

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CR No. 8713 of 2017 (O&M)
Date of decision: 30.11.2018**

Beant Kaur through LRs

...Petitioner

Vs.

Balbir Singh and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Abhinav Gupta, Advocate
for the petitioner.

Mr. B.S. Jaiswal, Advocate
for Mr. Lovish Rattan, Advocate
for respondent No. 2.

Mr. Surinder Sharma, Advocate
for respondent No. 3.

AMIT RAWAL, J.(ORAL)

The controversy involved in the present case is whether the impugned order dated 28.11.2017 allowing the application of the defendants under Order 7 Rule 11 calling upon the plaintiffs to pay the advalorem Courts fee with regard to the challenge laid to three sale deeds No. 1670, 1671, 1672 of 12.12.2013 executed by attorney of the plaintiff. In other words, can the plaintiff get away by not paying the advalorem Court fees and challenge to the sale deeds on the ground of being out-come of misrepresentation and not executed by the person authorised.

Mr. Abhinav Gupta, learned counsel appearing on behalf of the petitioner submitted that the Power of Attorney was cancelled on September, 2013 whereas the sale deed executed on dated 12.12.2013 and, therefore, there is an act of misrepresentation and plaintiff cannot be called to pay the advalorem Court fee. In such circumstances, learned counsel for the petitioner has submitted that the ratio decidendi culled out in the judgment of Full Bench of this Court in **Niranjan Kaur v. Nirbigan Kaur 1982 PLJ 423** would not apply.

Mr. Jaiswal, learned counsel appearing on behalf of respondent No. 2 submits that prayer is not only for cancellation of the sale deed but for possession of the suit property also. He further submits that agent/defendant No. 2 did not receive any notice with regard to the cancellation of power of attorney. The sale consideration was also passed on and in this view prayed for dismissal of revision petition.

I have heard learned counsel for the parties. The law regarding the payment of Court fee is well settled in the judgment rendered by Full Bench of this Court in **Niranjan Kaur's** case (ibid). The aforementioned judgment has reiterated by another coordinate Benches in **Rajiv Mahajan and Others Vs. Ajit Kaur and Others 2014(3) ICC 563**, **Balwan Singh Vs. Premo Devi and Another 2017(3) Law Herald 2143** and **Om Parkash vs. Indrawati 2002 (4) RCR (Civil) 186** . The relevant part in Om Parkash case (supra) reads as under:-

"Thus, what the Supreme Court has held in Shamsheer

Singh's case (supra) is that in the suit by the plaintiffs for the declaration that the decree obtained by the mortgagee against their father was not binding on them, they were really asking either for setting aside the decree or for the consequential relief of injunction restraining the decree-holder from executing the decree against the mortgaged property as he was entitled to do. This case is hardly helpful to the case of the plaintiff-petitioner as it is clearly distinguishable from the facts of the present case for the simple reason that herein the plaintiff-petitioner is a party to the document, which she is required to get cancelled because of the alleged fraud etc. A suit for declaration by a son or a member of a coparcenary under the Hindu Law will thus be on a different footing. In such a suit, the main relief will be that of a declaration and the consequential relief of injunction restraining the decree-holder from executing the decree against the sons etc. will be just ancillary. This is further clear when reference has been made in Shamsheer Singh's case (supra) to **Vinayakrao v. Mankunwaribai, AIR 1943 Nagpur 70**, wherein it was held that in a suit by the son for a declaration that the decree against his father does not affect his interest in the family property, consequential relief was involved and ad valorem Court-fee was necessary. On the other hand, there may be cases, where the declaration asked for is merely a surplusage and the so-called consequential relief is in reality an independent

substantial relief. For instance, if a person sues for a declaration that the defendant is liable to pay him money due on a certain bond and also asks for recovery of the amount, or asks for a declaration that he is the owner of the certain property and entitled to its possession and asks for possession of the property, the reliefs for the recovery of the amount or for possession cannot properly be treated as consequential reliefs, which can be valued arbitrarily by the plaintiff under section 7(iv) (c).

5. If the principles laid down by the Full Bench are applied to the facts of the case in hand, no doubt is left that the suit is not only for declaration but also for consequential relief. The prayer made in the suit is that the sale deeds dated 28.4.2000 and 27.4.2000 may be set aside as the same have been the result of fraud, mis-representation and collusion. The consequential relief of permanent injunction has also been prayed restraining defendant-respondents No. 2 and 3 from alienating, selling or transferring the suit land or any part thereof to anyone on the basis of the aforesaid wrong, illegal and void sale deeds and many other consequential reliefs. Therefore, the reliance placed by the learned counsel for the plaintiff-petitioner on the Full Bench does not in any manner advance his case. On the contrary, the Full Bench laid down the principle that the Court should find out the substantive relief claimed without going into the form. Therefore, the revision petition is liable to be dismissed".

In Surjit Singh Vs. Karamjit Kaur 2012 (3) RCR Civil

364 there was execution of transfer of land in favour of daughter-in-law and later on relief qua cancellation was sought without claiming any possession. In **Rajiv Mahajan case (supra)** power of attorney was cancelled as such the respondent could not have executed the sale deed and in such circumstances ad valorem courts fee was held not liable to be paid.

