

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

CR No.831 of 2019

Date of Decision: 22.04.2019

Sunita.

...Petitioner.

Versus

Sheikh Mohammed Zamiruddin Noor Mohammed.

...Respondent

Coram : Hon'ble Mr. Justice B.S.Walia

Present: Mr. Hari Om Sharma, Advocate for the petitioner.

B.S. Walia, J (Oral).

[1] Challenge in the revision petition under Article 227 of the Constitution of India is to Order dated 04.01.2019 (Annexure P-1) passed by the Court of Shri Ravi, Civil Judge (Junior Division), Shahabad, District Kurukshehtra, whereby the application filed by the respondent-defendant under Order 7 Rule 11 CPC was allowed and 30 days time was given to the petitioner-plaintiff to tender *ad valorem* Court fee, failing which it was ordered that the plaint would stand rejected.

[2] Brief facts of the case, leading to the filing of the present revision petition are that the petitioner-plaintiff had challenged the validity of sale deed bearing *vasika* No.1378 dated 29.07.2016 on the ground that the same had been got executed from her by the respondent-defendant by playing fraud. Application was moved by the respondent-defendant that despite the requirement to pay *ad valorem* Court fee on the market value of the suit land, the petitioner-plaintiff had affixed simple Court fee of Rs.5/- only, despite it being settled proposition of law that an executant was

required to pay *ad valorem* Court fee on the consideration stated in the sale deed irrespective of whether possession was claimed or not. Apart from other pleas raised by way of objection, the petitioner-plaintiff contended that *ad valorem* Court fee was not payable because relief of possession had not been claimed. Reliance was placed upon the Full Bench decision of Hon'ble the Madhya Pradesh High Court in case '**Sunil and others** versus **Awadh Narayan and others**', 2011(1) RCR (Civil) 312.

[3] However, the application filed by the respondent-defendant was allowed by the learned trial Court.

[4] Learned counsel for the petitioner has reiterated the submissions made before the learned trial Court that since the petitioner had not claimed the relief of possession therefore she was not required to pay *ad valorem* Court in view of the decision in *Sunil's case (supra)*.

[5] Learned counsel contends that in view of the decision in *Sunil's case (supra)*, where the suit is for a declaration simplicitor that the instrument is void and not binding, *ad valorem* Court fee is not required to be paid, instead it is fixed court fee which is payable.

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

[7] Hon'ble the Supreme Court in '**Suhrid Singh @ Sardool Singh** versus **Randhir Singh and others**', 2010(2) 421 has categorically held that where the executant of a deed wants the same to be annulled, he has to seek cancellation of the deed, for which he has to pay *ad valorem* Court fee on the consideration stated in the sale deed. However, as against a non executant, who is in possession and merely sues for a declaration that

the deed is null or void and does not bind him or his share, such a plaintiff has merely to affix Court fee of Rs.19.50 under Article 17(iii) of the Second Schedule of the Act. Likewise, if a person, who is non executant, is not in possession and seeks not only a declaration that the sale deed is invalid but also consequential relief of possession, he has to pay *ad valorem* Court fee as provided under Section 7(iv) (c) of the Act. The sale deed bearing *vasika* No.1378 dated 29.07.2013 was executed by the petitioner-plaintiff in favour of the respondent-defendant for a sum of Rs.61,10,000/-. Although, the petitioner-plaintiff has not claimed the relief of possession but the fact remains that the petitioner is the executant of the sale deed under challenge, therefore, in accordance with the decision of Hon'ble the Supreme Court in '**Suhrid Singh @ Sardool Singh's case** (*supra*), the petitioner-plaintiff is liable to pay *ad valorem* Court fee on the basis of the market value of the suit land because being executant of the sale deed, it does not make any difference that the petitioner is not claiming the relief of possession. The decision of Hon'ble the Supreme Court in '**Suhrid Singh @ Sardool Singh's case** (*supra*) had not been referred to in the decision of Hon'ble the Full Bench of Madhya Pradesh High Court, although the same is subsequent in time. The decision of Hon'ble the Supreme Court in '**Suhrid Singh @ Sardool Singh's case** (*supra*) is binding on all Courts throughout the country. Relevant extract of the decision of Hon'ble the Supreme Court in '**Suhrid Singh @ Sardool Singh's case** (*supra*) 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](#).”*

In the light of the position noted above, I do not find any infirmity
with the well reasoned order passed by the learned trial Court, allowing the
application vide impugned order dated 04.01.2019 (Annexure P-1).
Resultantly, finding no merit in the revision petition, the same is ***dismissed***.

(B.S.WALIA)
JUDGE

April 22, 2019
'Rajneesh'

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