

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

CR No.934 of 2017.

Date of Decision: 08.02.2017.

Parminder Singh

....Petitioner.

VERSUS

Smt. Shiksha Devi and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

Present: Mr. Aditya Jain, Advocate for the petitioner.

SNEH PRASHAR, J.

The petitioner is aggrieved of the order dated 12.01.2017 passed by learned Civil Judge (Junior Division), Gurgaon by virtue of which the application filed by respondents-defendants No.1 and 2 seeking direction to him (petitioner-plaintiff) to pay advalorem court fees was allowed.

The submissions made by Mr. Aditya Jain, learned counsel representing the petitioner have been considered.

Learned counsel for the petitioner contends that no doubt the petitioner-plaintiff has sought cancellation of sale deed dated 05.09.2013 allegedly executed by his father (respondent-defendant No.3 Ranjit Singh) in favour of respondents-defendants No.1 and 2, but it is his specific allegation that the sale consideration amount recorded in the sale deed was never paid to respondent-defendant No.3. The petitioner-plaintiff has also

claimed to be a co-sharer in the property which was subject matter of the sale deed. The respondent-defendant No.3 in his written statement submitted that the sale consideration amount was to be deposited in his bank account for treatment of his mental ailment etc., but no such amount was ever deposited by respondents-defendants No.1 and 2. When the sale consideration amount recorded in the sale deed had not been paid, the petitioner-plaintiff should not be forced to pay advalorem court fee on the sale consideration amount.

Admittedly, the petitioner-plaintiff has sought cancellation of sale deed executed by his father (respondent-defendant No.3) in favour of respondents-defendants No.1 and 2. From the impugned order, it transpires that he was not a party to the said sale deed but besides seeking cancellation of the sale deed he has also sought relief of possession. It is a settled proposition of law that if a non executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid or nonest or illegal and is not binding on him. When the non executant is not in possession of the property that is subject matter of the deed, he has to pray for possession as a consequential relief in addition to the declaration sought by him and in said circumstances he has to pay advalorem court fees as provided under Section 7(iv)(c) of the Court Fees Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee should be affixed on 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

In the above premise, there appears no illegality or perversity in the order of learned trial Court directing the petitioner to pay advalorem court fee on the suit filed by him, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

08.02.2017.
jitender sharma

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