

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

CR-1639-2021 (O&M)

Date of decision: 19.08.2021

Ram Singh and another

...Petitioners

Versus

Mukesh Kumar and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Arav Gupta, Advocate for the petitioners.

H.S. MADAAN, J. (Oral)

Case taken up through video conferencing.

Ram Singh and Tulla Ram, defendants in civil suit filed by plaintiffs Mukesh Kumar and others against them, seeking declaration that plaintiffs are owners and in possession of the suit property and the impugned relinquishment deed bearing No.2177 dated 28.05.2014 and impugned agreement to sell dated 07.12.2020 are not binding upon rights of the plaintiffs, as such, be cancelled, had filed an application under Order 7 Rule 11 CPC for rejection of the plaint for the reason that proper Court fee had not been affixed on the plaint and the suit was barred by limitation. That application was contested on behalf of the plaintiffs and it was dismissed by the trial Court, vide impugned order dated 02.04.2021, the operative part of which is as under:-

“6. It is well settled that for deciding application under Order 7 Rule 11 CPC only the averments in the plaint

have to be considered and not the written statement. The law related to the rejection of the plaint on the basis of deficiency of Court fees has been well settled by the Hon'ble Supreme Court in case titled as Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors., 2010 (2) CCC 510 (SC). The Hon'ble Supreme Court has held that if 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. But if non-executant who 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 affix court fee of Rs.19.50/- under Articles 17 (iii) of Second Schedule of the Act. But if a non-executant who is not in possession and 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.

7. In the present case, the plaintiffs are neither the executant nor the parties to the impugned agreement to sell and relinquishment deed. Further, the plaintiffs are not even claiming consequential relief of possession. Therefore, in view of the judgment of Suhrid Singh (supra), the plaintiffs are no liable to pay ad valorem court fees and thereby the plaint cannot be rejected on this ground.

8. As regards the ground of limitation the same is mixed question of law and facts in the present case and therefore, cannot be adjudicated upon at this stage. Therefore, the plaint cannot be rejected even on this ground.”

Thus the said order is being challenged by way of filing the present revision petition.

Learned counsel for the revisionists has referred to various judgments in support of his contentions i.e. Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana & Ors. 2011 (89) ALR 445, Dahiben Vs. Arvinbhai Kalyanji Bhanusali (D) thr. LRs & Ors., 2020 (143) ALR 689, Prabhat Singh & Anr. Vs. Kamla Devi & Ors. in RSA-5029-2011 decided on 01.09.2015, Estate Officer, PUDA now GMADA Vs. Satwant Kaur & Ors. in CR-6288-2011 decided on 14.07.2014, Kamlesh Babu & Ors. Vs. Lajpat Rai Sharma & Ors., 2008 (3) AWC 2903 (SC) and Raghwendra Sharan Singh Vs. Ram Prasanna Singh (dead) by LRs, 2020 (140) ALR 735, contending that the plaint deserve to be rejected, however, I find that the trial Court did not fall in error in observing that in view of facts and circumstances of the case, limitation was a mixed question of law and facts and could not be made basis for rejection of the plaint and similarly, it could not be said that the suit is not properly valued for the purpose of Court fee. It has to be noticed that defendants are yet to file written statement. In the written statement, they may take any number of objections and the trial Court may take such objections into view while framing issues then after affording an opportunity of leading evidence to the parties, all such objections can be decided in accordance with law.

The impugned order is quite detailed and well reasoned. I do not see any any illegality, infirmity or impropriety with the impugned order, which might have called for interference by this Court

by way of accepting the revision petition. The authorities referred to by learned counsel for the petitioners are not applicable due to different facts, circumstances and the context in which such observations have been made. The revision petition is found to be without any merit and is dismissed accordingly.

19.08.2021

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(H.S. MADAAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No