

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.2251 of 2016 (O&M)

Date of Order:27.02.2018

Karan Singh

..Petitioner

Versus

M/s Creative Buildwell Private Ltd. and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

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

Mr. Aashish Chopra, Advocate, and
Ms. Niharika Sharma, Advocate,
for the respondents.

ANIL KSHETARPAL, J(Oral)

Although, fresh notice was issued by this Court to respondent no.1 on 26.04.2017 and the notices issued have not been received back served or otherwise. However, it is not disputed that during the pendency of the suit, property was transferred in favour of respondent no.2, who is represented by counsel. Hence, service upon respondent no.1 is dispensed with.

Plaintiff-petitioner has challenged the order dated 18.12.2015, passed by the learned trial Court directing the plaintiff to pay the *ad valorem* court fee with respect to sale consideration on the sale deeds dated 15.05.2006 and 17.02.2011.

It is not in dispute that the plaintiff is the executant of sale deed dated 15.05.2006. Although, learned counsel for the petitioner has argued that major payment under the sale deed has not been paid as the cheque was dishonoured on account of stoppage of payment, however, in the considered opinion of this Court, such non-payment of sale consideration would have

no bearing for determining the court fee payable under Section 7 of the Court Fee Act, 1870.

Learned counsel for the petitioner, at this stage, pointed out that the court fee on the amount of sale consideration executed by him on 15.05.2006 has already been paid. However, learned counsel has brought to the notice of the court that plaintiff is not the executant of sale deed dated 17.02.2011. The sale deed dated 17.02.2011 has been executed during the pendency of the suit by defendant no.1 in favour of defendant no.2. Hence, he submits that no court fee is payable on the part of the petitioner. He relies upon the judgments passed by this Court in *Niranjan Kaur v. Nirbigan Kaur*, 1981 PLJ, 423 and Tarsem Singh And Others vs Vinod Kumar And Others 2014 (1) Indian Civil Cases, 1054

On the other hand, learned counsel for respondent no.2 has vehemently argued that since the plaintiff has challenged the sale deed dated 17.02.2011, hence court fee on the value of the property is payable. He has further vehemently submitted that the possession of the property has been sought and, therefore, *ad valorem* court fee must be paid by the plaintiff.

In the considered opinion of this Court, the argument of learned counsel for respondent no.2 with regard to payment of court fee on sale deed dated 17.02.2011, does not have any substance. This Court has repeatedly held that the executant of a document is required to challenge and seek cancellation under Section 31 of the Specific Relief Act, 1963. A non-executant is not required to seek cancellation but he can only file a suit for declaration claiming that such document does not affect his rights.

As regards the relief of possession, it is not in dispute that the suit property is an agricultural land. For relief of possession, there is a State

amendment carried out by Act No.11 of 1974 which was further amended by Act No.22 of 1974 dealing with agricultural land in Haryana. For relief of possession, the *ad valorem* court fee is not payable on the value of the property but calculated on the basis of the assumed value provided under the Act.

Learned counsel for respondent no.2 once again insisted that since the suit filed is for declaration with a consequential relief, therefore, court fee is payable under Section 7(iv)(c). The argument is wholly without any substance.

The suit is for declaration and injunction and prayer is that the plaintiff is in joint possession. In the considered opinion of this Court, once no relief of possession has been sought for, no court fee is payable even as per the amendment carried out by the State of Haryana.

In view of what has been recorded hereinabove, the revision petition is partly allowed. The petitioner-plaintiff is made liable to pay *ad valorem* court fee on the value of the sale consideration dated 15.05.2006 executed by him.

According to learned counsel for the petitioner, the aforesaid amount has been paid. If that be so, the learned trial court would proceed with the trial. However, if it has not been paid, the petitioner is granted 15 days time to deposit the same.

The direction of the learned trial court to pay *ad valorem* court fee on the sale deed dated 17.02.2011 is set aside.

February 27, 2018
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No