

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 5008 of 2017 (O&M)
Date of Decision: 29.9.2017

Raj Rani

.....Petitioner

Versus

Kamlesh @ Meena and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Ms. Ekta Thakur, Advocate
for the petitioner.

ANITA CHAUDHRY, J

CM-17217-CIL-2017

Application is allowed for the reasons stated therein.

Annexure A-1 is taken on record.

CR-5008-2017 (O&M)

The petitioner is aggrieved by the order dated 24.5.2017 whereby the application filed by the defendant was dismissed by the Civil Judge (Junior Division), Dera Bassi.

Few facts are essential. The plaintiff filed a suit seeking declaration that she was the owner in possession of 5/320 share in the land fully detailed in the heading of the plaint and the sale deeds in respect of her share and the subsequent mutations entered on the basis of sale deeds were illegal and not binding upon her. She also sought a decree for injunction restraining the defendants from dispossessing her or raising any construction over the property in dispute.

The defendants filed an application seeking directions to the

plaintiff to affix the ad valorem Court fee which has been dismissed by the lower Court relying upon '**Suhrid Singh alias Sardool Singh versus Randhir Singh and others 2010(2) CCC 510 (SC)**'. Para 6 of the order reads as under:-

“The plaintiff through the present suit seeking the declaration that she is the owner in possession of the suit land in respect of 5/320 share as detailed in the head note of the suit by also challenging the execution of sale deeds dated 23.01.2009, 02.1.2006 and 04.8.2004 in respect of the said share not executed by the plaintiff. Rather as per the plaintiff's case sale deed dated 7.9.05 was executed by Pushpa, sale deed dated 23.01.2009 was executed by defendant no. 1 from defendants no. 2 and then defendant No. 2 got executed the sale deed dated 02.1.2006 from defendant No. 3 who got a sale deed dated 04.8.2004 executed from Pushpa on the basis of power of attorney Smt. Pushpa. Hence it is clear that the plaintiff is not the executant of the sale deeds under challenge. If it so then, I am of the view that she is not liable to affix the advelorem court fee on the basis of the sale consideration amount of the said sale deeds. Reliance in this regard can be placed on judgment titled as “Santosh Mahalan and another Vs. Naina Devi and others, reported as 2014(3) CCC, Page 157 (P&H)”. In the said judgment of Hon'ble Punjab & Haryana High Court also discussed the law laid down in the judgment titled as “Suhrid Singh alias Sardool Singh Vs. Randhir Singh and others, 2010(2) CCC 510 (SC).” Accordingly, the present application cannot be allowed invoking the provisions under Order 7 Rule 11 CPC on the grounds as taken therein, the present application is hereby dismissed. Now to come up on 11.07.2017 for producing entire PWs.”

The petitioner was asked to place on record the issues framed

it is found that a specific issue was also framed with respect to the Court fee.

I have heard the counsel for the petitioner at length.

The counsel has relied upon **Satwinder Kaur @ Satinder Kaur versus Surjeet Singh and others 2007(2) R.C.R (Civil) 195.**

The issue has been settled in **Suhrid Singh's** case (supra) and it would be necessary to reproduce paras 4 and 6 which read as under:-

4. *The limited question that arises for consideration is what is the court fee payable in regard to the prayer for a declaration that the sale deeds were void and not 'binding on the co-parcenary', and for the consequential relief of joint possession and injunction.*

5. x x x x x

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](#).

It has been held above that where a party sues for declaration that the sale deed is null and void and not binding upon him/her and he is not party to the sale deed, then the ad valorem Court fee is not payable but where the consequential relief of possession is also claimed along with the declaration regarding the sale deed then the Court fee will have to be paid as provided under Section 7 of the Court Fee Act.

I find no infirmity in the order passed by the Court below.

The revision petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

September 29, 2017
Gurpreet

Whether speaking/reasoned : **Yes**
Whether reportable : **No**