

233

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

**Civil Revision No.6133 of 2017
Date of Decision: 27.11.2018**

OMPATI

.....Petitioner

Vs

SUSHILA AND ORS.

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. S.K. Aggarwal, Advocate
for the petitioner.

Mr. Satpal Singh, Advocate for
Mr. Harkesh Manuja, Advocate
for respondents No.1 and 2.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has preferred this revision petition against the order dated 02.08.2017 passed by the Civil Judge (Jr. Divn.) Safidon vide which the application under Order 7 Rule 11 CPC filed by the respondents No.1 and 2/defendants No.2 and 3 was allowed directing the plaintiff/petitioner to affix *ad valorem* court fee.

[2]. Plaintiff is the executant of release deed dated 14.06.2012 which was allegedly executed in favour of defendant No.1 and one Naveen Kumar. After the death of Naveen Kumar, the property was inherited by defendant No.2, who in turn sold

the same to defendants No.4 and 5 vide sale deed 11.08.2015. Plaintiff has challenged the release deed as well as sale deed by way of declaratory suit.

[3]. Evidently, the release deed was without any consideration. As per first principle in **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010(2) R.C.R. (Civil) 564**, if the executant of an instrument seeks to get it annulled, then he has to pay court fee as per consideration shown in the instrument. Since there was no consideration shown in the release deed, therefore, for challenging the release deed, no court fee is required to be paid as per first principle of the aforecited case.

[4]. Secondly, as far as the sale deed executed by defendant No.2 in favour of defendants No.4 and 5 is concerned, petitioner is a non-executant. As per recital made in the plaint he is in possession of the suit property. As per second principle of **Suhrid Singh @ Sardool Singh's** case (supra), if a non-executant in possession seeks to assail the instrument, he has to affix the court fee of Rs.19.50 paise under Article 17(iii) under Second Schedule of the Court Fees Act.

[5]. In view of above, I am of the considered opinion that the impugned order suffers from inherent defect and is required to be set aside. This revision petition is allowed and the

impugned order dated 02.08.2017 passed by the Civil Judge (Jr. Divn.) Safidon, is set aside. Normal consequences to follow.

November 27, 2018

Atik

Whether speaking/reasoned
Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No
Yes/No