

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

109

CR-5131 of 2016(O&M)
Date of decision: 01.08.2022

Sushil Gupta

..Petitioner

Versus

Rishi Ram Aggarwal

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Aman Bansal, Advocate,
for the petitioner.

Mr. Sachin Gupta (Ladwa), Advocate
for the respondent.

ANIL KSHETARPAL, J(Oral)

The defendant in a suit for grant of decree of declaration with a consequential relief of permanent injunction assails the correctness of order passed by the trial court while dismissing his application under Order 7 Rule 11 CPC for rejection of the plaint.

The petitioner claims that the plaint is liable to be rejected as the plaintiff, who is executant of the gift deed is required to pay ad-valorem court fee. The court has dismissed the application while relying upon the judgments passed in **Om Parkash vs. Smt. Bimla Devi and others, 2014 (3) Law Herald, 2238 P&H** and **Surjit Singh vs. Karamjit Kaur, 2012 (3) RCR(Civil) 364 P&H.**

This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paper Book.

At the outset, it must be noticed that another revision petition filed between the parties in **Tarun Gupta vs. Rishi Ram Aggarwal, (Civil Revision No.8851 of 2015, decided on 22.07.2016)**, has been decided while directing the plaintiff to pay ad-valorem court fee. In this case, the Court has ordered the plaintiff in that suit (respondent herein) to pay the ad-valorem court fee on the basis of valuation of the property made in the gift deed.

In **Suhrid Singh alias Sardool Singh vs. Randhir Singh and others, 2010 (4) SCC (civil) 585**, a distinction was made between the suit filed by the plaintiff, in which he himself is executant of the document and in which he is not the executant. The Court held that if the executant of the deed seeks its annulment/cancellation, he is to pay ad-valorem court fee on the consideration stated in the sale deed. However, if the suit for declaration is filed by the non-executnat, the ad-valorem court fee on the date of the valuation is not required to be paid.

In **Tarun Gupta's case(supra)**, reliance was also placed on a Division Bench judgment in **Tarsem Singh and others vs. Vinod Kumar and others, (CR No.4753 of 2005, decided on 15.07.2011)**. The High Court after discussing the judgments passed in **Om Parkash's case (supra)** and **Suirjit Singh's case (supra)** which are relied upon by the trial Court, held that the respondent cannot derive advantage from the aforesaid judgments.

Keeping in view the aforeaid facts, for parity of reasons recorded in Tarun Gupta's case (supra), the revision petition is allowed. The order passed by the trial court is set aside.

The plaintiff (respondent herein) is granted one month's time to make good the deficiency in payment of Court fee.

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

August 01, 2022

(ANIL KSHETARPAL)
JUDGE

nt

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>