

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

CR No.7207 of 2015

Date of decision :01-08-2017

Ram Avtar

...Petitioner

Versus

Santosh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vikas Mohan Gupta, Advocate
for the petitioner.

Mr. Ram Kumar Saini, Advocate
for respondent No.1.

ANIL KSHETARPAL, J.(Oral)

Plaintiff-petitioner has filed the present revision petition against order dated 28.08.2015 whereby the trial court while deciding application under Order 7 Rule 11 CPC had directed plaintiff to pay ad valorem court fee. It is admitted position on record that the plaintiff is a non-executant and the sale deed was executed by his father. As per judgment of Hon'ble the Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh**” AIR 2010 SC **2807**, a non-executant is not required to pay ad valorem court fee.

A Division Bench judgment of this Court in CR No.4753 of 2005 titled **Tarsem Singh and others v. Vinod Kumar and others**, decided on 15.07.2011 while relying upon the judgment of Supreme Court in Suhrid Singh's case (supra) has held 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.”

If the non-executant filed a suit for declaration that suit cannot be considered as a suit for cancellation of a documents, in terms of Section 31 of the Specific Relief Act. As such, the plaintiff is entitled to maintain a suit that the sale would have no adverse effect on his rights or the sale is not binding on his rights. It has further been concluded that in case a non-executant challenges the sale deed, ad valorem court fee is not payable.

Further it is admitted position on the record that earlier similar application was moved and the same was dismissed.

In view of the aforesaid facts, the revision petition is allowed and the order dated 28.08.2015 is set aside.

Revision petition is allowed.

01-08-2017
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(ANIL KSHETARPAL)
JUDGE

Whether Speaking/reasoned : Yes
Whether Reportable : No