

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.8610 of 2016(O&M)
Date of Decision-11.12.2018

Nachhatar Singh (deceased through LRs) ... Petitioners
Versus

Atma Singh and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Saurav Singla, Advocate for
Mr. Pardeep Bajaj, Advocate
for the petitioner(s).

Mr. Vishal Gupta, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner through his LRs against the order dated 01.08.2016 passed by Civil Judge (Junior Division), Jagraon, whereby the application under Order 7 Rule 11 CPC filed by the defendant was allowed and the plaintiff was directed to affix the *ad valorem* Court fee and to make good the deficiency in Court fee.

[2]. Plaintiff filed a suit for declaration to the effect that he is owner in possession of the suit property. Transfer deed dated 31.05.2011 was claimed to be *sham* transaction and was not binding upon the right and title of the plaintiff. Permanent injunction was also sought, restraining the defendant from dispossessing the plaintiff.

[3]. Defendant filed an application under Order 7 Rule 11 CPC on the ground that since the plaintiff has challenged the transfer deed, therefore, he was required to pay *ad valorem* Court fee on the value of the deed for the relief of cancellation of the deed. Plaintiff claimed that since possession was with the plaintiff, therefore, *ad valorem* Court fee was not required to pay. Plaintiff is the executant of transfer deed and the same was claimed to be the result of fraud and misrepresentation.

[4]. Trial Court allowed the application on the ground that the plaintiff being the executant of deed is required to affix *ad valorem* Court fee on the consideration stated in the deed.

[5]. I have considered the arguments raised by learned counsel for the parties.

[6]. The expression "law" occurring in Order 7 Rule 11 (d) includes judicial decisions of the Hon'ble Apex Court. The authoritative pronouncement of the Hon'ble Apex Court is the law of land. The law declared by Hon'ble Apex Court under Article 141 of the Constitution of India is law of land. Law includes not only legislative enactments but also judicial precedents. Reference can be made to **Virender Kumar Dixit Vs. State of U.P., 2014(9) ADJ 506** and **Bhargavi Constructions and another Vs. Kothakapu Muthyam Reddy and others, 2017(4) RCR (Civil) 359.**

[7]. In **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(2) RCR (Civil) 564 (SC)**, the Hon'ble Apex Court has laid down some parameters for consideration of the application under Order 7 Rule 11 CPC. The principles as laid down in the aforesaid judgment are:-

“(a) If the executant of a document/deed wants to seek its annulment, then he is to seek cancellation of the same and to pay ad valorem Court fee on the consideration stated in the said document/deed.

(b) If an non-executant of a document/deed seeks annulment of a deed, then he is to seek declaration that the deed is invalid, non-est, illegal and is not binding upon him. He has to pay fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

(c) If the non-executant of a document/deed is not in possession and he seeks not only a declaration of the deed/document to be illegal, but also seeks possession, then he has to pay ad valorem Court as provided under Section 7(iv) (c) of the Act and such valuation in case of immoveable property shall not be less than the value of property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.”

The aforesaid principles as laid down in **Suhrid Singh @ Sardool Singh's case (supra)** were followed by the Division Bench of this Court in **Tarsem Singh and others Vs. Vinod Kumar and others, 2014(1) ICC 1054.**

[8]. If challenge to the document is made in the suit on the basis of fraud, then the view of the Courts was that since

cancellation is sought on the basis of fraud having been practiced upon the plaintiff, therefore, plaintiff is not liable to pay *ad valorem* Court fee. The same was also endorsed by the High Court in **CR No.4067 of 2012** titled **Dharam Singh and others Vs. M/s Omax Construction Ltd.** decided on 12.03.2015. The said judgment was overruled by the Hon'ble Apex Court in **CA No.8880 of 2015** arising out of **SLP(C) 16313 of 2015** titled **M/s Omax Construction Ltd. Vs. Dharam Singh and others** decided on 26.10.2015. The ratio laid down in **Rambai Vs. Kapoori and another, 2014(4) RCR (Civil) 376** and **Tarun Kumar and others Vs. Pankaj Kapoor and others, 2016(5) RCR (Civil) 296** are explained in the facts and circumstances of those cases, where actual possession remained with the vendor. Only a symbolic possession was recorded in favour of the defendant therein.

[9]. In the controversy in hand, it can be culled out that the law laid down in **Suhrid Singh @ Sardool Singh's case (supra)** would apply as a ratio and thereafter, individual case has to be tested at the threshold of its own facts. If in a given case, the suit is filed on the basis of fraud having been played upon the plaintiff, still the plaintiff is required to pay *ad valorem* Court fee. The payable Court fee would be tested as per ratio laid down in **Suhrid Singh @ Sardool Singh's case (supra)**. As per first principle of **Suhrid Singh @ Sardool Singh's case (supra)**, if an executant of a deed seeks to get it annulled by way of civil suit,

then he has to pay *ad valorem* Court fee as per consideration shown in the instrument. The aforesaid principle is irrespective of the plea of fraud or otherwise. On a plea of fraud in a suit, the Hon'ble Apex Court has settled the controversy in **M/s Omax Construction Ltd. Vs. Dharam Singh and others case (supra).**

The question is how much Court fee is required to be paid and the same should be governed by the principles as laid down in **Suhrid Singh @ Sardool Singh's case (supra)**. If a non-executant who is in possession of the property seeks to get the document annulled, then his case would be governed by second principle of **Suhrid Singh @ Sardool Singh's case (supra)** and he is required to pay Court of Rs.19.50 as per Article 17(iii) of the Second Schedule of the Act. If the non-executant who is not in possession of the property and he seeks not only the declaration of the instrument to be invalid, but also seeks possession thereof, then he is required to pay *ad valorem* Court fee as per market value under Section 7(iv) (c) of the Act. In any eventuality, there cannot be escape from not adhering to the principles as laid down in **Suhrid Singh @ Sardool Singh's case (supra)**. **Tarun Kumar and others case (supra)** and **Rambai's case (supra)** were decided on the basis of facts involved in those cases. In those cases, possession was always remained with the plaintiff.

[10]. In view of factual position of the present case, transfer deed under challenge in the suit does not show any consideration, therefore, plaintiff is required to pay Court fee as

per first principle of **Suhrid Singh @ Sardool Singh's case** **(supra)**. Since no consideration is shown in the deed itself, therefore, plaintiff is not required to pay *ad valorem* Court fee. Impugned order is thus found to be suffered with illegality and is not sustainable in the eyes of law. Consequently, this revision petition is allowed. Impugned order dated 01.08.2016 passed by Civil Judge (Junior Division), Jagraon is hereby set aside. Normal consequences to follow.

(RAJ MOHAN SINGH)
JUDGE

11.12.2018

Prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No