

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

CR No.7864 of 2016

Date of decision : 07.10.2017

Raghbir Singh

...Petitioner

Versus

Sukhwinder Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vishal Sharma, Advocate for the petitioner.

ANIL KSHETARPAL, J. (ORAL)

The plaintiff-petitioner is in revision petition against the order dated 14.10.2016 passed by the Civil Judge (Junior Division), Zira, directing him to affix the ad valorem Court fee as per the market value of the property.

The plaintiff had filed a suit with following relief:-

“Hence, it is prayed that a decree for declaration that the plaintiff is owner in possession of 2/3 share of the house shown by words A B C D E and shops shown by words E I F G H D shown in red colour and first floor chubara and open terrace shown by words J K L M N O construction in red colour and open terrace, shown in the site plan which is bounded as East: Janj Ghar West: House of Dr. Gowardhan Dass, North: House of Bhag Mal son of Mulkh Raj and south: Main bazaar situated in the area of W.No.4, Main bazaar area Makhu Tehsil Zira District Ferozepur and for

setting aside the transfer deed dated 16.7.12 alleged to be executed by defendant No.1 Sukhwinder Singh in favour of Ramma defendant No.2 registered vide Vasika No.613 dated 16.7.12 as being illegal, null, void, against the principle of natural justice, not competent to execute the same and due to the result of fraud and for setting aside the sale deed dated 25.9.12 executed by defendant Sukhwinder Singh in favour of Fauja Singh defendant No.3 of the portion shown by words I F G H registered vide Vasika No.974 before Joint Sub Registrar, Makhu on 15.10.2012 is absolutely illegal, null, void, against the principle of natural justice, not maintainable, not competent to execute, due to the result of fraud with consequential relief of permanent injunction restraining the defendants from interfering in the peaceful use and accommodation of the above said property, as shown by words A to O, fully mentioned above, and further restraining to the defendants from alienating in any way to any person any part of the property, except than in due course of law, the property situated in the area of Ward No.4, Makhu Tehsil Zira and in case if the plaintiff fails to prove possession on any part of the property, as shown by words A to O, then for possession thereof, may kindly be passed in favour of the plaintiff and against the defendants, with costs.

Any other relief which the Court may deem fit may also be granted to the plaintiff.”

The petitioner had prayed for multifarious reliefs including the decree for declaration setting aside of the sale deed executed by defendant No.1 and partition of the property.

The learned trial Court has directed the plaintiff to affix the ad valorem Court fee while relying upon the judgment passed by the Hon'ble

Supreme Court of India in the case of *Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others*, 2010 AIR SC 2807.

Learned counsel for the petitioner has submitted that the petitioner is non-executant of the sale deed. He has further submitted that the petitioner had positively asserted in his plaint that he is in possession and being co-owner entitled to seek the partition.

Next relief sought by the petitioner is a decree for declaration.

It is well-settled that in a case for partition where the plaintiff claims to be in possession, no ad valorem Court fee is required to be affixed. Still further, every co-sharer is by legal fiction deemed to be the owner in possession of every part of the property. A Division Bench of the Lahore High Court way back in the year 1934 in the case of *Asa Ram and others Vs. Jagan Nath and others*, AIR 1934 Lahore 563, has held that ad valorem Court fee is not payable on such suits. This view has been reiterated by this Court once again in the judgment reported in 2015(4) PLR 191, *Rajiv Kumar and others Vs. Rakesh Kumar and others*.

In view of the settled position of law, the order passed by the trial Court is clearly erroneous. Hence, it is set aside.

Revision petition is allowed.

The trial Court is requested to proceed with the trial of the case.

07.10.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No