

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

**CR No.5567 of 2017(O&M)
Date of Decision: 07.12.2018**

**Sunil Narual (now deceased) through LR's and others
.....Petitioners**

**Versus
Baljit Singh and othersRespondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. K.S. Chahal, Advocate
for the petitioners.

Mr. K.D. Sachdeva, Advocate
for the respondents.

RAJ MOHAN SINGH, J.(Oral)

[1]. Petitioners have preferred this revision petition against the order dated 18.02.2017 passed by Additional Civil Judge (Senior Division), Patiala vide which application under Order 7 Rule 11 CPC for rejection of plaint was allowed and the plaintiffs were asked to furnish Court fee.

[2]. Learned counsel for the petitioners submitted that it is not a case of sale deed, rather agreement to sell was executed, wherein an amount of Rs.35 lacs was paid as earnest money.

[3]. Plaintiffs filed a suit for declaration, challenging the agreement to sell dated 17.12.2014 allegedly executed between

plaintiff No.1 and defendant No.1. Allegations of forgery and fabrication of documents were also alleged in the context of cheques of plaintiffs No.1, 3 and 4. Plaintiffs alleged that there was some money transactions between plaintiff No.1 and defendant No.1. Defendants had taken signatures of plaintiff No.1 on some blank papers and also took the cheques of the plaintiffs under undue pressure of the police. They never returned the blank signed papers and blank cheques to the plaintiffs and fabricated the agreement to sell dated 17.12.2014. Plaintiffs have alleged in the suit that agreement to sell dated 17.12.2014 is illegal, null, void and not enforceable against the plaintiffs with consequential relief of permanent injunction.

[4]. Plaintiff being an executant of the agreement is required to pay *ad valorem* Court fee on the consideration shown in the instrument itself. In view of ratio laid down in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(2) RCR (Civil) 564**, if the executant of a deed seeks cancellation of the same, he has to pay *ad valorem* Court fee on the consideration stated in the instrument. The instrument herein is agreement to sell carrying an endorsement of earnest money to the tune of Rs.35 lacs.

[5]. Apparently, the plaintiff is the executant of agreement to sell and the suit has been filed, seeking to annul the agreement

to sell by way of cancellation of the same. The ratio laid down in **Suhrid Singh @ Sardool Singh's case (supra)** was followed by Division Bench of this Court in **Tarsem Singh and others Vs. Vinod Kumar and others, 2011(31) RCR (Civil) 709.**

[6]. In **M/s N.N. Estate Private Limited Vs. Surinder Goyal, 2012(5) RCR (Civil) 591**, similar proposition arose and the High Court has held that the plaintiff had sought declaration that the agreement to sell executed by him was illegal, null and void. Such a challenge was held to be a prayer on behalf of the executant of the instrument for annulling the same, therefore, the ratio laid down in **Suhrid Singh @ Sardool Singh's case (supra)** would apply and the Court fee was held payable on the consideration mentioned in the instrument. The plea of fraud raised by the plaintiffs is squarely covered by the judgment passed by the Hon'ble High Court in **CA No.8880 of 2015** arising out of **SLP(C) No.16313 of 2015** titled **M/s Omax Construction Ltd. Vs. Dharam Sinbgh and others** decided on 26.10.2015, wherein decision of the High Court in **CR No.4067 of 2012** titled **Dharam Singh and others Vs. M/s Omax Construction Ltd.** decided on 12.03.2015 was reversed and it was held that even in case of plea of fraud having been raised by the plaintiff, the plaintiff is required to pay *ad valorem* Court fee on the consideration shown in the instrument.

[7]. For the reasons recorded hereinabove, I do not find any error of jurisdiction in the impugned order dated 18.02.2017 passed by Additional Civil Judge (Senior Division), Patiala. This revision petition is accordingly dismissed.

07.12.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No