

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 7301 of 2016

Date of Decision: 03.07.2018

Gurjinder Kaur and another

.....Petitioners

Vs.

Tej Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Mr. J.K. Singla, Advocate,
for respondent no. 1.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioners (defendants in the suit in question) challenge the order of the learned Civil Judge (Junior Division), Bathinda, dated 17.09.2016, by which their application under Order VII Rule 11 CPC, has been dismissed; holding therein that as regards the question of whether the plaintiff Tej Kaur (respondent no. 1) is of sound mind or not, that would be considered after evidence is led in that regard and as regards the question of payment of Court fee, *ad valorem*, the plaintiff having contended that she is still in possession of the suit property despite the sale deed which has been challenged, Court fee *ad valorem* is not liable to be paid.

Learned counsel for the petitioners-defendants submits that, firstly, the suit having been shown to be filed by Tej Kaur, who is the executant of the sale deed, but through her daughter on the ground that Tej Kaur is not mentally fit, it is

the question of her mental fitness that should have been decided at the outset by the learned Civil Judge and only thereafter, could any other order have been passed by that Court.

On the question of payment of Court fee *ad valorem*, he relies upon a judgment of the Supreme Court in Suhrid Singh @ Sardool Singh vs. Randhir Singh and others 2010 AIR (SC) 2807, wherein it has been held as follows:-

“6. 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](#).”

Hence, the contention of learned counsel for the petitioner is that Tej Kaur being the plaintiff who has challenged the sale deed actually executed by her, she was bound to pay Court fee *ad valorem* and not simply Rs. 19.50/-.

He also draws attention to Order 32 Rule 15 of the CPC, which reads as under:-

“[15. Rules Ito 14 (except rule 2A) to apply to persons of unsound mind.- Rules 1 to 14 (except rule 2A) shall, so far as may be, apply to persons adjudged, before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued].”

Learned counsel for respondent no. 1-plaintiff, on the other hand submits that the question of mental fitness of the plaintiff having been left open to be yet decided, it not having been held as to whether she is mentally fit or not, the learned Civil Judge has not erred anywhere and as regards payment of fee *ad valorem*, he relies upon two judgments of co-ordinate Benches of this Court in **Harbans Kaur** vs. **Amrit Singh @ Beer Singh** 2015 (4) RCR (Civil) 770 and **Om Parkash** vs. **Smt. Bimla Devi and others** 2014 (36) RCR (Civil) 162, in the first of which, while noticing the judgment of the Supreme Court in **Suhrid Singh @ Sardool Singhs'** case (supra), it was held as follows:-

“5. In the present case, parties are closely related to each other as the respondent is the son of the petitioner. The case of the petitioner is that at the time of execution of transfer deed, no consideration had passed between the parties and the transfer deed in question was a result of fraud and misrepresentation. Petitioner has filed suit for declaration and has not sought the relief of possession. The present case is covered by the decision given by this Court in Surjit Singhs' case (supra). Hence, the petitioner was not required to affix ad valorem Court fee.”

In **Om Parkashs'** case (supra), after discussing some judgments of this Court, of the Patna High Court, as also after reference to **Suhrid Singh @ Sardool Singhs'** case, it was held that the plaintiff would not be required to pay *ad valorem* court fee in the circumstances that she had actually sought a declaration that the gift deed executed by her in favour of defendant no. 1 was null and void.

Learned counsel for respondent no. 1 further submits that *ad valorem* Court fee would not be payable in this case also for the reason that the plaintiff had sought a declaration for the sale deed declared to be null and void and not binding upon her, because the said sale deed is the result of a fraud played.

Having considered the impugned order as also the arguments on both sides, in the opinion of this Court, what was first to be decided by the learned Civil Judge was the mental condition of the plaintiff, Tej Kaur, as, if she is indeed found to be mentally unfit, with the suit therefore having been filed practically by her daughter in a representative capacity, though shown to be filed by Tej Kaur, the contention being that the sale deed is a result of fraud perpetuated also on account of the mental condition of Tej Kaur, the question of payment of fee, *ad valorem* or otherwise, would be dependent on such finding.

If Tej Kaur is indeed found to be mentally unfit, then in the opinion of this Court, *ad valorem* Court fee is not necessary to be paid, because then the suit is practically not filed by her but by her daughter contending therein that her mother, i.e. the plaintiff, was not in a fit condition to execute the sale deed.

However, if Tej Kaur is found to be of sound mind, then, the sale deed having been shown to be made for consideration, though it is also contended that actually no consideration was paid, yet Court fee *ad valorem* would need to be paid even as per the ratio of the judgment in **Suhrid Singh @ Sardool Singhs'**

case.

Consequently, this petition is allowed with the impugned order set aside and the learned Civil Judge directed to first enquire into the mental fitness or otherwise, of the plaintiff Tej Kaur, in terms of what is stipulated in Order 32 Rule 15 of the CPC.

Based on the order to be passed in that regard, that Court would also decide the question of Court fee having to be paid *ad valorem* or otherwise, in terms of what has been observed hereinabove.

The question on the mental fitness of the plaintiff would be decided expeditiously by the trial Court by fixing very shorts dates, even if further enquiry is decided to be conducted by that Court in terms of the statutory provision referred to hereinabove.

The petition is disposed of.

July 03, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes