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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2786-2019 (O&M)
Date of decision : 1.5.2019

Paramjit Kaur

..... Petitioner

Versus

Amrik Singh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. L.S. Mann, Advocate for the petitioner.

KULDIP SINGH, J.

Heard.

Petitioner has impugned the order dated 9.1.2019 (Annexure P-5), passed by learned Civil Judge, (Junior Division), Fatehgarh Sahib vide which while disposing of the application filed by defendant No.2 for rejection of plaint on account of non-payment of adequate Court fee, the present petitioner-plaintiff has been ordered to pay the ad-valorem Court fee on the sale consideration of the sale deed No. 3114 dated 10.3.2016 on the next date of hearing i.e. on 21.1.2019.

A perusal of the plaint shows that according to the plaintiff-petitioner, her husband-defendant No. 1 had executed a sale deed dated 10.3.2016, registered on 28.3.2016 in favour of defendant No. 2. Plaintiff has challenged the said sale deed and seeks setting aside of the same. In the plaint, it is stated that defendant No. 1-husband of the plaintiff-petitioner was having bad habit like liquor and intoxicants and fell in bad company and executed the sale deed. Even the plaintiff-petitioner had filed the

application under Order XXXIII Rule 1 of the Code of Civil Procedure was

filed for maintenance and permanent injunction, which has been compromised with the intervention of relatives and respectable persons. It is nowhere stated that any charge was created on the suit property. Plaintiff-petitioner otherwise has no vested right in the suit property, therefore, the maintainability of the suit itself is questionable.

Learned counsel for the plaintiff-petitioner relies upon the authorities of this Court contained in CR-6223-2013, titled as *Kati vs. Bara Singh and another*; CR-128-2014, titled as *Smt. Santosh Malhan and another vs. Naina Devi and others*; CR-2192-2006 titled as *Satwinder Kaur @ Satinder Kaur vs. Surjeet Singh and others*; CR-5895-2015 titled as *Darshan Singh (deceased) through his legal heirs vs. Kashmir Singh and others* and CR-1037-2016 titled as *Piyush vs. Asha Devi and another*. In all the said cases, the facts are distinguishable. There the parties were strangers. Here the plaintiff-wife has challenged the sale deed executed by the husband-defendant No. 1 without showing that she has got any vested right in the suit property and this Court finds that it is a proxy litigation by husband-defendant No. 1.

Learned counsel for the plaintiff-petitioner further submits that in the proceedings under Order XXXIII Rule 1 of the Code of Civil Procedure, the husband-defendant No. 1 has given the undertaking that before the execution of the sale deed he will get the consent of his wife. However, learned counsel for the plaintiff-petitioner has failed to show that any order was passed by the Court that no sale can be executed without the consent of the wife.

It appears to be a proxy litigation by defendant No. 1-husband of plaintiff-petitioner through his wife. Therefore, plaintiff-petitioner in such circumstances, cannot take the benefit of the fact that he was not party to the sale consideration and has got the right to challenge it. In fact, it appears that defendant No. 1-husband of the plaintiff had got the sale deed challenged through his wife. Therefore, I do not find any illegality or infirmity in the impugned order dated 9.1.2019 (Annexure P-5), passed by learned Civil Judge, (Junior Division), Fatehgarh Sahib.

Dismissed.

(KULDIP SINGH)
JUDGE

1.5.2019
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No