

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

C.R. No.4885 of 2015

Norti Ram

....Petitioner

Versus

Krishan Kumar Gogia and Ors.

....Respondents

Date of Order: 27.4.2018

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vishal Gupta, Advocate for the petitioner.

Mr. Ankur Lal, Advocate for

Mr. Parminder Singh, Advocate for respondent Nos.1 & 2.

AMIT RAWAL, J (ORAL)

This revision is directed against the order dated 13.5.2015 passed by Civil Judge (Jr. Division), Karnal whereby application of the respondents filed under Order 7 Rule 11 CPC for rejection of the plaint has been allowed.

Learned counsel for the petitioner submitted that the trial Court has totally misread the provisions of the Act while allowing the application. The petitioner-plaintiff being signatory to the sale deed is not required to pay any ad valorem court fee. In support of his contention, learned counsel for the petitioner has relied upon a judgment of this Court reported as **Rakesh Kumar Vs. Kundan Lal 2017(1) PLR 273**. He has further referred to para 4 & 5 of the plaint to show that it was in fact a mortgage

deed and not sale deed and therefore it has been defined as Bogus Sale Deed. The trial Court has wholly overlooked all the aspects and has not examined any of the material on record.

Per contra, learned counsel for the respondents has fully supported the impugned order.

I have heard learned counsel for the parties and appraised the paper book.

It would be in the fitness of things to reproduce the relief clause of the suit, which reads as under:

“4. That the defendants No.1 and 3 obtained photo copies of the ownership documents saying that they would get typed the “Rehan-Nama” and when needed the plaintiff would be called and that the plaintiff may take advance payment of Rs.8.00 lacs and Rs.35.00 lacs at the time of execution of the “Rehan-Nama”. That the Rehan-nama was executed and Rs.35.00 lacs were given, as agreed upon by the defendant No.1. The plaintiff requested for a copy of the said Rehan-nama, then the defendants No.1 and 3 said that copy would be provided when the original Rehan-nama is received from the Tehsil office. It is pertinent to mention here that at the time of execution of Rehan-nama, the plaintiff was not given time to read the same, nor the plaintiff was in a position to read it quickly because the plaintiff and his wife are not much educated, nor the document was shown to them. The copy of the “Bogus Sale deed” is attached herewith as Annexure-A.”

PRAYER CLAUSE PARA

“It is, therefore, prayed that a decree of declaration to the effect that:

(i) the Sale deed No.4729/1, dated 05.09.13

registered with the office of Sub Registrar, Karnal in favour of the defendant No.2 and

(ii) agreement to sell dated 04.03.14 in favour of the defendant No.4. Are illegal, null & void, in-operative, ineffective, not binding upon the rights of the plaintiff and liable to be set aside.

It is further prayed that a decree of permanent injunction restraining the defendants permanently from interfering/dispossessing the plaintiff from the suit property fully detailed in para No.2 of the plaint and also restraining the defendant No.2 and 4 permanently from alienating/transferring/mortgaging/creating any charge on the suit property under the garb of sale deed No.4729/1, dated 05.09.13 and agreement to sell dated 04.03.14 in any way or manner may kindly be passed in favour of the plaintiff and against the defendants with costs.”

A joint reading of para 4 and the relief clause, it cannot be believed that the petitioner has not received any amount. The law relied upon by learned counsel for the petitioner in **Rakesh Kumar's (supra)** is not applicable as in that case there is categorical pleadings with regard to the possession though the same was disputed by the petitioner.

Once the petitioner is signatory to the sale deed though alleging fraud but fact of the matter is that there is specific averment to the receipt of money though the petitioner is stated to have paid Rs.9 lacs thereafter. The aforesaid question is subject matter of decision, which shall be adjudicated by the trial Court by way of leading evidence and not at the issue of affixing the court fee.

At this stage, realizing the aforesaid situation, learned counsel for the respondent submitted that granting appropriate time to the petitioner

C.R. No.4885 of 2015

#4#

for filing ad valorem Court fee would be justified.

Taking into account all the facts of the present case, the present petition is disposed of and order dated 13.5.2015 is upheld. One months' time is granted to the petitioner to pay ad valorem court fee.

April 27, 2018
manoj

^(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable : Yes/No