

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5661 of 2015(O&M)
Date of Decision: 22.10.2018

Ravi Raj and another

.....Petitioners

Versus

Pohap Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashish Gupta, Advocate
for the petitioners.

Mr. C.B.Geol, Advocate
for the respondents.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 22.07.2015 passed by Civil Judge (Junior Division), Mewat vide which the application under Order 7 Rule 11 CPC filed by the petitioners was dismissed.

[2]. Plaintiffs filed a suit for declaration with permanent injunction, challenging the sale deed dated 06.05.1988 executed by Mohan Lal @ Jaswant Singh (father of plaintiffs No.1 and 2), Dan Singh (father of plaintiffs No.3 and 4) and Prithvi Singh (plaintiff No.5) to be null and void. The sale deed was executed for a consideration of Rs.1,75,000/- in favour of

the defendants. The aforesaid sale deed was challenged on the basis of fraud in the context of earlier status of the defendants being that of lessees. Plaintiffs claimed themselves to be in possession of the suit property. Para No.2 of the plaint reads as under:-

“2. That plaintiffs are agriculturist and their main source of income is agriculture. The plaintiffs are the simpleton person and does not know about the complicity of the revenue record. Previously the fore fathers of the plaintiffs namely Mohan Lal @ Jaswant Singh and Dan Singh used to cultivate the suit land prior to 06.05.1988 the predecessor in interest of the plaintiffs and plaintiff No.5 executed a lease deed in favour of the defendant for 26 year and during the lease period defendants used to cultivate the suit land on payment of lease amount Rs.800/- per acre. The defendants used to pay the lease amount in the month of May of each year but did not take any receipt of the lease amount. The lease period of the suit land is to complete on 6 May 2014 on completion of lease period plaintiff taken the possession from the defendant on 7 May 2014 at that time defendants disclosed that your predecessor in interest have alienated the suit land to us and we are absolute owner of the suit land on that the plaintiffs became very surprised and make inquiries from the record of sub Registrar, Nuh and obtained the certified copy of the sale deed vasika No.181 dated 6.5.1988 and 180 of 6.5.1988 and their subsequent mutation No.315 and 316 both dated 25.5.1988 and obtained

others relevant record. The plaintiffs are in physical possession over the suit land from 7.5.2014 and have sown wheat crop in the suit land. The defendant are threatening to disposes the plaintiff on the basis of of false and fabricated and illegal sale deeds vasika No.181 dated 6.5.1988 and 180 of 6.5.1988 and their subsequent mutation No.315 and 316 both dated 25.5.1988 which they have no right to do so and the plaintiffs have legal right to get the said sale deeds and mutations cancelled.”

[3]. Evidently, plaintiffs No.1 to 4 are not the executants of the sale deed. Only plaintiff No.5 was one of the executants of the sale deed in question. As per ratio laid down in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 (2) RCR (Civil) 564**, if the executant seeks to annul the deed/instrument, then the executant has to affix the Court fee on the basis of consideration shown in the instrument itself. So far as, plaintiff No.5 is concerned, he is the executant of the sale deed to the extent of his share in the property. The case of plaintiffs No.1 to 4 is covered under second principle of **Suhrid Singh @ Sardool Singh's case (supra)** i.e. if non-executants of the instrument are in possession of the suit property, then non-executants are required to affix Court fee of Rs.19.50 as per Article 17(iii) of Second Schedule of the Act. The case of plaintiff No.5 appears to be covered by first principle wherein he

is required to affix Court fee as per consideration shown in the instrument to the extent of his share. The view expressed in **Suhrid Singh @ Sardool Singh's case (supra)** was followed by the Division Bench of this Court in **Tarsem Singh and others Vs. Vinod Kumar and others, 2011(31) RCR (Civil) 709.**

[4]. In the light of aforesaid precedents, this revision petition is disposed of.

October 22, 2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No