

216

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

**Civil Revision No.1223 of 2015
Date of Decision: 02.08.2017**

**Harinder Singh Sidhoo and others
.....Petitioners**

vs

**Varinder Pal Singh
....Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sunil Garg, Advocate
for the petitioners.

None for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 18.11.2014 passed by the Civil Judge (Jr. Divn.) Ludhiana vide which application under Order 7 Rule 11 CPC filed by the defendant was allowed.

[2]. Brief facts are that the plaintiffs filed a suit for declaration to the fact that agreement to sell dated 07.09.2011 *qua* the house in question stood rescinded. Permanent injunction was also sought against the defendant.

[3]. Defendant filed an application under Order 7 Rule 11

CPC for rejection of the plaint on the ground that the plaintiffs by way of entering into agreement to sell agreed to sell property measuring 338 square yards for a consideration of Rs.3,42,00,000/- and a sum of Rs.51,00,000/- was received by the plaintiffs as earnest money. Now by seeking annulment of the agreement to sell, the plaintiffs were liable to pay the *ad valorem* court fee on the instrument being executants of the same.

[4]. Trial Court vide order dated 18.11.2014 accepted the application after noticing the fact that the plaintiffs being the executants of the agreement to sell were liable to pay the *ad valorem* court fee. In view of ratio of **Suhird Singh @ Sardool Singh vs. Randhir Singh and others, 2010(2) Civil Court Cases, 510 (SC)**, if the executants wants to avoid the deed, they have to sue for cancellation of the deed and have to pay the *ad valorem* court fee on the consideration specified in the deed itself.

[5]. By relying upon **Om Parkash vs. Smt. Bimla Devi and others, 2014(3) Law Herald 2238**, Learned counsel for the petitioners sought to argue that in case the declaration is sought in respect of gift deed, obtained by fraud, then provision of Section 7(iv)(c) of the Court Fee Act would apply and the plaint is not required to be affixed with *ad valorem* court fee

[6]. I have heard learned counsel for the petitioners.

[7]. Perusal of the plaint does not show any ground of fraud pleaded by the plaintiffs. Evidently, only agreement to sell was executed and the plaintiffs have already received the amount of Rs.51,00,000/-as earnest money. The possession was already with the plaintiffs and now by way of the suit in question, the plaintiffs want annulment of the agreement to sell.

[8]. In my considered opinion, the plaintiffs are liable to pay the *ad valorem* court fee as they being the executants of the agreement to sell are liable to pay the *ad valorem* court fee on the consideration received by them. The precedent cited by the learned counsel is distinguishable in view of the fact and circumstances of the case, particularly when in the case in hand, there was no plea of fraud taken by the plaintiffs. Factum of agreement to sell has been admitted in the pleadings. The plaintiffs wanted to avoid it only on the ground of readiness and willingness on the part of the defendant.

[9]. In view of above, I deem it appropriate to dismiss the present revision petition being totally devoid of merits.

August 02, 2017

Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No