgment in *Om Parkash's case (supra)* based upon the judgment in *Surjit Singh's case (supra)*.

For the foregoing reasons, the petition is allowed, the impugned order is set-aside, the application filed by the petitioner under Order 7 Rule 11 CPC is allowed and the respondent is directed to pay *ad valorem* court fee on the basis of valuation of the property made in the gift deed. The respondent is allowed two months time to pay the court fee failing which adverse consequence for rejection of plaint would ensue.

22.07.2016
yakub

(REKHA MITTAL)
JUDGE