

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.1109 of 2014
Date of Decision:26.9.2017**

Sunita and another

...Petitioners

Versus

Naveen and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Gaurav Tyagi, Advocate for
Mr.S.P.Tyagi, Advocate for the petitioners.
Mr.R.S.Malik, Advocate for respondent No.2.
Mr.Navneet Singh, Advocate for respondent No.3.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the order dated 14.1.2014 (Annexure P-3) passed by the learned trial court, whereby application under Order 7 Rule 11 of the Code of Civil Procedure ('CPC' for short) filed by defendant No.1 was allowed, directing the plaintiffs to pay *ad valorem* court fee, they have approached this Court by way of instant civil revision petition under Article 227 of the Constitution of India, for setting aside the impugned order.

Notice of motion was issued and operation of the impugned order was stayed.

Heard learned counsel for the parties.

It has gone undisputed before this Court that the petitioners-plaintiffs were not party to the sale-deed dated 11.7.2008, which is under challenge in their suit for declaration with consequential relief of permanent injunction. Plaintiffs are the sisters of defendant No.1. Plaintiffs also claimed themselves to be owners in possession, being the daughters of late Shri Bhima son of late Shri Tek Chand. Under these undisputed facts and circumstances of the case, the impugned order passed by the learned trial court has been found suffering from patent illegality, as the same runs

counter to the law laid down by the Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 (12) SCC 112.**

In fact, the learned trial court misread and misunderstood the law laid down by the Hon'ble Supreme Court in **Sardool Singh's** case (supra), while passing the impugned order. It is so said because neither the petitioners-plaintiffs were party to the sale-deed, which has been challenged in the civil suit for declaration nor the plaintiffs were seeking consequential relief for possession, as they were rightly claiming themselves to be owners in possession of the suit property, on the basis of their right of inheritance. In case, the sale-deed, which is under challenge in the suit for declaration filed by the plaintiffs, is declared null and void and not binding on the rights of the plaintiffs, they would be declared as owners in joint possession to the extent of their share. In such a situation, the learned trial court could not have directed the plaintiffs to pay *ad valorem* court fee. Since the learned trial court has exceeded its jurisdiction, while passing the impugned order, the same cannot be sustained, for this reason as well.

No other other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found suffering from patent illegality, it cannot be sustained. Accordingly, the impugned order dated 14.1.2014 is hereby set aside. The learned trial court is directed to proceed further with the suit and decide the same at an early date, in accordance with law.

Resultantly, with the above-said observations made and directions issued, the civil revision petition stands allowed, however, with no order as to costs.

26.9.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No