

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 07.12.2018

1. CR No.8160 of 2016(O&M)

M/s T.I.E.R. Infrastructure Pvt. Ltd. and another
.....Petitioners
Versus
Brahm Datt Sharma and othersRespondents

2. CR No.5558 of 2017(O&M)

Smt. Santosh Petitioner
Versus
Pawan Kumar and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. N.D. Achint, Advocate
for the petitioners.

Mr. S.K. Sharma, Advocate
for respondent No.1 in CR No.8160 of 2017.

Mr. Sanjay Verma, Advocate
for respondent No.1 in CR No.5558 of 2017.

RAJ MOHAN SINGH, J.

[1]. Vide this common order CR No.8160 of 2017 titled M/s T.I.E.R. Infrastructure Pvt. Ltd. and another Vs. Brahm Datt Sharma an CR No.5558 of 2017 titled Smt. Santosh Vs. Pawan Kumar and others are being disposed of. Since common

question of law and facts are involved, therefore, the facts are being taken from CR No.8160 of 2016.

[2]. In CR No.8160 of 2016, petitioners have assailed the order dated 18.10.2016 passed by Civil Judge (Junior Division), Faridabad vide which application filed by the petitioners under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

[3]. In CR No.5558 of 2017, petitioner has assailed the order dated 24.05.2017 passed by Civil Judge (Junior Division), Faridabad vide which application under Order 7 Rule 11 CPC for rejection of plaint was dismissed.

[4]. Plaintiff filed a suit for declaration with consequential relief of permanent injunction, challenging the sale deed on the ground of non-passing of consideration and fraud.

[5]. At the stage of application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. Perusal of the plaint would not show that the plaintiff is in possession of the suit property after sale, rather in para No.10 of the plaint, following recital was made:-

“10. That the defendants are continuously threatening the plaintiff to alienate the suit property to their customers after raising construction but the plaintiff requested not to raise any construction or not to alienate the suit property in any manner but the defendants are not ready to listen any word of the plaintiff hence this suit.”

[6]. Perusal of the aforesaid para would show that the plaintiff has *prima facie* admitted the possession of the defendant. The aforesaid pleadings in para No.10 can be corroborated from the recital in the sale deed. Even though, no other document is to be seen at this stage, but *prima facie* pleadings made in para No.10 has force on the strength of recital in the sale deed, wherein the plaintiff has specifically recited that he has handed over the possession of rectangle No.96, killa No.5/1 min East Rakba 2 kanals,13 marlas, which was in his possession and he was in possession for the last 10 years and he shall be responsible if in future any defect is found out in the ownership of the plaintiff. He further pleaded that he ceased to have any interest in the land. His legal representatives shall be bound by the same. The entire expenses of sale including stamp and duty charges have been born by the purchaser.

[7]. Learned counsel for the petitioners submitted that in view of first principle of **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.

[8]. Evidently, the plaintiff is the executant of the sale deed

and he seeks to annul it on the ground of non-passing of consideration and fraud. The ratio laid down in **Suhrid Singh @ Sardool Singh' case (supra)** was followed by this Court in **Tarsem Singh and others Vs. Vinod Kumar and others, 2011 (31) RCR (Civil) 709.**

[9]. As against this, learned counsel for the respondent(s) submitted that in view of ratio laid down in **Tarun Kumar and others Vs. Pankaj Kapoor and others, 2016(5) RCR (Civil) 296,** if the possession was not delivered to the defendant, the non-passing of consideration coupled with plea of fraud can be assailed in a suit without payment of *ad valorem* Court fee. By referring to **Rambai Vs. Kapoori and another, 2014(4) RCR (Civil) 376,** learned counsel contended that in case execution of sale deed is without payment of consideration coupled with plea of fraud and the possession remained with the vendor, a suit for declaration without payment of Court fee can be maintained.

[10]. It is a settled principle of law on the strength of **Kaliaperumal Vs. Rajagopal and another, 2009(2) RCR (Civil) 471 (SC)** that sale is defined as being a transfer of ownership for a price. There will be absolute transfer of all rights in the property subject matter of sale. No rights are left with the transferrer. The price is fixed by the contract antecedent to the conveyance. Price is the essence of a contract of sale. There is

only one mode of transfer by sale in regard to immovable property of the value of Rs.100/- or more and that is by a registered instrument. Payment of entire price is not a condition precedent for completion of the sale by passing of title in view of Section 54 of Transfer of Property Act which defines 'sale' as a transfer of ownership in exchange for a price paid or promised or part paid and part promised. In the event of non-payment of price/balance price, remedy available to the vendor is only to sue for the balance price by way of suit for recovery. The vendor cannot avoid the sale, however, he can create charge upon the property for the unpaid part of the consideration where the ownership of the property has passed over to the vendor before payment of entire sale consideration. If the amount of consideration paid through cheques and in the event of dishonouring of cheques, the vendor has to pay the *ad valorem* Court fee. The expression "law" occurring in Order 7 Rule 11 (d) CPC includes judicial precedents of the Hon'ble Apex Court. The authoritative pronouncement of the Hon'ble Apex Court is the law of land. Reference can be made to **Bhargavi Constructions and another Vs. Kothakapu Muthyam Reddy and others, 2017(4) RCR (Civil) 359.**

[11]. One of the consideration made in the aforesaid cases was that the vendor claimed himself to be in possession and

therefore, the case was not considered under the ambit of first principle of **Suhrid Singh @ Sardool Singh's case (supra)**.

[12]. Perusal of the plaint would show that the plaintiff has admitted the possession of the defendants in para No.10 and the said assertion finds favour from the recital in the sale deed as well, therefore, facts of **Tarun Kumar and others case (supra)** are all together different. Similarly, in **Rambai Vs. Kapoori and another's case (supra)**, delivery of possession in favour of vendor was one of the consideration as in the said case, possession was found with the vendor. Second consideration was in respect of fraud with which the sale deed was allegedly executed. So far as possession of the land in question is concerned, the same has not been pleaded by the plaintiff in the plaint, rather the same has been pleaded conversely in favour of the defendants.

[13]. In a subsequent judgment in **CR No.4067 of 2012** titled **Dharam Singh and others Vs. M/s Omax Construction Ltd.** decided on 12.03.2015, the view expressed by this Court for not requiring *ad valorem* Court fee in case of challenge in the suit on the basis of fraud was overruled by the Hon'ble Apex Court in **CA No.8880 of 2015** arising out of **SLP(C) No.16313 of 2015** titled **M/s Omax Construction Ltd. Vs. Dharam Singh and others** decided on 26.10.2015.

[14]. For the reasons recorded hereinabove, I am of the considered view that the impugned orders are not legally sustainable. Plaintiff being the executant of the sale deed has to pay the *ad valorem* Court fee as per consideration shown in the instrument. Revision petitions are accordingly allowed. Impugned orders are hereby set aside. Normal consequences to follow.

07.12.2018	(RAJ MOHAN SINGH)
Prince	JUDGE
Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No