

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.3564 of 2018(O&M)
Date of Decision: 19.09.2019

Gurjit Singh

.....Petitioner

Versus

Baljit Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. A.S. Manaise, Advocate
for the petitioner.

Mr. Prateek Sodhi, Advocate
for respondents No.1 and 7.

RAJ MOHAN SINGH, J.

CM No.14166-CII of 2019

For the reasons mentioned in the application, the same
is allowed.

Accompanying document is taken on record.

Main case

[1]. Petitioner has preferred this revision petition against the
order dated 09.05.2018 passed by Civil Judge (Junior Division),
Amritsar, vide which application under Order 7 Rule 11 CPC
filed by defendants No.1 to 7 was allowed and the

plaintiff/petitioner was directed to pay *ad valorem* Court fee on the suit.

[2]. Plaintiff filed a suit for declaration to the effect that he is a co-owner/co-sharer in joint possession of land measuring 160 kanals, 13 marlas as shown in the headnote of the plaint to the extent of 1/18th share out of entire suit land or in other words 1/3rd share of the plaintiff out of 1/6th share of Avtar Singh and suit for declaration to the effect that the alleged exchange deed dated 11.10.2013 and mutation sanctioned in pursuance thereof are illegal and result of fraud. Permanent injunction and mandatory injunction were also sought in the suit.

[3]. Defendants No.1 to 7 filed an application under Order 7 Rule 11 CPC for rejection of plaint on the premise that exchange deed dated 11.10.2013 registered on 14.10.2013 to which the plaintiff is one of the executants is being challenged and it is necessary for the plaintiff to pay *ad valorem* Court fee as per document and as per value of the exchange deed.

[4]. Evidently, the plaintiff is a co-sharer along with defendants. Perusal of the exchange deed would show that there is no passing of consideration in the deed. In **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 (2) RCR (Civil) 564**, the Hon'ble Apex Court has held that if the executant of the sale deed seeks cancellation of the deed, he

has to pay *ad valorem* Court fee on the consideration stated in the deed. Plaintiff has not asked for any possession.

[5]. Learned counsel for the petitioner relied upon **Harbans Kaur Vs. Amrik Singh @ Beer Singh, 2015(4) Law Herald 3088, Surjit Singh Vs. Karamjit Kaur, 2012(3) RCR (Civil) 364, Rajesh and another Vs. Suresh and others, 2017(3) Law Herald 2205, Sunil Kumar Vs. Sheokaran Lal and another, 2015(2) RCR (Civil) 385** and **Pushpa Rani and others Vs. Usha Rani and others, 2016(4) RCR (Civil) 346** to contend that when the plaintiff has claimed declaration and injunction to be owner in possession of joint property by challenging the exchange deed and no consequential relief of possession is sought, *ad valorem* Court fee is required to be paid on the consideration shown in the instrument. Since there is no consideration shown in the instrument, therefore, the plaintiff is not required to pay *ad valorem* Court fee on the market value of the property. The issue of Court fee is exclusively between the Court and the plaintiff. The duty of the defendant is only to set the machinery in motion.

[6]. In the light of aforesaid precedents, ratio as laid down in **Niranjan Kaur Vs. Nirbigan Kaur, 1982 PLR 127, Jagat Singh Vs. Avtar Singh and others, 1970 CurLJ 80** and **CR No.5798 and 2012** titled **Yashpal Vs. Kiraninder Singh and**

others decided on 10.03.2016 cannot be appreciated at this stage.

[7]. **Suhrid Singh @ Sardool Singh's case (supra)** is a subsequent judgment on the issue. As per ratio laid down in the aforesaid judgment, if the executant of an instrument seeks to get it annulled, he is required to pay Court fee as per consideration shown in the instrument. Plaintiff being executant of the exchange deed, in the event of seeking cancellation of exchange deed, has to pay *ad valorem* Court fee on the consideration stated in the exchange deed. The second principle of aforesaid case law would apply only where non-executant in possession sues for declaration that the deed is null and void and does not bind him. In such eventuality, he has to pay a fixed Court fee of Rs.19.50 under Article 17(iii) of Second Schedule of the Act. As per third principle, if a non-executant not in possession sues not only for declaration, but also seeks possession as a consequential relief, then he has to pay *ad valorem* Court fee as provided under Section 7(iv)(c) of the Act. The aforesaid judgment has set at naught the controversy with regard to all the three circumstances.

[8]. The expression "law" occurring in Order 7 Rule 11(d) CPC includes judicial precedents 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.**

[9]. In view of authoritative pronouncement in **Suhrid Singh @ Sardool Singh's case (supra)**, ratio laid down in **Niranjan Kaur Vs. Nirbigan Kaur's case (supra)**, **Jagat Singh Vs. Avtar Singh and others case (supra)** and **Yashpal Vs. Kiraninder Singh and others case (supra)** cannot be relied as the same would run against the spirit of authoritative pronouncement of the Hon'ble Apex Court as laid down in **Virdener Kumar Dixit's case (supra)** and **Bhargavi Constructions and another's case (supra)**.

[10]. For the reasons explained hereinabove, I find that the present case of the plaintiff is covered by first principle of **Suhrid Singh @ Sardool Singh's case (supra)** and the plaintiff is required to pay *ad valorem* Court Fee as per consideration shown in the exchange deed. However, it is made clear that if the trial Court ultimately finds that *ad valorem* Court is required to be paid over and above the consideration shown in the

instrument, in such eventuality, the trial Court can pass a contingent/conditional decree, requiring the plaintiff to make good the deficiency in Court fee within a specified period.

[11]. With these observations, this revision petition is allowed.

19.09.2019
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No