

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CR No.7147 of 2017

Date of decision: 13.10.2017

**Balwinder Kaur**

**... Petitioner**

**Vs.**

**Gurdip Kaur and others**

**... Respondents**

**CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present: Mr. D.K. Bhatti, Advocate  
for the petitioner.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

Present civil revision petition under Article 227 of the Constitution of India, filed at the hands of defendant No.3, is directed against the order dated 24.08.2017 passed by the learned trial Court, whereby her application under Order VII Rule 11 of the Code of Civil Procedure, seeking a direction to the plaintiff to pay ad-valorem Court fee, was dismissed.

Heard learned counsel for the petitioner.

Before proceeding further, it is pertinent to notice the relevant observations made by the learned trial Court in para 3 of the impugned order, which are based on sound reasons, besides supported by the law laid down by the Hon'ble Supreme Court and the same read as under: -

*“Perusal of record reveals that in the present case, the plaintiffs have sought the relief of declaration along with permanent*

*injunction. Although, the defendant No.3 through this application has challenged the amount of court fee affixed by the plaintiffs. However, from the perusal of sale deed under challenge in the present suit reveals that the plaintiffs are not a party to the same. In these set of circumstances, it has been held by the Hon'ble Apex Court in Surhid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 (2) Civil Court Cases 510 (SC) that in case of cancellation of deed sought by non-executant and he is in possession, he has to sue for declaration that the deed is null and void and does not bind him or his share and he has to pay merely a fixed court fee. Similarly in Surinder Singh and others Vs. Narinder Singh, 2010 (4) Civil Court Cases 083 (P&H) it was held by the Hon'ble High Court suit for declaration that sale deed is null and void -plaintiff not a party to the sale deed -plaintiff not seeking possession-plaintiff not required to pay ad-valorem court fee – order dismissing application under Order 7 Rule 11 CPC upheld. In the present case, the plaintiffs have challenged the execution of a sale deed dated 30.08.2006. It is further averred by the plaintiffs that they are in possession of the suit property. In these set of circumstances, when the plaintiffs are in alleged possession of the suit property and have not sought possession of the same, rather have challenged the sale deeds and power or attornies, in which they are not a party then this court is of the considered opinion that the requisite court fee has already been affixed by the plaintiffs and the present application filed by defendant No.3 under Order VII*

*Rule 11 CPC for rejection of plaint on the ground of non affixation of the court fee stands disallowed.”*

So far as the undisputed fact situation obtaining on record of the case in hand is concerned, plaintiffs are admittedly not claiming any relief of possession. They have filed a suit for declaration with permanent injunction. It is also not in dispute that plaintiffs were not party to the sale deed, which is under challenge. Under these undisputed circumstances, no fault can be found with the impugned order passed by the learned trial Court and the same deserves to be upheld.

So far as the judgment relied upon by learned counsel for the petitioner in **Boda Ram Vs. Beermati Devi and others, 2014 (2) Civil Court Cases 818** is concerned, there is no dispute about the observations made therein. However, on close perusal of the cited judgment, the same has not been found of any help to the petitioner, being distinguishable on facts. Further, it is settled proposition of law that peculiar facts and circumstances of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausund Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.**

A bare perusal of the impugned order passed by the learned trial Court would also show that not only the true facts of the case but even the law laid down by the Hon'ble Supreme Court as well as this Court has been rightly

followed by the learned trial Court, before passing the impugned order. Having said that, this Court feels no hesitation to conclude that the learned trial Court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner could not point out any patent illegality or perversity in the impugned order, which may warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. The impugned order passed by the learned trial Court has been found based on sound reasons and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since no illegality or perversity has been found in the impugned order, the same deserves to be upheld. The revision petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No ground for interference has been made out.

Resultantly, with the abovesaid observations made, present revision petition stands dismissed, however, with no order as to costs.

[ RAMESHWAR SINGH MALIK ]  
JUDGE

13.10.2017  
*vishnu*

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| Whether speaking/reasoned | : Yes/No |
| Whether Reportable        | : Yes/No |