

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

**Civil Revision No.6929 of 2015 (O&M)
Date of decision:17.11.2017**

Prithi Singh

... Petitioner

Vs.

Baldev Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.S.Budhwar, Advocate
for the petitioner.

Ms. Dolly Shivani, Advocate
for respondents No.2, 3 and 4.

AMIT RAWAL J.

Petitioner/plaintiff is in revision petition against the impugned order dated 10.09.2015 (Annexure P-4), whereby, upon acceptance of the application under Order 7 Rule 11 CPC moved by respondent/defendant No.5 for rejection of the plaint, the plaintiff has been called upon to pay the court fees on the consideration of the documents.

Mr. R.S.Budhwar, learned counsel for the petitioner/plaintiff submitted that as per the relief sought in the plaint (Annexure P-1), the court fees as reflected in paragraph 11, has rightly been paid. The trial Court has not taken into consideration the provisions of Section 7 (v)(a) of the Court Fees Act, 1870 (hereinafter referred to as "1870 Act") and as well as the amendment caused by the Haryana Government in the aforesaid Act. The court fees has to be paid keeping in view the relief sought in the plaint and not on the asking of the defendants. Similar kind of dispute had arisen in

CR No.3054 of 2013, whereby, this Court, vide order dated 22.10.2013 the plaintiff therein was directed to pay the correct court fees.

He further submitted that in fact, pith and substance in the suit vis-a-vis was challenge to the judgment and decree dated 25.11.1985 executed by Sunder Singh deceased father of the plaintiff in favour of his sons/defendants No.2 to 4 and his brother-Rishal Singh (since deceased) with their undue influence. The aforementioned decree was passed in civil suit no.1178 of 1985 and on the basis of the said judgment and decree, mutation no.175 dated 2.9.1987 was entered and sanctioned in the names of defendants No.2 to 4 and Rishal Singh as the nature and character of the property at the hands of Sunder Singh was ancestral. Rishal Singh had executed a subsequent decree dated 25.1.1988 in favour of Baldev Singh/defendant No.1, which was also nonest in the eyes of law. As per the subsequent decree aforesaid, mutation no.182 was also entered and sanctioned on 15.09.1989. Defendant No.1 had executed two sale deeds bearing Nos.914/1 and 915/1 both dated 29.12.2009 in favour of defendant No.5, which have also been challenged on the grounds stated in the suit, therefore, the plaintiff is not liable to be pay the ad valorem court fees.

He also submitted that as per the judgment of learned Single Bench in **Smt. Beena and others vs. Rajinder Kumar and others 2006 (2) RCR (Civil) 449**, the Haryana Government had caused amendment in Indian Court Fee Act, 1870, whereby, the court fee is to be paid ten times of the revenue so payable. This is what has been paid and therefore, the finding of the trial Court vis-a-vis calling upon the plaintiff to pay the ad valorem court fee on the sale consideration is not sustainable in the eyes of law.

As per the order dated 15.12.2016, contesting respondents have been served but there is no representation on behalf of respondent No.5 except respondents No.2, 3 and 4 being represented through Ms. Dolly Shivani, Advocate. Accordingly, I proceeded further to decide the revision petition.

On the other hand, Ms. Dolly Shivani, learned counsel for respondents No.2, 3 and 4 submitted that the judgment rendered in **Smt. Beena's case (supra)** is no longer a good law and by differing with the judgment cited in aforesaid case rendered by other co-ordinate Bench in **Rajinder Parshad vs. Shamsheer Singh 1967 PLR 445**, the matter was referred to the Division Bench. The Division Bench in **Tarsem Singh and others vs. Vinod Kumar and others 2014(1) ICC 1054** held that view explained in **Beena (supra)** was not correct appreciation of law and relied upon the ratio decidendi culled out by the Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010 AIR (SC) 2807**. She, thus, urged that the order under challenge is perfectly legal and justified, much less the same cannot be said to have been passed without jurisdiction.

I have heard learned counsel for the parties and appraised the paper book.

For appreciating the controversy with regard to the payment of ad valorem court fees, it would be apt to reproduce the relief sought in the plaint and paragraph 11 qua affixation of the court fees at the instance of plaintiff which read thus:-

“It is, therefore, respectfully prayed that a Decree for Declaration to the effect that impugned judgments and decrees dated 25.11.1985 passed in civil suit No.1178/85 by Sh. L.N.Mittal, the then learned SSJ, Kurukshetra and the subsequent impugned judgment and decree dated 25.1.1988 passed by Sh. S.C.Dureja, the then learned SSJ, Kurukshetra in civil suit no.79/1988 and the subsequent sale deeds No.914/4 and 915/1 both dated 29.12.2009 and mutations No.175, 182 and 1732 and 1734 and subsequent revenue entries recorded on the basis of above said judgments and decrees and sale deeds in favour of the defendant may kindly be declared as illegal, null and void and not bindings on the rights of the plaintiff in any manner and plaintiff may also be declared as owner of the suit land mentioned in the para no.1 of plaint alongwith consequential relief of possession and permanent injunction for restraining the defendants not to alienating, transferring, mortgaging, interfering in any manner on the basis of the alleged documents may kindly be passed in favour of the plaintiff against the defendants alongwith mandatory injunction by directing the revenue authorities to correct the revenue record regarding the suit land as per the final decision of the present case in favour of the plaintiff, in the interest of justice.

Any other relief for which the plaintiff is found entitled during the pendency of the present suit, may also be granted to

him.”

11. That the value of the suit for the purposes of court fee and jurisdiction is ₹400/- and hence a court fee stamp worth ₹10/- is affixed on the plaint.”

No doubt the amendment of 1974 provided the payment of court fee ten times of the revenue, where the plaintiff has sought possession of the land but the aforesaid fact was irresistibly pondered upon by this Court in Smt. Beena's case (supra) . However, on reference of the matter to the Division Bench, it has been laid down that vis-a-vis court fees, in case the plaintiff seeks the cancellation of the deed, he has to pay the ad valorem court fee. For the sake of brevity, the principles enumerated in the judgment rendered by the Hon'ble Supreme Court in Suhrid Singh@ Sardool Singh's case (supra) are reproduced hereinbelow:-

“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."

Thus, the view rendered in Smt. Beena' case (supra) would not be applicable in this case and the finding given by the trial Court vis-a-vis calling upon the plaintiff to pay the court fee as per the relief sought indicated above is correct appreciation of law and such order cannot be faulted with.

Since the matter is pending in this Court, the petitioner/plaintiff is given another 30 days time for payment of court fee failing which the trial Court shall proceed further with the case in accordance with law.

Resultantly, the revision petition stands dismissed.

(AMIT RAWAL)
JUDGE

November 17, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No