

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

CR No. 5270 of 2017(O&M)

Date of decision: 30.8.2017

Gurcharan Singh

....Petitioner

VERSUS

Shish Pal and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.P.S. Virk, Advocate for the petitioner.

REKHA MITTAL, J.

The present petition directs challenge against order dated 13.07.2017 passed by the Civil Judge (Junior Division), Karnal whereby application filed by the respondents/defendants under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter to be referred as 'Code') has been allowed and the petitioner/plaintiff has been directed to affix advalorem Court fee on the value of property on the date of execution of transferred document.

The petitioner/plaintiff has filed a suit for declaration and permanent injunction claiming himself to be owner in possession of land measuring 4 bighas situated at Kasba Karnal, detailed in head-note of the plaint. Plea of the petitioner/plaintiff is that he wanted to send his daughter Imminder Kaur abroad and was in need of money. Jaipal – respondent No.2 agreed to provide financial assistance of Rs.5 lakh on interest at the rate of 2% per month and asked the plaintiff to execute a security document of his land measuring 2 bighas in favour of his brother Shish Pal

– respondent No.1. The petitioner agreed to execute a lease agreement in favour of respondent No.1 as per the settlement sought to be pleaded in para 4 of the plaint. It is averred that respondent No.2 took the petitioner to tehsil premises Karnal for executing lease agreement but got signed some blank and printed documents from the petitioner on 15.07.2015. The petitioner returned the amount to the respondents/defendants with interest at the rate of 2% per month on 27.09.2015 and requested for return of original lease deed but the respondents assured that they will cancel/tear the same.

On 08.10.2015, he received a legal notice dated 06.10.2015 sent by respondent No.1 through Sh. S.N. Bhardwaj, Advocate calling upon the petitioner to get NOC from the office of DTPO Karnal and get the sale deed executed and registered in terms of agreement to sell dated 15.07.2015. The petitioner responded to the said legal notice on 09.10.2015 through his counsel Sh. Pardeep Vohra, Advocate wherein he denied execution of the agreement to sell and requested respondent No.1 to withdraw the notice. Thereafter, a Panchayat was convened and respondents admitted receipt of Rs.5 lakhs along with interest which was paid to the petitioner. They further disclosed that respondent No.1 marked his presence by way of affidavit on 15.10.2015 and the agreement can be cancelled from tehsil Karnal. The defendants handed over the original documents i.e. agreement to sell dated 15.07.2015 and affidavit dated 15.10.2015 and called the plaintiff at tehsil premises Karnal on 24.11.2015 for cancellation of the alleged agreement to sell dated 15.07.2015.

On 24.11.2015, respondent No.2 came to house of the petitioner and took him to tehsil premises Karnal for cancellation of the agreement and on asking of the respondents, petitioner thumb-marked the

already typed documents in good faith on account of cancellation of the agreement. In the month of July 2016, petitioner received summons from the Court of Civil Judge (Junior Division), Karnal in the civil suit **Shish Pal Vs. Gurcharan Singh** and was surprised to know that the respondents in connivance with each other and revenue officials played fraud upon him. They instead of cancellation of agreement dated 15.07.2015 obtained sale deed No.6492/1 dated 24.11.2015 in favour of respondent No.1 and got the mutation entered and sanctioned in favour of respondent No.1 at Sr. No.41907 which are illegal, null and void, ineffective, inoperative and not binding upon rights of the petitioner on the premise that he neither executed any agreement of sale nor sale deed dated 24.11.2015 nor received Rs.35,13,150/- from Shish Pal on 15.07.2015 or Rs.15,00,000/- from respondent No.1 on 24.11.2015.

The respondents/defendants filed the instant application under Order 7 Rule 11 of the Code for rejection of plaint for want of payment of advalorem Court fee on the value mentioned in the sale deed as the petitioner/plaintiff has appended fix Court fee of Rs.25/-. The petitioner filed reply to the application that sale deed dated 24.11.2015 is the result of fraud and plaintiff is still in possession of suit property, therefore, Court fee has been assessed correctly as per law.

After having heard counsel for the parties in the light of materials on record, by relying upon judgment of Hon'ble the Supreme Court in **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010(2) CCC 510**, the trial Court in view of its observations recorded in para 6 of the impugned order allowed the application and directed the petitioner /plaintiff to affix Court fee as directed in the penultimate para.

Counsel for the petitioner has assailed the impugned order primarily on two counts. The first submission made by counsel is that as the petitioner has not prayed for any consequential relief much less relief of possession while claiming declaration qua sale deed in question being null and void, ineffective, inoperative and not binding on rights of the petitioner, he is not liable to pay advalorem Court fee. For this purpose, he has referred to Full Bench judgment of this Court **Niranjan Kaur Vs. Nirbigan Kaur, 1982 PLR 127.** Further reference has been made to judgments of Single Bench **Krishna Devi and another Vs. Jaswant Singh, 2006(4) RCR (Civil) 563,** **Teja Singh Vs. Smt. Amar Kaur and others, 2008(1) PLR 209.**

The second submission made by counsel is that as the petitioner has sought cancellation of the sale deed having been obtained by the respondents by practicing fraud, petitioner is not liable to pay advalorem Court fee. For this purpose, he has referred to judgments of this Court **Rambai Vs. Kapoori and another, 2014(4) RCR (Civil) 376** and **Tarun Kumar and others Vs. Pankaj Kapoor and others, CR No.3824 of 2014, decided on 03.12.2015.**

Counsel has further submitted that in case this Court does not intend to agree with the judgments rendered by a Co-ordinate Bench, the matter may be referred to a Larger Bench for decision. In this context, reference has been made to judgment of Hon'ble the Supreme Court of India **State of Bihar Vs. Kalika Kuer, Kalika Singh and others, AIR 2003 SC 2443.**

I have heard counsel for the petitioner, perused the paper-book and the various judgments cited at bar.

