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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ C.R.P. 124/2016

MOHD SHAMIM

..... Petitioner

Through Mr.Hari Kishan and Mr.Tabrez,
Advocates.

versus

SAIMA & ANR

..... Respondents

Through None.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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22.08.2016

CM Nos. 29244-45/2016 (exemption)

Exemption is allowed subject to all just exceptions.

C.R.P. 124/2016 and CM No. 29243/2016 (stay)

1. By the present petition, the petitioner seeks to impugn the order dated 09.05.2016. By the impugned order the trial court decided that the petitioner/plaintiff has to pay court fees on the market value of the immovable property relating to which the documents in question are the subject matter.
2. The plaintiff has filed the suit for declaration for declaring papers/documents dated 03.07.2000 purported to be executed by the petitioner in favour of respondent No.1 and also conveyance deed dated 24.10.2013 executed by respondent No.2 in favour of respondent No.1 as illegal, ineffective, null and void.
3. It is the contention of the petitioner that neither of the documents has

been executed by the petitioner and hence, court fees for a suit for declaration would be the appropriate court fees. He relies upon the judgment of the Supreme Court in the case of ***Suhrid Singh @Sardool Singh vs. Randhir Singh & Ors., AIR 2010 SC 2807*** to contend that where an executant wants his deed to be annulled, he has to seek cancellation of the deed. However, if a non-executant seeks annulment of a deed, he has to seek a declaration. Hence, the court fees for a suit of declaration would be applicable.

4. A perusal of the plaint filed shows that the petitioner has claimed that the documents dated 03.07.2000 was never executed by him and has been forged by respondent No.1. Hence, he submits that he has never executed a document. He only seeks a declaration to that effect. There is no dispute that second document, namely, document dated 24.10.2013 which is the subject matter of the suit has not been executed by the petitioner.

5. The Supreme Court in the case of ***Suhrid Singh @Sardool Singh vs. Randhir Singh & Ors. (supra)*** in para 6 held as follows:

“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.”

6. The above case also pertains to court fees in the State of Punjab as governed by the Court Fees Act, 1870 as amended in Punjab.

7. A perusal of the impugned order shows that the legal position as elaborated in the said judgment has not been taken into account. Accordingly, it is appropriate that the petitioner be permitted to file a review application before the trial court.

8. Granting the leave and liberty to the petitioner to file a review application before the trial court, the present petition is disposed off. In case such a review petition is filed within two weeks from today, the trial court may consider the same as per law.

9. Dasti.

AUGUST 22, 2016/rb

JAYANT NATH, J