

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-86-2019 (O&M)

Date of decision: 09.08.2022

Shanker Devi and others

....Petitioners

Versus

M/s Sharda Housing Development Ltd. And another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Abhimanyu Singh, Advocate for the petitioners

Mr.R.S.Hooda, Advocate for respondent no.1

ANIL KSHETARPAL, J (Oral)

The plaintiffs filed a suit for grant of decree of declaration with a consequential relief of possession. The prayer clause reads as under:-

“The plaintiffs, therefore, prays that a decree for declaration to the effect that the sale deed vasika No. 2691 dated 11.10.2012 is null and void ab initio and not binding on the rights of the plaintiffs and same is liable to be cancelled and set aside because same is executed by the defendant No.2 without legal necessary and consideration of the ancestral coparcenary property of the plaintiffs and plaintiffs are legally entitled to obtain the vacant possession of the suit land with a decree of permanent injunction restraining the defendants No.1 from alienating the suit land to any other persons mentioned in para No.1 of the plaint may kindly be passed in favour of the plaintiffs and against the defendants with costs.

Any other relief which this Hon'ble Court may deems fit and property also be granted in favour of the plaintiffs and against the defendants.”

On an application filed by the defendant no.1, the trial court

has directed the plaintiffs to pay ad valorem court fee on the amount of the sale consideration. It is admitted position that the plaintiffs are not the executants of the sale deed. The trial court itself has noticed that in view of the judgment passed by Supreme Court in **Surhid Singh @ Sardul Singh vs. Randir Singh** (2010) 12 SCC 112, the non-executants of the sale are not required to pray for the cancellation/annulment of the sale deed. The court, while drawing a distinction between a suit for declaration filed under Section 34 of the Specific Relief Act, 1963 and a suit filed for annulment of the document under Section 31 of the Specific Relief Act, 1963, held that in a suit for declaration, ad valorem court fee is not payable, if the plaintiffs are not the executants of the documents.

The trial court has directed the plaintiffs to pay the ad valorem court fee on relief of possession of the land. Admittedly, the suit land is the agricultural land. The trial court has failed to notice amendment in Section 7 (v) of the Court Fee Act, 1870 brought in by the State of Haryana, which reads as under:-

As in Haryana

[(a) where the subject-matter is land other than land situated within municipal limits or Abadi Deh whether under cultivation or not, according to the market value thereof which shall be deemed to be-

(i) in the cases of land which is irrigated by perennial canal, sixty rupees per acre;

(ii) in the case of land which is irrigated by non-perennial canal or by well, fifty rupees per acre; and

(iii) in the case of land which is Barani, Sailab, Bhud, Thur Sem, Banjar or of like nature, thirty rupees per acre; and

(b) where the subject-matter is house, garden, or land situated within municipal limits or Abadi Deh whether under cultivation or not, according to its market value;]

Qua the relief of possession, the plaintiffs are required to pay the court fee as per the amendment brought in by the State of Haryana. Hence, the order in question is set aside. The trial court is requested to calculate the amount payable as per the amendment while granting an opportunity to the plaintiffs to make good the deficiency, if any.

Hence, allowed.

All the pending miscellaneous applications, if any, are also disposed of.

09.08.2022

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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)
JUDGE