

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

C.R. No.6777 of 2018 (O&M)
Date of Decision.22.11.2018

Ashwani Bhardwaj

.....Petitioner

Vs

Sohan Lal Singal and another

...Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Narinder Kumar Vadehra, Advocate
for the petitioner.

Mr. Abhimanyu Kalsy, Advocate
for respondent No.1 and 2.

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AMIT RAWAL J. (ORAL)

The present revision petition is directed against the impugned order whereby application filed by the respondent-defendant for rejection of the plaint under Order 7 Rule 11 CPC has been allowed and the petitioner-plaintiff has been called upon to pay the ad valorem court fee.

Learned counsel appearing on behalf of the petitioner submitted that the petitioner/counter-claimant was already in possession of the suit land and therefore, cannot be called upon to pay ad valorem court fee, particularly, when challenge has been laid to the power of attorney and sale deed, which was an act of fraud. In support of the aforementioned submissions, relied upon unreported judgment of this Hon'ble Court in **Sarabjeet Kaur Vs. Panjab Singh and another** passed in C.R. NO.427 of 2017 decided on 24.08.2018 and **Santosh Malhan and another Vs. Naina Devi and others 2014 (30) RCR (Civil) 125.**

I am afraid aforementioned argument of learned counsel

for the petitioner is not sustainable, for, in the instant case the trial Court has directed the counter-claimant to pay ad valorem court fee on the value of the sale deed and not with regard to possession. However, in the case of **Santosh Malhan's case** (supra), the person was already in possession whereas in the other judgment also, the issue with regard to payment of court fee was on the relief of possession and not on the sale deed, thus, the aforementioned judgments did not apply to the facts of the present case. Concededly, the petitioner/counter-claimant has not paid the court fee on the sale deed even if the act has been done by the agent, he was party to the sale deed, therefore, ratio decidendi culled out by Full Bench judgment of this Court in **Niranjan Kaur Vs. Nirbigan Kaur 1982 PLJ 127** would apply.

In view of the aforementioned observations, the order impugned is upheld and the revision petition is dismissed. However, 30 days' time is given to pay ad valorem court fee.

(AMIT RAWAL)
JUDGE

November 22, 2018
Pankaj*

Whether Reasoned/Speaking Yes

Whether Reportable No