

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 8426 of 2015
Date of decision : May 24, 2018

Anuj Sharma and others through mother Anita Devi

..... Petitioners

Versus

Smt. Prem Lata and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rakesh Nagpal, Advocate
for the petitioners.

Mr. R. K. Saini, Advocate
for the respondents.

AMIT RAWAL, J (oral).

The present revision petition is directed against the impugned order dated 10.11.2015 (Annexure P-4) whereby on an application filed by the respondent-defendants under Order 7 Rule 11 CPC for rejection of the plaint for deficient payment of court fee the petitioners-plaintiffs have been called upon to make up the deficiency of court fee under the provisions of Section 7 of the Court Fees Act, 1870.

Learned counsel appearing on behalf of the petitioners submitted that the claim in the suit by the petitioners-plaintiffs was that they had right by birth in the property being ancestral challenging the sale deed dated 27.5.2011 executed by defendant No.2 father of the plaintiffs, therefore the plaintiffs were not party to the sale deed and simpliciter declaration and joint possession had been sought. In view of the conditions

laid down by the Hon'ble Supreme Court in Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010 AIR (SC)2807 the plaintiffs are not required to pay the court fee. Therefore the impugned order is illegal and perverse.

Per contra, learned counsel appearing on behalf of the respondent submitted that the judgment relied upon by the petitioners-plaintiffs rather support the case, for, the suit has been very cleverly drafted with a view that declaration tantamounts to cancellation, therefore prays that the court fee is required to be paid and urges this court for dismissal of the revision petition.

I have heard learned counsel for the parties, perused the paper book and of the view that there is force and merit in the submissions of learned counsel for the petitioner. It would be apt to reproduce the prayer made in the suit filed by the petitioners-plaintiffs as under:-

“That the plaintiffs pray that a decree for declaration to the effect that the plaintiffs are still the owners in joint possession in the suit land mentioned above in para No.1 of the plaint being coparceners along with their father defendant No.2 and the impugned sale deed i.e. Vasika No. 925/1 dated 27.5.2011 has no binding effect upon the rights of the plaintiffs in the suit land mentioned in para No.1 of the plaint being illegal, null and void, ineffective, non-existent, fraudulent and not binding upon the rights of the plaintiffs and further a decree for permanent injunction restraining the defendant No.1 from alienating the suit property detailed above in para No.1 of the plaint to some unknown person and also from creating any charge/encumbrance etc.from any financial institution etc.,illegality and forcibly or otherwise in any manner, not or in future, be passed with costs in favour

of the plaintiffs and against the defendants.”

It is also not disputed that defendants are not party to the sale deed aforementioned. On plain reading of the prayer as well as the fact that the petitioners are not party to the sale deed, in view of the judgment of Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh's case (supra)**, the plaintiffs are not required to pay the court fee under Section 7 (iv) (c) read with Section (v) of the Court Fees Act, 1870. The trial court has misread the judgment aforementioned. For the sake of brevity para 6 of the judgment reads as under:-

“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](#).”

Keeping in view the aforementioned facts, the impugned order is not sustainable in the eyes of law and is hereby set aside.

Accordingly the revision petition stands allowed.

(AMIT RAWAL)
JUDGE

May 24, 2018
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Whether speaking/reasoned	Yes
Whether Reportable	No