

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

**CR No.5091 of 2014
Date of decision:3.3.2017**

Jakariya and another

...Petitioners

Versus

Smt.Mamuna and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Amit Jain, Advocate for the petitioner.
Mr.Arvind Kashyap, Advocate for respondent No.1.

RAMESHWAR SINGH MALIK, J. (Oral)

Present civil revision petition, at the hands of plaintiffs, is directed against the order dated 4.7.2014 passed by the learned trial court, whereby application filed by the defendants under Order 7 Rule 11 of the Code of Civil Procedure ('CPC' for short) was allowed, directing the plaintiffs-petitioners to pay *ad valorem court fees*, as per the consideration of impugned sale-deed, in their suit for declaration with consequential relief of permanent injunction.

Notice of motion was issued and in the meantime, operation of the impugned order was stayed. However, further proceedings before the learned trial Court were ordered to continue.

Heard learned counsel for the parties.

A bare perusal of the impugned order would show that the learned trial Court misdirected itself, while completely misreading the true facts of the case and also true import of Section 7 of the Court Fees Act, 1870 ('the Act' for short). In fact, the impugned order has been found

running contrary to the law laid down by the Hon'ble Supreme Court as well as this Court in more than one judgments on the issue.

So far as the facts of the case are concerned, these are hardly in dispute. Plaintiffs-petitioners have challenged the validity of sale-deed No.4845 dated 30.1.2012 in favour of defendants No.1 to 3, having been allegedly executed by defendant No.4 on the basis of a false, forged and fabricated power of attorney. Once the plaintiffs-appellants have taken specific averments in this regard in their plaint, then they cannot be said to be party to the sale-deed by any stretch of imagination. However, the learned trial Court proceeded on a factually incorrect and wholly misconceived approach, observing in the impugned order that plaintiffs were party to the impugned sale-deed. Since the learned trial Court proceeded on this factually incorrect assumption, the impugned order has caused manifest injustice to the plaintiffs-petitioners and the same cannot be upheld.

Once it is specifically pleaded case of the plaintiffs that the impugned sale-deed was based on fraud, allegedly executed by defendant No.4 in favour defendants No.1 to 3, on the basis of a forged and fabricated power of attorney, plaintiffs were neither executant nor party to the impugned sale-deed and under such fact situation, they were not required to pay *ad valorem* court fee. Having said that, this Court feels no hesitation to conclude that since the learned trial Court has completely misread the facts and misunderstood the relevant provisions of law, the impugned order has been found suffering from patent illegality and perversity, which cannot be upheld, for this reason also.

The above-said view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court as well as this Court :-

1. **Suhrid Singh alias Sardool Singh Vs. Randhir Singh and others, (2010) 12 SCC 112**
2. **Jasbir Singh Vs. Ajit Singh, 2002 (3) RCR (Civil) 418 (P&H);**
3. **Pawan Kumar and another Vs. Banwari and others, 2008(4) RCR (Civil) 572 (P&H);**
4. **Surjit Singh Vs. Karamjit Kaur, 2012 (3) RCR (Civil) 364 (P&H);**
5. **Smt.Santosh Malhan and another Vs. Naina Devi and others, 2014 (1) PLJ 237 (P&H);**
6. **Gulzar Singh Vs. Balwant Singh and others, 2014 (1) PLJ 578 (P&H);**
7. **Civil Revision No.3811 of 2009 (Kuldeep Singh and others Vs. Smt.Kussam and others), decided on 6.8.2010.**
8. **Civil Revision No.6277 of 2013 (Smt.Mahadevi Vs. Hari Kishan and others), decided on 21.8.2015.**
9. **Civil Revision No.7196 of 2016 (Bhupender Singh Vs. Balkar Singh (now deceased) through his Lrs and others), decided on 24.1.2017.**

During the course of hearing, learned counsel for respondent-No.1 could not raise any meaningful argument in support of the impugned order passed by the learned trial Court. In fact, since the impugned order passed by the learned trial Court is contrary to the law laid down by the Hon'ble Supreme Court as well as this Court, learned counsel for the respondent was rightly feeling handicapped in this regard and rightly so, it being a matter of record. Despite making his best efforts, he could not

defend the impugned order as the same has been found suffering from patent illegality.

No 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 passed by the learned trial Court is a patently illegal order and has also been found running contrary to the law laid down by the Hon'ble Supreme Court as well as this Court, the same cannot be sustained. Accordingly, the impugned order is hereby set aside. The revision petition deserves to be accepted.

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

3.3.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No