Before adverting to the submissions made by counsel for the petitioner, it is pertinent to note that the Full Bench decision in **Niranjan Kaur's case** (supra) and Single Bench decisions in **Krishna Devi and another's case** (supra) and **Teja Singh's case** (supra) were rendered much prior to decision of Hon'ble the Supreme Court of India in **Suhrid Singh @ Sardool Singh's case** (supra) relied upon by the trial Court. Under the circumstances, the petitioner cannot derive any advantage to his contentions from the judgments rendered prior to judgment of Hon'ble the Supreme Court in **Suhrid Singh @ Sardool Singh's case** (supra).

Much stress has been laid by counsel for the petitioner that as the petitioner has sought cancellation of sale deed by raising a plea of fraud, petitioner is not liable to pay advalorem Court fee by relying upon judgments of two Co-ordinate Benches in **Rambai's case** (supra) and **Tarun Kumar's case** (supra). In **Rambai's case** (supra), the Court has noticed in para 7 of the judgment that the petitioner was more than 100 years old Parida Nashin lady. She was earlier married with one Tarif after whose death, she did Karewa marriage with one Ramphal from which marriage two daughters (now married) were born to her. She was residing in her parental house whereas land measuring 7 kanal 4 marlas is located in village Sikanderpur, Tehsil and District Jhajjar. This land had come to her from her earlier husband Tarif but was being cultivated by her subsequent husband Ramphal who had five sons out of whom Ram Narain has died and is survived by his three sons. Contention of the petitioner before the Court was that she is more than 100 years old and is moving from pillar to post seeking relief against fraud played upon her by Jai Bhagwan, one of the sons of Ram Kishan son of Ramphal. This Court in view of peculiar facts and circumstances of the case that possession of the land has not been

disturbed and one of the members of the family has prima facie duped and defrauded the petitioner for getting the sale deed executed in his and his wife's name and the only relief sought is declaration by the petitioner who is poor and helpless, Parda Nashin woman held that advalorem Court fee is not payable.

In **Tarun Kumar and others' case** (supra), another Co-ordinate Bench has allowed the petition by relying upon judgment in Rambai's case (supra).

In the case at hand, plea of the petitioner is that the respondents/defendants played fraud upon him by getting an agreement to sell dated 15.07.2015 prepared on the pretext of getting lease deed of two bighas to be executed in favour of respondent No.1 for creating security for repayment of loan of Rs.5 lakhs payable with interest at the rate of 2% per annum. Another plea raised by the petitioner is that he repaid the said amount of loan on 27.09.2015 but the respondents assured that they will cancel/tear the original lease deed. Later, he received a legal notice calling upon the petitioner to execute the sale deed on the basis of agreement to sell but subsequent thereto, the respondents agreed to cancel the agreement to sell and took him to the tehsil premises and got the sale deed in question executed by playing fraud. It is difficult to accept that the respondents have prima facie duped and defrauded the petitioner by getting the sale deed executed. This Court cannot ignore a well known proverb 'once bitten, twice shy'. Had it been true that earlier the respondents prepared an agreement of sale by practicing fraud, the petitioner would have thumb marked/signed the sale deed either before the registering authority or prior thereto without ensuring as the document on which his thumb impressions/signatures are obtained. It is not even the plea raised by

counsel that either petitioner is illiterate or he does not know the language in which sale deed was written/typed. Under the circumstances, the petitioner cannot equate his case with that of Rambai to avoid payment of advalorem Court fee on sale consideration. This apart, in the two judgments referred to by counsel for the petitioner, it has not been laid down as a principle in law that whenever a petitioner raises a plea of fraud to challenge transfer of property, he would not be liable to pay advalorem Court fee.

So far as plea of the petitioner for referring the matter to a Larger Bench is concerned, a Division Bench of this Court in **Tarsem Singh and others Vs. Vinod Kumar and others, 2011(31) RCR (Civil) 709** has answered the reference made by a Single Bench of this Court in view of contradiction in the judgments of this Court **Smt. Beena Vs. Rajinder Kumar and others, 2006(2) RCR (Civil) 449** and **Bijender Singh Vs. Chand Singh, 2009(1) RCR (Civil) 270** and held in para 5 and 6, quoted thus:-

“5. In view of the said example given an example in para No. 6 of the judgment and the finding recorded in para No. 7, we hold as follows:-

- i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.
- ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.
- iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the

value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.

In view of the aforesaid judgment of the Hon’ble Supreme Court, the issue leading to payment of the Court fee is decided in terms of the parameters laid down above. The single bench judgments rendered prior to the Supreme Court judgment mentioned above run counter to the aforesaid view and thus overruled. The Reference is answered accordingly. The Single Bench judgments rendered, so far as they run counter to the aforesaid view, are thus overruled”

As the Division Bench has already decided that if an executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed, there is no question of making reference to a Larger Bench.

For the foregoing reasons, the petition fails and is accordingly dismissed in limine.

AUGUST 30, 2017
‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no