

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

Sr. No.216

CR No.985 of 2014

Date of decision: 20.09.2016

Joginder Singh Wahlla and others

....Petitioners

versus

Bishan Singh Wahlla and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE DEEPAK SIBAL**

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Present:- Mr. Rakesh Gupta, Advocate
for the petitioners.

Mr. Harish Goyal, Advocate
for the respondents.

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S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

This matter comes before us on a reference by the learned Single Judge.

2. The learned Single Judge noted that there are two views taken by this Court about the method for assessing the value of the property for the purpose of court fee within the State of Punjab. It is rightly agreed by the counsel that the issue does not arise in this matter at all. In other words, the question of valuing the land i.e. subject matter of the suit does not arise as the court fee is not to be computed on the value of the land.

3. The plaintiffs i.e. petitioners to this Civil Revision have sought a declaration to the effect that the transfer deed dated 06.08.2010 executed by their father in favour of the respondents is illegal, null and void and not

binding on them, for a declaration to the effect that plaintiffs/petitioners are owners in possession of the land to the extent of their respective shares therein and for a permanent injunction restraining defendants No.2 and 3 from selling, alienating and encumbering the same.

4. The Supreme Court in 'Suhrid Singh @ Sardool Singh vs. Randhir Singh', 2010(12) SCC 112, dealt with an identical suit. In fact, in that suit the declaration was that the property was purchased from the sale proceeds of ancestral property and that the plaintiffs/petitioners were entitled to joint possession thereof. The Supreme Court held 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.

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the “co-parcenery” and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the Act. The trial Court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds.”

5. In the case before us possession is not even sought. Only a declaration has been sought that plaintiffs/petitioners is in possession is sought.

6. Accordingly, the petitioners i.e. plaintiffs would be liable to pay court fee under Article 17(iii) of Second Schedule of the Court Fees Act, 1870 in respect of each of the reliefs claimed. The order of the trial Court holding the petitioners liable to pay the ad valorem Court fee is set

aside.

7. In view thereof, it is not necessary to answer the question that has been referred by the learned Single Judge to the Division Bench.
8. The Civil Revision is allowed accordingly.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

September 20, 2016
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No