

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

105

**CR No.2951 of 2018 (O&M)
Date of Decision : 08.03.2019**

BALDEV SINGH.

....PETITIONER

V/S

SAVNEER BAL (MINOR) AND OTHERS.

....RESPONDENTS

CORAM : HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. V.B. Aggarwal, Advocate for the petitioner.

Mr. Dinesh Singh Rawat, Advocate for respondent Nos.1 and 2.

None for respondent No.3.

B.S. WALIA, J.

[1] Revision petition has been filed under Article 227 of the Constitution of India, challenging order dated 13.04.2018 (Annexure P-1), passed by the learned Additional Civil Judge (Senior Division), Indri, in case titled as 'Savneer Bal and others' versus Baldev Singh and another', dismissing the application filed by the petitioner-defendant under Order 7 Rule 11 read with Section 151 CPC.

[2] Brief facts of the case, leading to the filing of the revision petition are that the respondents-plaintiffs filed a civil suit for declaration that sale deed bearing *Vasika No.1158/1* dated 15.07.2013 was illegal, null and void, inoperative, in contravention of the law and not binding upon the rights of the respondents-plaintiffs with a prayer for consequential relief of permanent

injunction for restraining the petitioner-defendant from further alienating the suit land by way of sale, mortgage, charge, lien, gift etc.

[3] The petitioner-defendant filed an application under Order 7 Rule 11 read with Section 151 CPC, for rejecting the plaint on the ground that the respondent-plaintiff had wrongly assessed the value of the suit for the purposes of Court fee and jurisdiction at Rs.200/- and affixed Court fee of Rs.25/- only as against the requirement to assess the value of the suit for the purpose of Court fee and jurisdiction as per the sale consideration of the suit property as mentioned in the sale deed.

[4] The learned Additional Civil Judge (Senior Division), Indri vide order dated 27.04.2018, dismissed the application filed by the petitioner-defendant under Order 7 Rule 11 CPC by observing that the respondent-plaintiffs, were neither executants of the sale deed under challenge nor were seeking consequential relief of possession, being co-sharers/coparcener in the suit property and as per decision of Hon'ble the Supreme Court in **Suhrid Singh @ Sardool Singh versus Randhir Singh and others**, 2010 AIR (SC) 2807 it was settled law that when a non executant challenged a sale deed without seeking consequential relief of possession, Court fee was not required to be affixed by such party as per the sale consideration mentioned in the sale deed.

[5] Learned counsel for the petitioner reiterated the submissions made before the learned trial Court and prayed for setting aside the impugned order and allowing the revision petition whereas learned counsel for respondent Nos.1 & 2 reiterated the reasoning for the passing of the impugned order and prayed for upholding of the same.

[6] I have considered the submissions of learned counsel for the parties.

[7] At the outset, it needs noticing that at the time of preliminary hearing, learned counsel for the petitioner while relying upon the decision of Hon'ble the Supreme Court in 'Suhrid Singh's case' (*supra*) had contended that the respondents-plaintiffs although were not the executant of the sale deed yet *not being in possession had* sought a declaration that the sale deed was invalid and had also sought *consequential relief of possession, therefore*, were bound to pay *ad valorem* Court fee as provided under Section 7(iv) (c) of the Court Fees Act, 1870 (hereinafter referred to as the Act).

[8] A perusal of paragraph No.3 of the plaint reveals the averment of the petitioner-defendant No.1 being joint owner in possession of ancestral land with the respondents-plaintiffs as comprised in *Khewat* No.396 min *Khatoni* No.408 min *Khasra* No.14//4/1/2(6-4), 4/2(1-0), *Kittas*-2 measuring 7 Kanal 4 Marla and *Khewat* No.900 min *Khatoni* No.1029 *Khasra* No.14//5/1(4-4) *Kittas*-1 measuring 4 Kanal 4 Marla thus total land 11K – 8M vide *jamabandi* for the year 2009-2010 and mutation No.2703 situated in village Randoli District Karnal, besides there were other properties *qua* which the respondents-plaintiffs reserved their rights to file a separate suit. Moreover, in paragraph No.10 of the plaint, it has been averred that the suit land was ancestral as the same had been inherited by petitioner-defendant No.1 from his father and mother, that the respondent-plaintiffs had every right being co-sharer and owner of said land and petitioner-defendant No.1 had no right to sell the share of the minor without taking permission from the Court, and that being co-

sharer, the respondent-plaintiffs were in possession of the land in question as well as the other land.

[9] Once civil suit was filed by the respondent-plaintiffs contending co-parcenary right and joint possession of the suit land, besides that they were not executant of sale deed bearing *vasika* No.1158/1 dated 15.07.2013 and had sought declaration that the same was illegal, null and void and not binding upon the rights of the respondent-plaintiffs with consequential relief of permanent injunction, then as per Article 17(3) of the Second Schedule to the Court Fees Act, the respondent-plaintiff was merely required to pay fixed Court fee of Rs.19.50 especially since there was no prayer for cancellation of the sale deed and prayer was only for declaration that the deeds did not bind the respondent-plaintiffs' co-parcenary right's and further prayer was for permanent injunction for restraining petitioner-defendant No.1 from further alienating the suit land by way of sale, mortgage, change, lien, gift etc. In the light of the position as noted above, the matter is squarely covered by the decision of Hon'ble the Supreme Court in '**Suhrid Singh @ Sardool Singh's** case (*supra*). Relevant extract of the same is reproduced 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](#).

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."

[10] In the instant case, the respondent-plaintiffs are not the executants of the sale deed, besides are in possession. Moreover, prayer is for a declaration that the deed is null and void and not binding on them or on their share. In aforesaid situation, the respondent-plaintiffs are required merely to pay fixed

Court Fee of Rs.19.50 as per Article 17(iii) of the Second Schedule of the Act. The position would have been different, if the respondent-plaintiffs though being non-executant were not in possession and had sought not only a declaration that the sale deed was invalid but also consequential relief of possession. If the situation had been as above, then, the respondent-plaintiffs would have been required to pay *ad valorem* Court fee, as provided under Section 7(iv) (c) of the Act. In the circumstances, I do not find any ground whatsoever warranting interference with the well reasoned order passed by the learned Additional Civil Judge (Senior Division), Indri. The revision petition being bereft of merit is accordingly **dismissed** but with no order as to costs.

[11] Since the main petition has been *decided and dismissed*, therefore, no orders are required to be passed on the pending miscellaneous application(s), if any and they be deemed to have been disposed off as such.

(B.S.WALIA)
JUDGE

March 8, 2019
'Rajneesh'

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No