

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

C.R. No.1016 of 2018 (O&M)

Date of Decision: February 15, 2018

Pankaj Tomar

...Petitioner

Versus

Kartar Singh Tomar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vineet Sehgal, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

The petitioner-Pankaj Tomar, who happens to be plaintiff before the Court below has laid challenge through this revision petition in terms of Article 227 of Constitution of India read with Section 151 CPC seeking quashment of orders dated 02.01.2018 Annexure P/4 whereby, application under Order VII Rule XI CPC for rejection of the plaint for insufficient Court fee was allowed and the plaintiff/petitioner was directed to affix *ad valorem* Court fee by the Court of learned Additional Civil Judge, (Senior Division) Panchkula.

Heard, learned counsel for the petitioner and perused the records of the case. The brief background is that the plaintiff-petitioner filed against his father and brother a suit for declaration to the effect that plaintiff is also owner being in possession of 50% of the share owned by defendant No1 in the property detailed in the head note of the plaint and also for decree of 50% share in the property in question in favour of plaintiff along with consequential relief etc. in which impugned order was

passed. It would be necessary to refer here that earlier the similar suit was filed by the present petitioner against his father and brother for declaration as well as permanent injunction which as per own stand of the petitioner during the course of submissions of his counsel ultimately decision has gone against the plaintiff regarding which regular second appeal is pending in which no effective order has been passed as on date. A close look at the suit of the plaintiff shows that he has also challenged the sale deed executed by the father of the property in question which too is under challenge by the plaintiff. The Court below has considered the relief being sought by the plaintiff and has held that though relief is couched in the form of mandatory injunction but in fact the consequential relief is for possession after declaring the sale deed dated 08.01.2015 as illegal, null and void.

Though, learned counsel for the petitioner has sought to hammer home the point that the petitioner is co-owner in the property and, thus, being co-sharer is not required to affix *ad valorem* Court fee and has placed reliance on **2016(5) RCR (Civil)298 Phool Singh vs. Jeet Singh @ Jeeta and others; 2016(5) RCR (Civil)296 Tarun Kumar and others vs. Pankaj Kapoor and others; 2016(2) PLR 362 Balwinder Singh and another vs. Sheela Ram and others and 2015(3) RCR (Civil) 1027 Suniul Nbarula vs. Shelly Juneja and others.** However, the same are factually at much variance from the case in hand as in the cited ratios there was pre-existing right of the person in the property in question but in the present case it is the own stand of the learned counsel for the petitioner that he has lost the suit in which he has now filed regular second appeal which is

pending. This Court seeks reliance of a view of this Court in case of 2001(1) RCR (Civil) 573 Ranjit Singh vs. Balkar Singh where this Court considering the similar proposition of law while placing reliance on two Apex Court views in Shamshser Singh vs. Rajinder Prashad and others AIR 1973 S.C.2384 and Niranjana Kaur Vs. Nirbigan Kaur (Minor), 1981 Rev.LR 428 held that Court fee payable on a plaint certainly to be decided on the basis of allegations and prayer in the plaint and shall in no way be cause of concern for the Court whether plaintiff's suit will have to fail for failure to ask for consequential relief. The substantial issue before this Court, at this juncture is substantive relief being asked by the petitioner on the basis of allegations made in the plaint and, therefore, the petitioner has challenged a sale deed to which he is not a signatory and could not show by any means how the petitioner claims that he is joint owner as well as in possession of the property under subject matter of challenge, thus the claim is not governed by Section 7(iv)(b) (c) of the Court Fee Act, 1870 and, therefore, *at valorem* Court fee is liable to be paid on the sale consideration of the sale deed on the market value of the property in question. The Court below has given well reasoned opinion and has come to a totally justifiable conclusion. Apparently, there is no merit in the present revision petition, the same as such stands dismissed in limine.

(FATEH DEEP SINGH)
JUDGE

February 15, 2018
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No