

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

CIVIL REVISION No.2930 of 2015 (O&M)

DATE OF DECISION : 14.12.2021

Sumer Singh alias Sumer Chand and anotherPetitioners

versus

Sher Singh and anotherRespondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. R.S. Mamli, Advocate for the petitioners

Mr. Parminder Singh Advocate for the respondents

ALKA SARIN, J.:

Heard through video conferencing.

The present Civil Revision Petition under Article 227 of the Constitution of India has been filed impugning the order dated 11.03.2015 (Annexure P-1) passed by the Civil Judge (Junior Division), Karnal, whereby the plaintiff-petitioners have been directed to affix *ad valorem* court fee on the plaint. The said order has been passed on an application filed by the defendant-respondents under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

The brief facts relevant to the present *lis* are that the plaintiff-petitioners herein filed a suit for declaration with possession and consequential relief of permanent injunction. It was averred in the plaint that the plaintiff-petitioners and the defendant-respondents are real brothers and that the plaintiff-petitioners and the defendant-respondents had jointly purchased land measuring 30 marlas from their joint income. However, the defendant-respondents had not got the sale deeds registered in the names of the plaintiff-petitioners. The prayer in the suit was for the issuance of a decree of declaration to the effect that the plaintiff-petitioners are owners of land measuring 15 marlas out of 30 marlas of land with consequential relief of possession.

The defendant-respondents filed an application under Order 7 Rule 11 CPC (Annexure P-3) for rejection of the plaint on the ground that the plaintiff-petitioners ought to have affixed *ad valorem* Court fee on the market value of the property. The plaintiff-petitioners filed a reply (Annexure P-4) to the said application. Vide the impugned order dated 11.03.2015 (Annexure P-1) the Trial Court directed the plaintiff-petitioners to affix *ad valorem* court fee on the plaint. Hence, the present civil revision petition.

The learned counsel for the plaintiff-petitioners has contended that the plaintiff-petitioners have affixed court fee as per Section 7(iv)(c) of the Court Fees Act, 1870 (hereinafter referred to as “the Act”) and would not be liable to affix *ad valorem* court fee as per the law laid down by the Supreme Court in the case of ***Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors.*** [AIR 2010 SC 2807]. The learned counsel further contended

that the plaintiff-petitioners have not challenged the sale deed but are only seeking joint possession in the suit property since the suit land, though purchased jointly from the joint income, the sale deed qua the same had been registered only in the name of the defendant-respondents.

Per contra, the learned counsel for the defendant-respondents has contended that the plaintiff-petitioners would be required to pay *ad valorem* court fee in as much as the plaintiff-petitioners being non-executants and not in possession have not only sought a declaration but have also sought a consequential relief of possession and, therefore, they have to affix *ad valorem* court fee. To buttress his argument the learned counsel has relied on the judgment passed by this Court in ***Prem Wati vs. Jule Khan & Ors.*** [CR. No.1686 of 2018 decided on 04.04.2019].

Heard.

In the present case, the limited question that arises for consideration is - What is the court fee payable in regard to the prayer for declaration that the plaintiff-petitioners are the joint owners of the suit property and for the consequential relief of possession and injunction ?

Section 7 of the Act reads as under :

“7. Computation of fees payable in certain suits - The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-

(iv) In suits -

xxx

for a declaratory decree and consequential relief - (c)
to obtain a declaratory decree or order, where consequential relief is prayed,

xxx

In all such suits the plaintiff shall state the amount at which he values the relief sought.”

The Supreme Court in the case of **Suhrid Singh @ Sardool Singh** (*supra*) has laid down 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 case of **Suhrid Singh @ Sardool Singh** (*supra*), the plaintiff therein had also filed a suit for a declaration that two houses and certain agricultural land purchased by his father were co-parcenary properties as they were purchased from the sale proceeds of ancestral

properties and that he was entitled to joint possession. In the present case also the claim is that the plaintiff-petitioners and the defendant-respondents are joint owners of the suit property in as much as the property had been purchased from the joint funds and the defendant-respondents had got the sale deeds registered only in their names. There is no cancellation of the sale deeds which has been sought for. In fact, the sale deeds itself are not under challenge. The judgment of the Supreme Court in the case of ***Suhrid Singh @ Sardool Singh (supra)*** would apply on all fours to the facts of the case in hand. In the present case there being no prayer for cancellation of the sale deeds and the only prayer being for a declaration that the plaintiff-petitioners were the joint owners, the property having been purchased from joint funds, and consequential relief of possession, though not being executants of the sale deeds, the court fee was computable under Section 7(iv)(c) of the Act.

Accordingly, the plaintiff-petitioner is directed to calculate and affix the court fee in accordance with Section 7(iv)(c) read with Section 7(v) of the Court Fees Act, 1870.

The revision petition is accordingly disposed off.

(ALKA SARIN)
JUDGE

14.12.2021
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NOTE: Whether speaking/non-speaking : Speaking Whether reportable : YES/NO
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