

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

224

CR-7749-2015
Date of Decision : 11.05.2018

Bhushan Rai and another

..... petitioners

Versus

Pawan Dhir and Other

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present :- Mr. S. S. Behl, Advocate
for the petitioners.

Ms. Jasleen Kaur, Advocate for
Mr. L. M. Gulati, Advocate
for the respondents.

Amit Rawal, J. (Oral)

The present revision petition is directed against the order dated 16.10.2015 passed by the Civil Judge (Jr. Division), Ludhiana, whereby the application moved by the respondent-defendant under Order 7 Rule 11 CPC for payment of the court fee has been allowed.

Learned counsel for the petitioner submitted that the petitioner had instituted the suit claiming the following relief:-

“Suit for declaration that sale deeds, bearing Vasika No. 17,203, bearing building number B-II-420/421 measuring 56.66 sq. yards situated at Ludhiana City Meena Bazar, registered with Sub Registrar, East Ludhiana on 10th of March, 2014, purporting to be having executed by plaintiff No. 1 through plaintiff No. 2 as attorney, in favour of defendant No. 2 Vasika No. 3448, concerning plot measuring 245.83 sq. yards comprised of Khasra No. 36//7/5-8/4-9/4-10/4-11-12-13-14-17-18-19-20-21-22-23-24-26, 37//6/4-7-14-15-16/2-17-24/2-25 Khata No. 12/12-

24/24-198/205-199/206-200/207-203/210 209/216-219/257 as per Jamabandi 2005-2006 situated within the revenue estate of village Kakowal, hadbust No. 80, tehsil and District Ludhiana, abadi Amanantran Colony, registered with sub registrar Ludhiana East on 9th of June 2014, purporting to have been executed plaintiff No. 2, in favour of defendant No. 3 and Vasika No. 3447, consisting of 2 shops bearing private No. 4-5, measuring 50 sq. yards, comprised of Khasra numbers 36//7/5-8/4-9/4-10/4-11-12-13-14-17-18-19-20-21-22-23-26, 37//6/4-7-14-15-16/2-17-24/2-25, 36—24 Khata No. 12/12-24/24-198/205-199/206-200/207-203/210 and 204/211-205/212-206/213-207/214-208/215-209/216-249/257 as per Jamabandi for the year 2005's-2006 situated within the revenue estate of village Kakowal, tehsil and district Ludhiana, Abadi Amantaran Nagar, resigtered with sub registrar Ludhiana East on 9th of June, 2014 purporting to have been executed by plaintiff No. 2, in favour of defendant No. 3, is an act of fraud having been committed by the defendant in conspiracy with each other, and the sale deed are without consideration and as such does not convey any title and interest in favour of vendees of the sale deeds. Further that the sale deeds have been got executed by the plaintiffs without their conscious mind rather than by an act of fraud and treachery.

AND

Suit for permanent injunction restraining the defendants, their agents, their assigns and their associates from interfering in the possession of the plaintiffs over the property described and covered under the aforesaid sale deeds. And further restraining defendants from causing any 3rd party interest by way of sale, exchange, gift, lease or otherwise over the property in dispute.”

Counsel for the petitioner submitted that petitioner is not party to the sale deed and was not supposed to file court fee since the said sale deed was a result of fraud. The finding of the Court below are not sustainable as the case is not covered as per the principles set out by the Supreme Court in ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010 (2) RCR (Civil) 564.***

On the contrary, learned counsel for the respondents submitted that the trial Court rightly passed the impugned order in terms of the principles laid down in ***Suhrid Singh @ Sardool Singh vs. Randhir Singh***

and others, 2010 (2) RCR (Civil) 564, the petitioner shall be construed to be a party to the sale deed. Therefore, no interference is warranted by this Court.

I have heard learned counsel for the parties and perused the record.

In the judgment rendered in **Suhrid Singh @ Sardool Singh'** case (supra), the Hon'ble Supreme Court held as under:

“7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "co-parcenery" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv) (c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds.

8. We accordingly allow these appeals, set aside the orders of the trial court and the High Court directing payment of court fee on the sale consideration under the sale deeds dated 20.4.2001, 24.4.2001, 6.7.2001 and 27.9.2003 and direct the trial court to calculate the court fee in accordance with Section 7(iv)(c) read with Section 7(v) of the Act, as indicated above, with reference to the plaint averments.”

In the present case, it is an act done by the agent on behalf of the principal, therefore, the sale deed executed by plaintiff No. 2 is to be construed to be an act of the plaintiff. Hence, the petitioner has rightly been held liable to pay the court fee for setting aside the sale deed.

In view of above, this Court finds no infirmity in the impugned order. The present revision petition is dismissed.

However, the petitioner is granted two months' time to comply with the order under challenge from the date of receipt of certified copy of this order.

11.05.2018
Waseem Ansari

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No