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

**Civil Revision No.16474 of 2018
Date of Decision: 25.03.2019**

JASVIR KAURPetitioner
Vs
SAJJAN SINGH AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Swarn Tiwana, Advocate
for the petitioner.

Mr. L.S. Mann, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has laid challenge to the order dated 30.10.2017 passed by the Addl. Civil Judge (Sr. Divn.) Khamanon, whereby the application filed by the petitioner/defendant No.1 under Order 7 Rule 11 CPC was dismissed.

[2]. Brief facts are that plaintiff/respondent No.1 filed a suit for declaration to the effect that he is owner in possession of the suit land as shown in the headnotes 'A' and 'B' of the plaint. Plaintiff also sought declaration that the sale deed dated 03.12.2015 and sale deed dated 26.02.2016 executed through General Power of Attorney dated 29.09.2015 are illegal, forged, the result of fraud, null and void. Plaintiff also sought permanent

injunction restraining the defendants from alienating or creating any charge over the property and also restraining them from interfering in the peaceful possession of the plaintiff.

[3]. Petitioner/defendant No.1 filed an application for rejection of the plaint and the same was dismissed primarily on the ground that since the sale deeds have been challenged on the ground of fraud, therefore, the case falls under the ambit of Section 7(iv)(c) of the Court Fee Act and *ad valorem* court fee is not payable.

[4]. Notice of motion was issued on 07.01.2019. On 11.02.2019, respondent No.1 appeared through Mr. Hazara Singh, Advocate for Mr. L.S. Mann, Advocate for respondent No.1. On the statement made by learned counsel for the petitioner, service qua respondents No.2 and 3 were dispensed with.

[5]. Learned counsel for respondent No.1 on the strength of **Sri Rathnavarmaraja vs. Smt. Vimla, 1961 AIR (SC) 1299;** **Madan Lal and another vs. Smt. Lajwanti Devi and others, 1972 AIR (Punjab) 146** and **Krishan Kumar Grover vs. Parmeshri Devi and others, 1967 AIR (Punjab) 389** submitted that the revision petition is not maintainable against the impugned order as the court fee was to be affixed not to arm a litigant with a weapon of technicality but to secure a revenue for

the State.

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

[7]. In a latest judgment of **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010(2) R.C.R. (Civil) 564**, the Hon'ble Apex Court after considering all pros and cons, has come to the conclusion that the executant of an instrument cannot avoid payment of court fee as per consideration shown in the instrument. It is a settled principle of law that when the plaintiff himself seeks to get the instrument annulled by way of declaration, he has to pay the court fee on the consideration as shown in the instrument itself.

[8]. In the present case, the plaintiff has sought declaration *qua* both the sale deeds which were executed through General Power of Attorney and the aforesaid sale deeds are claimed to be illegal, result of fraud, null and void.

[9]. Two sale deeds have been assailed by the plaintiff on the ground that the transfer being fraudulent. In **Kaliaperumal vs. Rajagopal and another, 2009(2) RCR (Civil) 471 (SC)** the sale is defined as being a transfer of ownership for a price. There will be absolute transfer of all rights in the property subject matter of sale.

[10]. 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 authoritative judgment pronounced by the Hon'ble Apex Court in **Bhargavi Constructions and another vs. Kothakapu Muthyam Reddy and others, 2017(4) RCR (Civil) 359** would answer the issue and the judgment pronounced in **Suhrid Singh @ Sardool Singh's** case (supra) would be a law of the land as the case is covered by its first principle. Since the aforesaid judgement is latest in point of time, therefore, I intend to follow the ratio of the said judgement.

[11]. Sale deeds have been assailed on the ground of fraud. The judgment rendered in Hon'ble Apex Court in **CA No.8880 of 2015** arising out of **SLP(C) No.16313 of 2015** titled **'M/s Omax Construction Ltd. vs. Dharam Singh and others**, decided 26.10.2015 would answer the claim of the plaintiff on that premise as well.

[12]. For the reasons recorded hereinabove, this revision petition is allowed. Impugned order dated 30.10.2017 passed by the Addl. Civil Judge (Sr. Divn.) Khamanon is hereby set aside. Normal consequences to follow.

March 25, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No