

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

CR No.5674 of 2014 (O&M)
Date of decision : 22.11.2017

Sohan Lal

...Petitioner

Versus

Puneet Kumar Amrohi and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. H.S. Bedi, Advocate for the petitioner.

Mr. Gitish Bhardwaj, Advocate for respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-petitioner is aggrieved of the order dated 02.07.2014 directing the plaintiff to affix the ad valorem Court fees on the market value of the land.

The plaintiff has challenged a registered gift deed dated 09.10.2006 executed by defendant No.1 as general power of attorney of the plaintiff. The trial Court has held that since the plaintiff himself is the Executant of the document and he is seeking cancellation thereof, therefore, ad valorem Court fee is payable as per Article 1 of Schedule 1 of the Court Fees Act, 1870.

Learned counsel for the petitioner has vehemently argued that with regard to the relief of the possession, ad valorem Court fee is not payable in view of the amendment made by the State of Haryana in 1974.

I have considered the submission. However, the learned trial Court has not ordered the payment of the Court fee on the relief of the possession. The amendment by the State of Haryana in the year 1974 only deals with the eventuality when possession is being sought.

In the present case, the plaintiff-petitioner is seeking cancellation of the gift deed in terms of Section 31 of the Specific Relief Act, 1963.

This issue has been examined in detail by the Hon'ble Full Bench in the case reported as *Niranjana Kaur Vs. Nirbigan Kaur*, 1982 PLR 127.

Once again this issue was examined by the Hon'ble Division Bench of this Hon'ble Court in the judgment 2014(1) ICC 1054, *Tarsem Singh and others Vs. Vinod Kumar and others*. Hon'ble Division Bench concluded as under:-

“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 these two authoritative pronouncement, it is amply clear that if a plaintiff is the Executant of the document, then he is required to seek annulment/cancellation thereof and, therefore, he is required to pay the Court fee in accordance with Article 1 of Schedule 1 attached to the Court Fees Act, 1870.

In these circumstances, there is no substance in the present revision petition.

Revision petition is dismissed.

In view of the fact that there was interim order operating during the pendency of the revision petition and in the meantime, the time for deposit of the Court fee has elapsed, this Court deem it appropriate to grant a period of another one month from today to make good the deficiency in the deposit of the Court fee payable.

All the pending miscellaneous applications are disposed of, in view of the aforesaid order.

22.11.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No