

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CR No.973 of 2018 (O&M)

Date of decision:15.02.2018

Karnail Kaur

... Petitioner

Vs.

Chander Mohan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Dr. Rau P.S.Girwar, Advocate
for the petitioner.

AMIT RAWAL J.

The petitioner-plaintiff is against the impugned order dated 21.09.2017, whereby, the application filed under Order 7 Rule 11 of Code of Civil Procedure, seeking rejection of the plaint on account of non-payment of sufficient court fee, has been allowed.

The petitioner-plaintiff instituted the suit seeking following relief:-

“Suit for declaration to the effect that the plaintiff is owner in possession of land measuring 2 kanals +01 marlas 05 marlas, total land measuring 03 kanals 05 marlas bearing khasra number 44//22/2(2-0), khewat no.130/118, khatauni no.287 (i.e. 02 kanals) and khasra numbers 44//21/1/1(0-5), 44//21/2(1-0), (i.e. 1 kanals 05 marlas), as per jamabandi for the year 2009-10, situated at village Bhokhra, Tehsil and Distt.

Bathinda and the defendants have absolutely no right, concern, interest or title of any kind whatsoever with it and the alleged sale deeds no.1341 dated 14.11.2013 and 1377 dated 21.11.2013 allegedly executed by the plaintiff in respect of the suit property in favour of the defendants and subsequent transactions and mutations, if any, are illegal, null and void, nonest, arbitrary, unjust, void abinitio, concealment of facts, false, result of misrepresentations, fraud and cheating on the rights of the plaintiff and without consideration, without her consent, ineffective, inoperative and the same have been brought into existence by the defendants cleverly and frequently instead of mortgage deed and is against the rights of the plaintiff and she is not bound by the same and is liable to be cancelled or set aside as the plaintiff had mortgaged the suit property with the defendants and she did not sell the same to the defendants vide alleged sale deeds and the defendants got the alleged sale deeds from the plaintiff cleverly and fraudulently in place of mortgage deed and the possession of the same is with the plaintiff and the possession has not been transferred in favour of the defendants;

AND

Suit for mandatory injunction for issuance of mandate / direction to the defendants to return the four signed cheques of the son of the plaintiff namely Manjit Singh of his account

maintained by him with Oriental Bank of Commerce, Civil Lines, Bathinda;

AND

Suit for mandatory injunction restraining the defendants from illegally and forcibly dispossessing the plaintiff from the suit land and also from alienating any portion of the suit property to any person in any manner i.e. by way of sale, mortgage, exchange, gift, lease etc alongwith any other additional, alternative and consequential relief.”

Learned counsel for the petitioner-plaintiff submitted that challenge to the sale deeds executed by the plaintiff referred to in the aforementioned plaint were result of fraud, mis-representation and without consideration, therefore, the court fee was not required to be paid.

In support of his contention, relied upon the judgments of this Court rendered in **Nirmal Singh Vs. Jagdev Singh 2012 (41) RCR (Civil) 865; Joginder Singh Vs. Kulwant Singh and others 2015(47) RCR (Civil) 428; Rambai Vs. Kapoori and another 2014(4) RCR (Civil) 376 and Sukha Singh @ Sukhdarshan Singh Vs. Basakha Singh and another 2014(61) RCR (Civil) 903.**

I have heard the learned counsel for the petitioner-plaintiff, apprised the paper book and of the view that there is no force and merit in the submissions of Dr. Rau P.S.Girwar, Advocate.

No doubt, the plaintiff has not sought the cancellation of the sale deeds but challenged the sale deeds executed by her. The Full Bench of this Court in **Niranjan Kaur Vs. Nirbigan Kaur 1981 PLJ 423** and the Supreme Court of India in **Suhrid Singh @ Sardool vs. Randhir Singh and others 2010(2) RCR (Civil) 564**, consistently held that where a person claims declaration by raising a plea that the sale deed was executed by playing fraud and mis-representation, it would tantamount to cancellation of the document despite the fact that the possession had not been handed over and court fee is required to be paid on the value mentioned in the sale deed. For the sake of brevity, paragraph 15 of judgment rendered in **Niranjan Kaur (supra)** and paragraphs 5 to 7 of Suhrid Singh (supra) read thus:-

“15. As regards the present case, the plaintiff-petitioner claimed possession of the suit land after getting a declaration that the sale deed was null and void because of the alleged fraud etc. It is significant to note that the plaintiff-petitioner herself being a party to the sale deed could not sue for a mere declaration that the sale deed was fraudulent and the vendees had not acquired any title thereunder. The sale deed had to be cancelled, otherwise, title in the land had already passed to the vendee under the deed. In the present case, the plaintiff-petitioner had to get the sale deed, to which she was a party, cancelled, before she could seek possession of the land. Thus, the substantive relief being the cancellation of the sale deed, it

is [Article 1](#), Schedule I of the Act, which was applicable to the suit of the plaintiff-petitioner.”

Paragraphs 5 to 7 of Suhrid Singh (supra)

“5. Court fee in the State of Punjab is governed by the [Court Fees Act](#), 1870 as amended in Punjab (‘Act’ for short). [Section 6](#) requires that no document of the kind specified as chargeable in the First and Second Schedules to the Act shall be filed in any court, unless the fee indicated therein is paid. Entry 17(iii) of Second Schedule requires payment of a court fee of Rs.19/50 on plaints in suits to obtain a declaratory decree where no consequential relief is prayed for. But where the suit is for a declaration and consequential relief of possession and injunction, court fee thereon is governed by [section 7\(iv\)\(c\)](#) of the Act which provides :

“7. Computation of fees payable in certain suits : The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

(iv) in suits - x x x x (c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed, x x x x x according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought:

Provided that minimum court-fee in each shall be thirteen rupees.

Provided further that in suits coming under sub-clause (c), in cases where the relief sought 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 this section."

The second proviso to [section 7\(iv\)](#) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with reference to the revenue payable under clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under clause (e) thereof.

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](#).

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."

In view of the ratio decidendi culled out by the Full Bench of this Court and Hon'ble Supreme Court, I concur with the opinion expressed by the trial Court while allowing the application of the defendants which is perfectly legal and justified, much less, the same cannot be said to have been passed without jurisdiction.

No ground for interference is made out in the order under challenge.

Accordingly, the revision petition is dismissed.

February 15, 2018

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No