

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

CR No.166 of 2017

Date of decision :31.07.2017

Surjit Kaur and another

...Petitioners

Versus

Sanamdeep Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. R.S. Bajaj, Advocate for the petitioners.

Mr. B.K. Mehta, Advocate for respondent No.1.

Mr. Arpan Sabharwal, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

Defendant Nos.2 and 3 have filed this revision petition under Article 227 of the Constitution of India challenging the order passed by the trial court dismissing the application under Order 7 Rule 11(b) CPC for rejection of the plaint on the ground that plaintiff has not affixed the required ad valorem court fee.

Learned trial court after appreciating the contention of both the parties has dismissed the application vide order dated 16.09.2006, relevant extract whereof is as under:

“ In the present case the plaintiff has sought the relief of declaration to the effect that plaintiff is exclusive owner of the property in question on the basis of will dated 25.01.2011 and the sale deeds dated 24.02.2002 bearing document No.7771 executed by Manjit Kaur in favour of Rakesh Khanna, defendant No.1, sale deed dated 05.05.2003 bearing document No.965

executed by Rakesh Khanna, defendant No.1 in favour of Manjit Singh and Surjit Kaur and the sale deed dated 28.01.2009 bearing document No.9135 executed by Manjit Kaur in favour of Surjit Kaur and Harjit Singh, are sham documents, null and void, forged and fabricated and are result of fraud and misrepresentation and are not binding on the rights of the plaintiff and are liable to be set aside. The plaintiff has further sought the relief of permanent injunction restraining the defendants from alienating the property in dispute in any manner whatsoever and from parting with the possession of any portion thereof. Thus keeping in view the law laid down by Hon'ble Apex Court of India in Suhrid Singh (supra) and keeping in view the fact that the plaintiff is not executant of other sale deed as mentioned in the application and thus he is not required to pay ad valorem court fee. Thus the application in hands stands dismissed.”

I have heard learned counsel for the petitioners.

It is not in dispute that plaintiff is non-executant of the sale deed.

The sale deed was executed by Manjit Kaur. As per judgment of Hon'ble the Supreme Court of India i.e. “**Suhrid Singh @ Sardool Singh Vs. Randhir Singh**” **AIR 2010 SC 2807**, a non-executant is not required to file a suit seeking cancellation of the document but he can maintain a suit for declaration that such sale is not binding on his rights.

Further revision petition at the hands of defendants is not

maintainable against the order passed by the trial court dismissing application under Order 7 Rule 11 CPC. The payment of court fee is a question which is primarily between the plaintiff and the State. Hon'ble the Supreme Court in **“Rathnavarmaraja Raja Vs. Smt. Vimla” AIR 1961 SC 1299** has held that the defendant has no right to challenge the aforesaid order by filing appeal or revision.

For the reasons recorded above, finding no merit in the present revision petition, the same is ordered to be dismissed.

31-07-2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : Yes