

225

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

**Civil Revision No.2169 of 2016
Date of Decision: 03.07.2018**

BALDEV SINGH

.....Petitioner

Vs

LAKHVIR SINGH AND ANR

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajiv Joshi, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

Petitioner has assailed the order dated 01.02.2016 passed by the Civil Judge (Jr. Divn.) Phillaur vide which application under Order 7 Rule 11 CPC filed by the defendants for rejection of the plaint was dismissed.

Notice of motion was issued on 04.05.2016. Plainitff/respondent No.1 was ordered to be served through counsel representing him before the trial Court by way of *dasti* process vide order dated 08.08.2016.

Respondent No.1 was duly served through his counsel and the said fact was recorded in the order dated 19.12.2016 passed in the present revision petition. Despite service, none appeared on behalf of respondent No.1.

In view of aforesaid, I proceeded to consider the

controversy on merits.

In a suit for declaration filed by the plaintiff/respondent No.1, factum of sale deed dated 22.03.2013 executed by his attorney/defendant No.2 in favour of defendant No.1 was assailed along with consequent mutation. Power of attorney dated 26.09.2012 executed by the plaintiff in favour of defendant No.2 was also assailed being fraudulent, null and void. Consideration shown in the sale deed was to the tune of Rs.1,65,16,000/-. Declaration was sought on the basis of sale deed and power of attorney being fraudulent.

In view of law laid down in **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010(2) RCR(Civil) 564**, if the executant of a deed seeks cancellation of the same, he has to affix *ad valorem* court fee on the consideration stated in the instrument. Apparently, sale deed was executed by defendant No.2 being attorney of the plaintiff, therefore, plaintiff can be termed as executant of the sale deed and the suit was filed seeking to annul the sale deed by way of cancellation of the same along with declaring the power of attorney to be null and void being fraudulent.

The ratio laid down in **Suhrid Singh @ Sardool Singh's** case (supra) was followed by the Division Bench of this Court in **Tarsem Singh and others vs. Vinod Kumar and**

others, 2011(31) RCR (Civil) 709.

The view expressed by the High Court in CR No.4067 of 2012 titled '*Dharam Singh and others vs. M/s Omax Construction Ltd.*', decided on 12.03.2015 in the context of not requiring payment of court fee in case of transaction being fraudulent was over ruled by the Hon'ble Apex Court in CA No.8880 of 2015 arising out of SLP(C) No.16313 of 2015 titled '*M/s Omax Construction Ltd. vs. Dharam Singh and others* vide order dated 26.10.2015.

Since the plaintiff executed the attorney in favour of defendant No.2, who in turn executed sale deed in favour of defendant No.1, therefore, for all intents and purposes, plaintiff is the executant of the sale deed as per principle No.1 of the **Suhrid Singh @ Sardool Singh's** case (supra). He has to affix court fee as per consideration shown in the instrument i.e. the sale deed dated 22.03.2013.

For the reasons recorded hereinabove, impugned order dated 01.02.2016 passed by the Civil Judge (Jr. Dinv.) Phillaur is set aside as the same is found to be not in consonance with requirement of law. This revision petition is allowed. Normal consequences to follow.

July 03, 2018

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No