

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

CR No.4506 of 2016
Date of decision : 03.05.2018

Lakhbir Singh and others

...Petitioners

Versus

Surinder Kaur and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: None for the petitioners.

Mr. G.S. Salana, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The plaintiffs-petitioners are in the revision petition against the order passed by the learned trial Court directing them to pay the court fee on the amount of sale consideration which have been challenged in the suit.

It is undisputed that the plaintiffs are not the Executant of the sale deeds. The sale deeds were executed by defendant No.1 in favour of defendant Nos.2 and 3. In this situation, the plaintiffs are not required to seek cancellation of the sale deeds, as provided under Section 31 of the Specific Relief Act, 1963. The plaintiffs are to file a suit for declaration claiming that such sale deeds do not affect their rights. There is a difference between the suit for cancellation of the instrument or mere suit for declaration. A person who is not a party to the instrument is not required to seek cancellation thereof. This is the distinction which have been drawn by

Hon'ble the Supreme Court in the case *Suhrid Singh @ Sardool Singh vs. Randhir Singh and Ors. AIR 2010 SC 2807*.

Learned counsel for the respondents has vehemently submitted that the plaintiffs have also sought the relief of joint possession. He submits that the court fee is payable at least by relief of joint possession.

This Court has considered the submission.

The relief of the joint possession is sort of declaratory relief. A decree for joint possession, even if, granted ultimately results in delivery of only symbolic possession, as provided under Order 21 Rule 35(1) of the Code of Civil Procedure. In any case, the property involved in the suit is agricultural in nature. The Court fee, if any, shall only be payable as per the local amendment carried out by the State of Punjab.

Learned counsel for the respondents has further pointed out that there is a residential house constructed on the disputed property.

Since, this issue has not been dealt with by the Court, therefore, while allowing the revision petition, the issue of payment of court fee on the relief of possession with regard to the agricultural land and residential house is kept open.

In view of the above, the present revision petition is allowed.

03.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No