

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.2079 of 2016 (O & M)

Date of decision :31-07-2017

Ashwani Kumar Sharma

...Petitioner

Versus

Sanjay Kumar Sharma and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. G.S. Jaswal, Advocate for the petitioner.

None for respondent No.1.

Mr. Indresh Goel, Advocate for respondent No.2.

ANIL KSHETARPAL, J.

Defendant-petitioner has filed this revision petition under Article 227 of the Constitution of India against order dated 18.01.2016 (Annexure P-5) dismissing the application for rejection of the plaint for affixing insufficient ad-valorem court fee.

Plaintiff had filed a suit for declaration that the gift deed dated 14.05.2012 executed by Sita Ram in favour of defendant No.1 is illegal, null and void.

Learned trial court after considering the application dismissed the same vide order dated 18.01.2016, the operative part thereof reads as under:-

“4. Vide the present suit plaintiff seek declaration that gift deed dated 14.05.2012 regarding house No.956 is illegal, null and void. Admittedly plaintiff is in possession of the said house. Law is settled by Hon'ble High Court in “Bhagwan Kaur Vs. Amrik Singh” 2006(4) RCR 531 : 2007(1) CivCC14:2006(3) in which it has been held that plaintiffs in joint possession of suit land with defendants who were coparceners-plaintiffs filing suit for declaration that they

are owners of suit land and sought consequential relief of permanent injunction restraining defendants from alienating the suit land-Declaration also sought that gift deeds were illegal and liable to be set aside-plaintiffs not required to pay ad valorem court fee on the ground that the plaintiffs have sought declaration being coparceners in the joint Hindu Family property and the challenged to the gift deeds is ancillary-contention of defendants that since the challenge is to the gift deeds in the suit, ad valorem court fee is required to be affixed-contention not tenable.

5. Hence in view of these judgment. No ad valorem court fee is required to be affixed. The court fees affixed is correct and valid. Hence application in hand stands dismissed. Now to come up on 25.02.2016 for filing written statement.”

Learned counsel for the petitioner has challenged the aforesaid order and claimed that once a gift deed has been challenged, the plaintiff is required to affix the ad valorem court fee of the market value.

I have considered the submission made by learned counsel for the petitioner.

The contention of learned counsel for the petitioner cannot be accepted as it is admitted position on record that the alleged gift deed was executed by Sita Ram in favour of defendant No.1. Plaintiff is admittedly a non-executant of the gift deed. Hence, he is not required to pay ad valorem court fee for seeking declaration that the document does not affect his rights. Plaintiff can certainly maintain a suit for declaration that the aforesaid gift deed is not binding on his

Hon'ble the Supreme Court of India in the judgment reported as **“Suhrid Singh @ Sardool Singh Vs. Randhir Singh” AIR 2010 SC 2807** has laid down that a non-executant is not required to pay ad valorem court fee.

Further the revision petition filed by the defendant-petitioner is not maintainable in view of the judgment passed by the Hon'ble Supreme Court of India reported as **“Rathnavarmaraja Raja Vs. Smt. Vimla” AIR 1961 SC 1299**. It was held by Hon'ble the Supreme Court of India that the question of payment of ad valorem court fee is between the plaintiff and the State. It was held that defendant has no right to move the superior Court under Section 115 of the Code of Civil Procedure.

Learned counsel for the petitioner has come up with the arguments that the aforesaid judgment is applicable for deciding the maintainability of the revision under Section 115 CPC. Learned counsel for the petitioner further submitted that the present revision petition is under Article 227 of the Constitution of India.

In my considered view, once the revision petition under Section 115 CPC was held to be not maintainable, the power of superintendence to interfere in the interim order (under Article 227 of the Constitution of India) would not stand enlarged in normal circumstances. Therefore, the revision petition filed by the defendant- petitioner is held to be not maintainable.

Accordingly, the revision petition is dismissed on merits as well being not maintainable.

31-07-2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No