Hon'ble the Supreme Court in **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors. 2010 AIR (SC) 2807** has laid down the following principles regarding affixation of ad valorem courts fee. The relevant part reads as under:-

"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 '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 (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".

In the present suit application for amendment is pending for adjudication. However, for the sake of brevity, the prayer in the suit reads as under:-

"A) Suit for declaration to the effect that the plaintiff is the owner in possession of land measuring 30 kanalas 5 marlas and House built on area

measuring 14 marlas 5 sarsahis as shown red in the site plant bounded on East: 90 Feet Street and Vipan West: 90 feet House of Jeet Ram North: 44 Feet Vipan Kumar and South: 44 Feet Street situated in the area of Village Nawan Pind Arayian, Tehsil Nakodar, District Jalandhar comprised in Khasra No. 15//2/1/(4-0) 8//15/3(0-13) 7//21/2(3-16) 7//22/2(1-12) 12//1(4-5) 12//9/2(2-1) 4//22(2-1) 7//19/2(1-16) 7//20/1(4-4) 8//16(8-0) and the alleged sale deeds dated 12.12.2013 bearing documents No. 1670 and 1671 executed by the defendant No. 1 in favour of the defendant No. 3 and sale deed dated 12.12.2013 bearing document No. 1672 executed by the defendant No. 1 in favour of the defendant No. 2; Sale deed dated 20.8.2013 document No. 949 executed by the defendant No. 1 in favour of the defendant No. 3; Sale deed dated 20.8.2013 document No. 950 executed by the defendant No. 1 in favour of the defendant No. 4 and sale deed No. 951 dated 20.8.2013 executed by the defendant No. 1 in favour of th defendant No. 5, alleging himself to be the attorney of the plaintiff are illegal unlawful, null & void, ineffective and inoperative qua the rights of the plaintiff being void abinitio, without consideration and are liable to be set aside and are not binding on the

rights of the plaintiff as the defendant No. 1 was not at all competent to execute and register the alleged sale deeds in favour of the defendants No. 2 to 5 as the Power of attorneys were already cancelled and revoked by Smt. Beant Kaur and further to the effect that the subsequent sale deeds No. 1540 dated 26.11.2013, 1539 dated 26.11.2013, 1542 dated 26.11.2013, 1543 dated 26.11.2013, 1541 dated 26.11.2013, 1538 dated 26.11.2013, 1750 dated 23.12.2013, 1724 dated 20.12.2013, 1726 dated 20.12.2013, 1723 dated 20.12.2013, 1725 dated 20.12.2013, 1727 dated 20.12.2013, 1866 dated 10.1.2014, 1749 dated 23.12.2013, 1751 dated 23.12.2013, 1752 dated 23.12.2013, 1865 dated 10.1.2014, 1791 dated 27.12.2013, 1792 dated 27.12.2013, 1867 dated 10.1.2014, 2107 dated 7.2.2014, 2108 dated 7.2.2014, 354 dated 22.5.2014, 1720 dated 12.2.2015, 567 dated 27.6.2016 are also illegal, unlawful, inoperative, null & void, without any authority and are liable to be set aside AND the mutations No. 813, 815, 823, 826, 829, 827, 828, 814, 822, 824, 825, 831, 832, 833, 834, 835, 836, 838, 839, 840, 843, 844, 845, 846, 847, 848, 851, 855, 856, 857, 858, 883, 884, 888 sanctioned on the basis of the alleged sale deeds are also illegal, unlawful, inoperative, null & void, without

any authority and are liable to be set aside and expunged from the revenue record.

With consequential relief of permanent injunction, restraining the defendants No. 2 to 5, their agents, attorneys, associates and representatives from further alienating the above said land in any manner whatsoever by way of sale, gift, exchange, transfer etc. And further from dispossessing the plaintiff from the suit property.

- B) Suit for grant of decree for declaration to the effect that the applicant Balwinder Singh is owner in possession of the property detailed above on the basis of Will dated 22.3.2014 executed by Smt. Beant Kaur in his favour as Smt. Beant Kaur died during the pendency of the suit.

In the alternative, suit for possession of the land measuring 30 kanals 5 marlas and House in dispute as fully detailed above, in case, the plaintiff is forcibly dispossessed from the suit property during the pendency of the suit and in case, he is not able to prove his possession after removing construction and Malba from the land measuring 30 kanals 5 marlas as detailed above by the said defendants".

Plaintiff has sought declaration declaring the sale deed illegal, null and void and in alternative relief of possession. In

such circumstances, it is not the case for cancellation of the sale deeds only but also for possession thus, advalorem Court fees is required to be paid. Considering the the sale deed even on behalf of agent, it would be a question of evidence whether the power of attorney in this case was validly cancelled or plaintiff cannot be permitted to continue with the suit without complying with the order.

Finding no illegality, no ground is made for interference in the petition.

Dismissed.

November 30, 2018
Poonam (II)

(AMIT RAWAL)
JUDGE

1.	Whether reportable?	Yes / No
2.	Whether reasoned / speaking?	Yes / No