

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

Civil Revision No.125 of 2016

Date of Decision: 14.07.2017

Geeta and others

. . . Petitioners

Versus

Kamlesh Devi and another

. . . Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Sharma, Advocate
for the petitioners.

Mr. Ashok Kumar Khubber, Advocate
for the respondents.

Anil Kshetarpal, J. (Oral)

In the present revision petition, the petitioners/plaintiffs have challenged an order dated 06.04.2015 passed by Civil Judge (Junior Division), Yamunanagar at Jagadhri, allowing application under Order 7 Rule 11 CPC with a direction to the petitioners/plaintiffs to pay ad valorem Court fee on Rs.8,50,000/- up to 08.05.2015.

Plaintiffs had filed a suit for declaration that sale deed No.1424 dated 18.09.2013 allegedly executed and registered by defendant No.2 in favour of defendant No.1, which is illegal, null and void, ineffective, inoperative, without sale consideration and not binding on the rights of the plaintiffs. The plaintiffs had also sought possession of land as per their share. Defendant No.1 filed an application under Order 7 Rule 11 CPC, for rejection of the plaint on the ground that proper court fee has not been paid/affixed.

As noticed above, Civil Judge (Junior Division), Jagadhri, vide order dated 06.04.2015 has directed the plaintiffs to pay ad-valorem Court fee on Rs.8.50,000/-.

I have heard learned counsel for the parties and with their able assistance, I have gone through the assertions made in the plaint.

It is admitted position on the record that the plaintiffs were not party to the said sale deed. It is defendant No.2, who had executed the sale deed. The plaintiffs have claimed that it was an ancestral joint Hindu family property and they are also coparceners and the property is also coparcenery, and therefore, plaintiffs No.1 to 3 have a pre-existing right. In this situation, it is well settled law that if the plaintiffs are not party to the sale deed or they are not executants, then the plaintiffs are not required to seek cancellation of the sale deed. The plaintiffs can certainly maintain a suit for declaration to the effect that such sale deed is not binding on their rights. The plaintiffs are not required to affix ad-valorem Court fee of the sale deed because they are not party to the document.

It has been laid down by the Hon'ble Supreme Court in the case of 'Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others'

2010 (2) R.C.R. (Civil) 564, to the same effect. There is another Division Bench Judgment of this Court passed in Civil Revision No.4753 of 2005, decided on 15.07.2011, which also lays down to the same effect. The conclusion drawn by the Division Bench is extracted as under:-

In view of the said example given an example in para No. 6 of the judgment and the finding recorded in para No. 7, we hold as follows:-

- i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.*
- ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.*
- iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv) (c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.”*

Learned counsel for the respondent has argued that since in this case, the plaintiffs have sought possession, therefore, the plaintiffs are liable to pay ad valorem Court fee on the value of the property.

I am afraid the submissions made by learned counsel for the respondent are not correct. The State of Haryana had amended Court Fee

Act by way of amendment brought up in Section 7 (iv) (c) of the Act, way back in 1974. It was specifically provided that in case of agricultural land, the Court fee would be payable with respect to relief of possession only as per the table incorporated by way of State amendment, therefore, ad valorem Court fee is not payable with respect to relief of possession where the agricultural land is sought. The amendment brought up by the State of Haryana in Act No.22 of 1974, is extracted as under:-

“2. In Section 7 of the Court Fees Act, 1870 (hereinafter referred to as the principal Act), for sub-clauses (a) and (b) of clause (v), the following sub-clauses shall be substituted, namely: -

“(a) Where the subject matter is land other than land situated within municipal limits or Abadi Deh whether under cultivation or not according to the market value thereof which shall be deemed to be -

(i) In the case of land which is irrigated by perennial canal, sixty rupees per acre ;

(ii) In the case of land which is irrigated by non-perennial canal or by well, fifty rupees per acre ; and

(iii) In the case of land which is Barani, Sailab, Bhud, Thur, Sem, Banjar or of like nature, thrity rupees per acre ; and

(b) Where the subject matter is house, garden, or land situated within municipal limits or Abadi Deh whether under cultivation or not, according to its market value ;”.

In view of the law laid down by the Hon’ble Supreme Court of India, Division Bench of this Court and the amendment brought up in by the State of Haryana in the Court Fee Act, the order passed by learned Civil Judge (Junior Division), Jagadhri, is liable to be set aside. Hence, the order under challenge is reversed.

The plaintiffs are directed to make up the deficiency in the payment of Court fee, if any, as per amendment brought up by Act No.22 in the Court Fees Act, 1974.

Disposed of.

[ANIL KSHETARPAL]
JUDGE

14.07.2017
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Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No