

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

**CR No.1511 of 2017
Date of Decision:14.05.2018**

Giana Devi and another

...Petitioners

Versus

Santosh and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr.Raman Chawla, Advocate for the petitioners.
None for the respondents.

ANIL KSHETARPAL, J. (ORAL)

On 22.3.2018, application for preponing the date of hearing was allowed and the office was directed to inform Mr.Dharampal Gill, Advocate, counsel for the respondents.

As per office notes dated 31.3.2018 and 7.5.2018, it is clear that learned counsel for respondents No.1 to 6 has been informed.

The defendants-petitioners are in the revision petition against the order dated 23.1.2017 passed by the learned trial court, dismissing the application under Order 7 Rule 11 of the Code of Civil Procedure for rejection of the plaint.

The plaintiffs executed a registered sale-deed in favour of defendants on 2.8.2010. Thereafter, the plaintiffs filed a suit, seeking cancellation of the aforesaid registered sale-deed. The defendants filed an application under Order 7 Rule 11 of the Code of Civil Procedure on the ground that once the executant pray for cancellation of the instrument,

i.e. registered sale deed, *advalorem* court fee is payable on the value of the property as depicted in the sale-deed.

The learned trial court dismissed the application on the ground that prayer for possession has not been made.

This Court has heard the learned counsel for the petitioners.

This Court is of the view that the order passed by the learned trial court is clearly erroneous. It is now well settled that the executant of the sale-deed is required to seek cancellation of the instrument and, therefore, liable to be fixed the court fee as per Article 1 of the Schedule, attached to the Court Fees Act, 1870. Reference in this regard can be made to a judgment passed by Hon'ble Full Bench of this Court in **Tarsem Singh and others Vs. Vinod Kumar, 2011 (31) RCR (Civil) 709** followed by a Division Bench judgment of this Court in **Niranjan Kaur Vs. Nirbigan Kaur, 1981 PLJ 423**.

In view thereof, the present revision petition is allowed. The order under challenged is set aside. The plaintiffs are granted one month time to pay the court fee.

14.05.2018
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No