

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.5114 of 2017
Date of Decision: December 13, 2018

Tripta Devi

...Petitioner

Versus

Harpal Singh & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. B.D.Sharma, Advocate,
for the petitioner.

Mr.Manik Makkar, Advocate for
Mr. Neeraj Yadav, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

Petitioner-plaintiff is aggrieved of the impugned order, whereby the application filed by the respondent-defendants for rejection of the plaint under Order 7 Rule 11 CPC, has been allowed.

Mr. B.D.Sharma, learned counsel appearing on behalf of the petitioner submitted that the claim in the suit was as under:-

“Suit for declaration to the effect that the plaintiff is owner in possession of a plot measuring 500 Sq.yds. having length 100 ft. and breadth 45 ft. bearing khasra no.86/210 min khata khatuni no.1244/1560 as per jamabandi for the year 2005-06 bounded by North: Ownership of others, South: ownership of others, East: Passage 20ft. Wide and West: ownership of others situated in the area of Abadi Preet Avenue, Village Nangli, Tehsil and District Amritsar, and further declaration to the effect that the alleged general power of attorney dated 15.6.2007 registered vide document no.3288, bahi no.4, zild

no.1183 at page 3839 relating to the suit property allegedly executed in favour of defendant no.1 by impersonating the plaintiff and the alleged sale deed dated 08.12.2010 registered vide document no.11804, bahi no.1, volume no.4222 at page 9697 registered on 08.12.2010 allegedly executed by defendant no.1 by alleging himself to be the attorney of the plaintiff in favour of defendant no.2 relating to the suit property and further mutation no.21421 in favour of the defendant no.2 on the basis of alleged sale deed are illegal, null and void, forged and fabricated, result of impersonation, fraud and misrepresentation, without consideration and are not binding upon the plaintiff and the same are liable to be set aside and for permanent injunction restraining the defendants from interfering into the peaceful possession of the plaintiff over the suit property and further from alienating, selling, mortgaging or in any other manner transferring the suit property or any part thereof in favour of anybody else.”

The sale deed dated 08.12.2010 was executed by attorney and, therefore, it was an act of fraud and could not be said to be voluntary act of the plaintiff and branded as a party to the sale deed. In such circumstances, *ad valorem* court fee is not required to be paid.

Mr. Manik Makkar Advocate for Mr.Neeraj Yadav, learned counsel for respondent No.2 supported the impugned order as it was in consonance with the law laid down by Hon'ble the Supreme Court in **Suhrid Singh @ Sardol Singh Versus Randhir Singh, 2010 (2) R.C.R. (Civil) 564**. For the sake of brevity, the principles enumerated by the Hon'ble Supreme Court are reproduced herein below:-

“Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him.

The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance can be brought out by the following illustration relating to 'A' and 'B'-two brothers. 'A'executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B' who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad valorem court fee on the consideration stated in the sale deed. If 'B' who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17 (iii) of Second Schedule of the Act. But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad valorem court fee as provided under Section 7 (iv) (c) of the Act. Section 7 (iv) (c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7. ”

I have heard the learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioner, for, the relief as noticed above, though it may be apparently an act of agent but the sale deed

is on behalf of the plaintiff. In such circumstances, plaintiff cannot get away from the payment of the court fee.

For the reasons stated above, I do not find any illegality or perversity in the impugned order. The same is upheld. Thirty days time is granted to the petitioner-plaintiff to make the deficiency in the court fee. Revision petition is dismissed.

December 13, 2018
ramesh

(AMIT RAWAL)
JUDGE

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