

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3995 of 2015
Date of Decision: 13.12.2017

Diwan Singh Through his LR Lakhwinder Singh
.....Petitioner
Vs
Gian Kaur and others
.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Kanwardeep Singh, Advocate
for the petitioner.

Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 05.05.2015 passed by Civil Judge (Junior Division), Karnal whereby application under Order 7 Rule 11 CPC filed by the defendant was allowed on the basis of ratio laid down by the Hon'ble Apex Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(2) RCR (Civil) 564.**

[2]. For better understanding of the case, para No.6 of the aforesaid judgment reads as under:-

“6. 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 non-est,

or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. 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 ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is 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 ad-valorem court fee as provided under [Section 7\(iv\)\(c\)](#) of the Act. [Section 7\(iv\)\(c\)](#) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any

property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of [Section 7](#).

[3]. Plaintiff filed a suit for declaration along with consequential relief of permanent injunction, challenging the sale deed executed by him. By way of declaratory suit, the plaintiff sought cancellation of the sale deed of which he himself was an executant.

[4]. In para No.5 of the plaint, the plaintiff pleaded that defendant No.7 namely Narinder Kaur is his daughter. One Paramjit Singh @ Pammy had developed illicit relations with Narinder Kaur. Narinder Kaur eloped with Paramjit Singh @ Pammy on 23.03.1992. Plaintiff got registered rapat in the police on 26.03.1992. Later on, it was discovered that they have performed marriage. Since 23.03.1992, there was no family relations of plaintiff's family with Narinder Kaur or with her husband and families were not in speaking terms.

[5]. In para No.9 of the plaint, plaintiff pleaded the fact conversely and contradicted the pleadings made in para No.5 of the plaint when he pleaded that on 23.07.2013, Narinder Kaur approached his wife and stated that she has received a telephonic message from village Sohlo that gas connection in the name of the plaintiff has been sanctioned by Nilokheri Gas Agency Indane Distributor, Nilokheri (Karnal) and the distributor

had conveyed to her to collect the gas connection from the agency. She insisted that the plaintiff should go to Nilokheri to collect the same. Thereafter, the plaintiff pleaded some incriminating allegations qua defendant No.7 in obtaining his signature under the pretext of furnishing an affidavit with the agency to the effect that the plaintiff has no other gas connection anywhere in India. Plaintiff further pleaded that Narinder Kaur along with Dalip Singh etc took the plaintiff to some Dera in the evening where Dalip Singh and Narinder Kaur persuaded the plaintiff to stay in the house of Dalip Singh. Dalip Singh and Charan Singh etc. served liquor to the plaintiff after mixing some intoxicant and the plaintiff became senseless. In the next morning i.e. on 24.07.2013, Narinder Kaur took the plaintiff to Tehsil office along with Dalip Singh, Joginder Singh Namberdar, Charan Singh and Mehar Singh and got the affidavit of the plaintiff prepared from a deed writer. Plaintiff was made to sit at some distance from the table of the deed writer. After getting the alleged document typed i.e. affidavit, they got the thumb impressions of the plaintiff on the typed papers which were not read over to the plaintiff. Plaintiff alleged that in fact due to manipulation and fabrication, the sale deed was executed on 25.07.2013 on the pretext of attestation of affidavit. Plaintiff pleaded that the sale deed was *void ab initio* and was an act of fraud wherein 4 kanals of land was shown to be sold,

out of share of the plaintiff allegedly for a consideration of Rs.10 lacs in favour of Gian Kaur (defendant No.1) and it was also fraudulently mentioned that the possession of the land was delivered to said Gian Kaur (alleged vendee). Plaintiff further pleaded that no consideration was paid to him. Following prayer was made in the plaint:-

“ It is, therefore, prayed that a decree for declaration may kindly be passed in favour of the plaintiff and against the defendants to the effect that the alleged sale deed No.680/1 alleged to be executed on 24.07.2013 and registered on 25.07.2013, is bogus, sham and nullity transaction and it does not affect the ownership right of the plaintiff in any manner whatsoever and the same may kindly be cancelled/set aside and the plaintiff be declared in possession of share of the land as detailed in paras No.6 and 9 of the plaint above as well as in jamabandi for the year 2010-11. The plaintiff be also awarded a decree for permanent injunction as consequential relief, restraining the defendant No.1 and 2 from alienating the said land under the pretext of the alleged sale deed No.680/1 dated 24/25.07.2013, and also restraining them from interfering in the peaceful possession of the plaintiff over the land in dispute in any manner whatsoever, along with costs of the suit.”

[6]. Perusal of the prayer clause would show that the sale deed in question was sought to be cancelled/set aside by the plaintiff by way of declaratory suit.

