

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

CR No.1273 of 2017.

Date of Decision: 02.03.2017.

Ravi Kumar

....Petitioner.

VERSUS

Savita Devi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Anil Kumar Gahlawat, Advocate
for the petitioner.

SNEH PRASHAR, J.

The petitioner is aggrieved of the order dated 12.01.2017 passed by learned Civil Judge (Junior Division), Rewari by virtue of which the application under Order VII Rule 11 of the Code of Civil Produce (for short, "CPC") filed by the petitioner-defendant No.1 was dismissed.

The submissions made Mr. Anil Kumar Gahlawat, learned counsel representing the petitioner have been heard.

Learned counsel for the petitioner argued that respondent No.1-plaintiff had filed a suit for declaration and permanent injunction against the petitioner and others challenging as many as 21 sale deeds executed by Sardar Singh, her father, alleging the suit property sold by way of the sale deeds to be joint Hindu family property, in which, being a coparcener, she

claim possession of the suit property, but at the same time alleged that she be declared to be in joint possession which, in fact, means that she was claiming possession. For seeking the relief claimed by her, she is under obligation to pay advalorem court fee on the market value of the land and construction in existence on the same which comes out to be more than Rs.6 crores. To support his argument, learned counsel relied upon **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors., 2010 AIR (SC) 2807.**

Perusal of the impugned order shows that learned trial Court had also decided the application under Order VII Rule 11 CPC filed by the petitioner, in the light of the law laid down in **Suhrid Singh @ Sardool Singh's** case (supra). The reasons recorded by learned trial Court are as under:-

“After hearing rival contentions of both the sides and perusing the case file, this court is of the considered view that it is settled principal that an application under order 7 rule 11 CPC is to be decided merely on the facts disclosed in the plaint. The perusal of the plaint reveals that in present suit plaintiff is seeking declaration of sale deed as mentioned in para no.1C and 1D by defendant no.2 in favour of defendant no.1, 3 to 26 which forms part of joint hindu co-parcanary property and claiming joint possession to the extent of 1/6th share on the basis of pre-existing right by birth in the joint Hindu family property and it was executed without any legal necessity, sale consideration and consent of other co-parceners. Plaintiff has asserted his possession over the suit land and has not sought any relief of possession. It is the

allegation in the plaint that determines whether the Court fee is payable in a suit or not? The application of any particular clause of Court fee depends upon the substance of the plaint. This court wish to draw support from the law laid down by Hon'ble Supreme court in case titled as Suhrid Singh alias sardool Singh versus Randhir Singh, 2010(2) Law Herald (SC), 1371, wherein, it is held that "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 nonest or illegal or that it is not binding on him. 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 advalorem court fee on the consideration stated in the sale deed. If B, who is a non executant, if 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 advalorem court fee as provided under section 7(iv)(c) of the Act. The prayer is for declaration that the deeds do not bind the coparcenary and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, court fee liable

to be pay in accordance with Section 7(iv)(c) read with section 7(v) of the Act.” In this case neither plaintiff was party to the sale deed which he is sought to be set aside/annulled nor he is seeking possession over the suit land. (Emphasis supplied on Sanjay Rana Vs. Sampat Singh, 2016(2) RCR (Civil) 397). Possession not claimed and this case is fully covered as the law settled in the case of Suhrid Singh's Supra. Therefore, plaintiff is required to affix court fee against the agricultural suit land as per the assessment of land revenue. Moreover if at any stage the court fees is found deficient then same can be made good at that stage.”

Learned counsel for the petitioner has failed to demonstrate any illegality or misreading of facts on part of leaned trial Court. From the instant petition, it transpires that the petitioner-defendant is none else but son of Smt. Saroj Devi, daughter of Sardar Singh and respondent No.1-plaintiff Savita Devi is the other daughter of Sardar Singh. It is the plea of respondent No.1-plaintiff that the sale consideration amount recorded in the sale deeds was never paid by the petitioner (defendant No.1) to her father-vendor Sardar Singh and the sale deeds were result of collusion between the two. She also alleges the suit property to be coparcenary property in which she has a share and claims only a declaration of joint possession with other co-parceners.

The application of the petitioner for the reasons mentioned in the order was rightly dismissed. In any case, it was observed by learned trial Court that in case at any stage the court fees is found to be deficient, the same can be asked to be made good.

Thus, finding no illegality or perversity warranting interference in the order of learned trial Court, the petition is hereby dismissed.

(SNEH PRASHAR)
JUDGE

02.03.2017.
jitender sharma

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No