

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

CR No.3664 of 2015 (O&M)

Date of decision: 21.03.2018

Baljeet Singh

..... Petitioner

Versus

Krishna Devi and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. S.S. Dinarpur, Advocate with
Mr. S.S. Godara, Advocate for the petitioner.

Mr. Neeraj Goel, Advocate, for
Mr. Sanjay Vashishth, Advocate for respondent No.1.

Mr. Sumit Sangwan, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

Plaintiff-petitioner is in the revision petition against the order passed by the learned trial Court directing the plaintiff to deposit ad valorem Court fee within a period of 30 days.

Plaintiff has filed a civil suit seeking declaration to the effect that the sale deed No.2014 dated 18.03.2013 is illegal, null and void. The defendant filed an application under Order 7, Rule 11 praying for rejection of the plaint on the ground that the proper Court fee has not been affixed. The Court finding substance in the application of the defendant directed the plaintiff to pay ad valorem Court fee after considering the fact that the plaintiff is the executant of the sale deed and seeking cancellation thereof.

The order passed by the learned trial Court has been challenged by way of this revision petition.

I have heard learned counsel for the parties at length and with

their able assistance gone through the paper book.

Learned counsel for the petitioner has submitted that since the petitioner has pleaded that the sale deed was executed on account of fraud played by the defendants, therefore, ad valorem Court fee is not payable. He has further submitted that the plaintiff has not sought relief of possession as he claims to be owner in possession. On the other hand, learned counsel for the respondent has pointed out that the plaintiff being the executant of the sale deed is in fact seeking cancellation thereof and therefore, the ad valorem Court fee on the sale consideration is payable.

Learned counsel for the petitioner in support of his arguments has relied upon the judgment reported as Rambai Vs. Kapoori and another, 2014(4) RCR (Civil), 376. Para No.17 of the aforesaid judgment clearly provides that in the peculiar facts and circumstances of that case, the Court ordered that no Court fee shall be payable. In the considered opinion of this Court, such judgment cannot be treated as a precedent.

Learned counsel for the petitioner has further relied upon the judgment reported as Harbans Kaur Vs. Amrik Singh @ Beer Singh, 2015(4) RCR (Civil) 770. Even in this judgment, the Court has noticed that the parties are closely related to each other as respondent is son of the petitioner. Taking into consideration those fact, the Court has ordered that the petitioner would not be required to affix Court fee. Hence, the aforesaid judgment is also on peculiar facts of the case, which would have no application in the present case.

Learned counsel for the petitioner has further relied upon various other judgments passed by the learned Single Benches on peculiar facts of the case. In the considered opinion of this Court, such judgments cannot be treated as precedent particularly when a Full Bench of this Court in

the judgment reported as Niranjan Kaur Vs. Nirbigan Kaur, 1981, PLJ 423, has clearly held that if an executant of the document is seeking cancellation thereof, the Court fee would be payable as per Article 1 Schedule I of the Court Fee Act and not as per Section 7(iv)(c) of the Act. This is what has been also held by the Hon'ble Supreme Court in the case of Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(12) SCC, 112, AIR 2010 SC 2807. Still further, a Division Bench of this Court in the judgment reported as Tarsem Singh and others Vs. Vinod Kumar and others, 2011(31) RCR (Civil), 709 while considering the similar question has also held as under:-

“i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.

ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.”

In view of the binding precedent, this Court does not find any good ground to interfere with the order passed by the Court.

Revision petition is dismissed.

(ANIL KSHETARPAL)
JUDGE

21.03.2018

Dinesh Bansal

Whether speaking/reasoned

Whether Reportable

Yes / No

Yes / No