

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

CR-5104-2018

Date of decision : 18.07.2022

Gurwinder Kaur

...Petitioner

Vs.

Bhupesh Garg and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr.Varun Jain, Advocate for the petitioner.

MANOJ BAJAJ, J.

Plaintiff-Gurwinder Kaur has filed this revision petition to challenge the order dated 24.05.2018 (Annexure P-7), whereby application seeking dismissal of suit for non compliance of order 29.11.2017, was allowed partly by Civil Judge (Junior Division), Patiala thereby directing the petitioner (plaintiff) to affix ad valorem court fee within one month.

The brief facts of the case are that Gurwinder Kaur (plaintiff) brought a suit for declaration to challenge the sale deeds bearing Nos.6054 dated 30.10.2015 and 12654 dated 16.02.2016, executed by her in favour of defendant Nos.3 and 1 respectively, relating to the immovable property i.e. building bearing property No.13397/5-1 comprised in khasra No.2260/1416/961 min (0-9 biswas) measuring 441 square yards, situated in Sidhuwal, Bhadson Road, Patiala and also prayed for permanent injunction restraining the defendants and their attorneys, servants and agents not to raise any construction or alter the nature of building. As per pleadings, Jiwan Singh son of Sant Singh

(plaintiff's father) was owner of the property, who expired on 07.01.2002, therefore, the suit property was inherited by way of natural succession by plaintiff, Smt.Bhag Kaur, Amarjit Singh, Harvinder Singh, Paramjit Kaur, Harpreet Singh in equal shares. Later, Smt. Bhag Kaur also expired and by virtue of her registered Will in favour of remaining co-sharers, her share was also inherited. Jiwan Singh, in his life time started running a business of bakery in partnership with one Surinder Kumar, but there arose dispute between them and their litigation finally was decided on 12.06.2009 in favour of Jiwan Singh's children including plaintiff, as the suit for possession and recovery was decreed. On 17.07.2015, Subash Chand (defendnat No.2) entered into an agreement to purchase the part of suit property (247.21 square yards) with the plaintiff and other co-sharers and got the sale deed executed and registered from plaintiff and other co-sharers in respect of 192.5 square yards in favour of defendant No.3-Navjot Kaur on 30.10.2015. Similarly, he got executed another sale deed in favour of his son Bhupesh Garg (defeandnt No.1) for land measuring 248.57 square yards, but as the complete sale consideration was not paid despite promise,therefore, plaintiff issued notice, however, the defendants have not paid balance sale consideration. According to plaintiffs, the instruments being without consideration are liable to be set aside, so on this cause of action, she filed the suit.

After service of defendants, an application under Order 7 Rule 11 CPC was filed by defendant No.3-Navjot Kaur and Civil Judge (Junior Division), Patiala vide its order dated 29.11.2017 allowed the same and

directed the plaintiff to pay ad valorem court fee within a month, as the suit has been filed for cancellation of sale deed No.6054 dated 30.10.2015. Since, the plaintiff failed to comply with the said direction, another application dated 15.01.2018 was moved by defendant No.3 for dismissal of the suit for lack of proper court fee.

The application was contested by the plaintiff on the ground that the defendants have sought time on numerous occasions for filing the written statement and have not so far filed their response and on merits, it was pleaded that because the plaintiff's share comes to 1/5th, so, the court fee affixed by her is adequate and the application be dismissed. The Civil Judge (Junior Division), Patiala vide its decision dated 24.05.2018, partly accepted the application by granting the plaintiff a period of another one month to pay ad valorem court fee. Aggrieved against the said order, plaintiff filed this revision petition.

Learned counsel for the petitioner has argued that since the property was originally owned by Jiwan Singh and after his death, plaintiff inherited 1/5th share along with other co-sharers, who are her brothers and sisters, therefore, she is to affix court fee relating to the value of her share. He has further argued that the order dated 29.11.2017 (Annexure P-4) had already been complied with as the requisite court fee in proportion to her 1/5th share stands affixed after issuance of directions on 29.11.2017, therefore, impugned order be set aside.

During the course of hearing, learned counsel has produced another order dated 04.05.2019 passed by Civil Judge (Junior Division),

Patiala to raise another argument that subsequent to the impugned order, an application dated 05.09.2018 filed by petitioner (plaintiff) under Order 6 Rule 17 CPC for amendment of plaint was allowed and now the plaint confines prayer relating to subject sale deeds qua her 1/5th share, therefore, the impugned order deserves to be set aside.

After hearing learned counsel and considering the above background, this Court finds that the relief claimed by the petitioner relates to the two sale deeds wherein, she along with her other co-sharers/co-owners transferred the property in favour of defendant Nos.1 and 3, therefore, if two separate instruments of sale are being challenged by only one of the vendors, and if she succeeds, it cannot be presumed that the instruments would survive in respect of the remaining vendors, who have not challenged it. The validity and correctness of the sale deeds is to be considered as a whole by the Civil Court, therefore, the argument based upon amendment of plaint does not lend any support to the case of the petitioner. The grounds raised by the petitioner have been carefully dealt with by the trial Court while declining the prayer by placing reliance *Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 AIR (Supreme Court) 2807.*

Since, it is not disputed that the petitioner is executant of both the instruments being vendor with other co-owners, she cannot be treated as a third party, therefore, cannot be exempted from affixing the court fee.

Thus, the case of the petitioner would fall under proviso to Section 7 (iv)

(c) Court Fees Act, 1870. Apart from it, the order dated 29.11.2017 was

never challenged by the plaintiff and the same has attained finality, therefore, the application filed by defendant No.3 only seeks compliance of the order dated 29.11.2017.

Resultantly, this Court finds that the impugned order dated 24.05.2018 (Annexure P-7) passed by Civil Judge (Junior Division), Patiala is based upon the correct appreciation of pleadings, law on the subject and does not suffer from any illegality or impropriety, therefore, does not warrant any interference.

Dismissed.

(MANOJ BAJAJ)
JUDGE

18.07.2022
vanita

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