[7]. Learned counsel for the petitioner relied upon **Pushpa Rani and others Vs. Usha Rani and others, 2016(4) RCR (Civil) 346, Bal Kishan Vs. Om Parkash, 1986(2) RCR (Rent) 551, Kedar Nath Methi Vs. Mithan Lal (since deceased) through his legal representatives Smt. Saraswati Devi and others, 2009(1) RCR (Rent) 7, M/s Gian Chand Vs. Balbir Kumar etc., 1995(2) RCR (Rent) 48, Paramjit Kaur @ Pami and another Vs. Mohinder Singh and others, 2011(2) PLR 438, Bhagwan Kaur and others Vs. Amrik Singh and others, 2006(4) RCR (Civil) 531, Teja Singh Vs. Smt. Amar Kaur and others, 2008(1) PLR 209, Sita Wanti Vs. Yash Pal Singh @ Jaspal Singh, 2006(4) RCR (Civil) 564, Surinder Singh and others Vs. Narinder Singh, 2010(4) CivCC 83, Kulwinder Kaur Vs. Sukhwant Singh, 2010(3) CivCC 373, Harmail Singh Vs. Gurmail Singh and others, 2009(4) RCR (Civil) 323, Suhrid Singh @ Sardool Singh's case (supra), Prince Minor through his mother and natural guardian Smt. Rekha Vs. Suresh Kumar and others, 2008(4) RCR (Civil) 430, Khajan Vs. J.S.R. Land Developer Pvt. Ltd. and others, 2011(3) PLR 364, Manzoor Ahmed Vs. Jaggi Bai and others, 2010(1) RCR (Civil) 356, Narinder Kumar Vs. Naresh Kumar and others, 2011(2) PLR 547** and contended that after the death of the plaintiff, the legal representatives have inherited the

property in their individual capacity being co-sharers and therefore, no *ad valorem* court fee is required to be paid.

[8]. Perusal of the aforesaid judgments shows that these judgments have no application to the facts of the present case.

In **Pushpa Rani and others' case (supra)**, parties were legal heirs of common ancestors. A decree was questioned in favour of the defendants therein to which plaintiffs were not the party. Plaintiffs claimed joint possession therein. In the facts and circumstances of the case, it was observed that in the event of grant of declaration on the basis of merits, joint possession will be an automatic mechanism as every co-sharer would be deemed to be in possession of every inch of joint property till land is partitioned by metes and bounds. No co-sharer can be presumed to be in possession of separate part of joint property unless he is proved to be in exclusive possession to the ouster of other co-sharers. **Bal Kishan's case (supra)**, **Kedar Nath Methi's case (supra)** and **M/s Gian Chand's case (supra)** have no applicability as facts are entirely different and the said cases are relating to eviction proceedings and impleadment of legal representatives. **Paramjit Kaur @ Pami and another's case (supra)** was relating to Section 7(iv) (f), (iv) (c) and was not relating to first principle as laid down in **Suhrid Singh @ Sardool Singh's case (supra)**. Similarly other cited precedents

were also not related to first principle as laid down in **Suhrid Singh @ Sardool Singh's case (supra)**. The argument that the sale deed was *void ab initio*, therefore the *ad valorem* court fee was not payable in view of **Manzoor Ahmed's case (supra)** cannot be accepted inasmuch as that the plain reading of the plaint would show that the plaintiff himself has pleaded contradictory stand in para No.5 and para No.9 of the plaint.

[9]. In view of **Suhrid Singh @ Sardool Singh's case (supra)**, if the executant of a deed/instrument seeks cancellation of the same, he has to pay *ad valorem* court fee on the consideration shown in the deed/instrument. Since the plaintiff himself was the executant of the sale deed, therefore, according to first principle as laid down in **Suhrid Singh @ Sardool Singh's case (supra)**, he has to pay *ad valorem* court fee on the consideration shown in the sale deed.

[10]. Even in case of fraud, the Hon'ble Apex Court in **Civil Appeal No.8880 of 2015** arising out of **SLP(C) No.16313 of 2015** titled **M/s Omax Construction Ltd. Vs. Dharam Singh and others** decided on 26.10.2015 has held that in case of fraud, the plaintiff has to affix *ad valorem* court fee. In the aforesaid civil appeal, the order dated 12.03.2015 passed by the High Court in CR No.4067 of 2012 was reversed.

[11]. Apparently, the plaintiff was the executant of the sale

deed and the suit was filed, seeking to annul the sale deed by way of cancellation of the same. The ratio laid down in **Suhrid Singh @ Sardool Singh's case (supra)** was followed by Division Bench of this Court in **Tarsem Singh and others Vs. Vinod Kumar and others, 2011(31) RCR (Civil) 709**. The view expressed by this Court in **CR No.4067 of 2012** titled **Dharam Singh and others Vs. M/s Omax Construction Ltd.** decided on 12.03.2015 stands reversed by the Hon'ble Apex Court in aforesaid Civil Appeal No.8880 of 2015 vide order dated 26.10.2015.

[12]. For the reasons recorded hereinabove, I do not find any error of jurisdiction or perversity in the impugned order dated 05.05.2015 passed by Civil Judge (Junior Division), Karnal. This revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

13.12. 2017

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No