

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

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126

CR No.1048 of 2022

Date of Decision: 22.04.2022

Ranbir Singh @ Ranvir Singh

....Petitioner

VERSUS

Kanchan and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. P. K. Ganga, Advocate for the petitioner.

ALKA SARIN, J.

The challenge in the present revision petition under Article 227 of the Constitution of India is to the order dated 14.02.2022 (Annexure P-5) passed by the Trial Court whereby the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC') read with Section 151 CPC has been allowed and it has been held that the plaintiff-petitioner is bound to pay ad-valorem court fee and the plaintiff-petitioner has been granted one opportunity to make good the deficient court fee and if on the given date he would not do so then the plaint shall be rejected.

The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration to the effect that sale deed dated 28.06.2017 registered in the office of Joint Sub-Registrar, Rania showing sale of land measuring 16 Kanals being 16/132 shares of land measuring 132 Kanals situated within the revenue estate of village Gindran, Tehsil Rania, District Sirsa executed by the plaintiff in favour of defendant no.1 was a security document and was without consideration and thus was not meant for actually transferring ownership and possessory rights in favour of alleged

vendee (defendant no.1) because the same was executed as a security to the loan amount due from father of the plaintiff to defendant no.1 of which father-in-law of defendant no.1 is the sole proprietor and plaintiff is legally entitled to get back the suit land by treating the said sale deed dated 28.06.2017 as cancelled on payment of balance amount found due to the said proprietorship concern and the plaintiff is also entitled to get the revenue record corrected accordingly and as a consequential relief of permanent injunction restraining defendant no.1 from alienating the suit land as well as creating any charge thereon.

An application (Annexure P-3) was filed under Order VII Rule 11 CPC for rejection of the plaint by the defendants-respondents inter-alia on the ground that the plaintiff-petitioner had failed to affix the *ad valorem* court fee on the total sale consideration and that the plaint was liable to be rejected. Reply (Annexure P-4) was filed by the plaintiff-petitioner stating therein that the sale deed was a security document and was without consideration and was not meant for actually transferring the ownership and possessory rights and in view of the relief claimed the plaintiff-petitioner was not required to pay court fee on the value shown in the sale deed.

Learned counsel for the plaintiff-petitioner has contended that though the plaintiff-petitioner is an executant of the sale deed, however, since the sale deed was only a security document and was never intended to actually transfer any right, title or interest in the suit land and also the fact that the plaintiff-petitioner is in possession of the suit land, hence, *ad valorem* court fee was not payable. In support of his arguments, learned counsel for the petitioner has relied upon a judgment of this Court in Satya Parkash vs. Nafe Singh & Ors. [2019(3) PLR 351] wherein it has been held

that in the circumstances of the case the payment of ad-valorem court fee was a mixed question of fact and law.

I have heard learned counsel for the plaintiff-petitioner.

According to the learned counsel, since the sale deed was only a security document and was never meant to actually transfer any right, title or interest in the suit land and also since the plaintiff-petitioner is in possession of the suit land and only seeking a declaration, hence, no *ad valorem* court fee would be payable. Hon'ble Supreme Court in case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors. [2010(12) SCC 112]** has held 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."

The reliance placed by learned counsel for the petitioner in case of Satya Parkash (*supra*) would be of no avail to him inasmuch as the judgment passed by the Hon'ble Supreme Court in the case of **Suhrid Singh @ Sardool Singh** (*supra*) has not been noticed and dealt with. Moreover, unlike in the case of Satya Parkash (*supra*), the plaintiff-petitioner is a party

to the sale deed. Admittedly the plaintiff-petitioner is the executant of the sale deed. It is also the admitted fact that the sale deed bears his signatures and is a registered document. That being so, there is no escaping from the law laid down by the Hon'ble Supreme Court in case of **Suhrid Singh @ Sardool Singh** (*supra*).

The argument raised by learned counsel for the plaintiff-petitioner that since the plaintiff-petitioner is in possession of the property and, hence, it is merely a decree of declaration and ad-valorem court fee is not to be affixed, is wholly untenable in law. It has clearly been held in the case of **Suhrid Singh @ Sardool Singh** (*supra*) that where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed and when a non-executant seeks annulment of a deed, he has to seek a declaration that it is invalid and non-est and once a person is an executant of the deed and seeks cancellation of the deed he is bound in law to pay ad-valorem court fee on the consideration stated in the sale deed. It is only a person, who is a non-executant and is in possession and sues for a declaration that the deed is null or void, who would not have to affix ad-valorem court fee and in case a person being a non-executant is not in possession, who seeks possession, in that case he would have to affix ad-valorem court fee.

In view of the above and keeping in view the law laid down by Hon'ble Supreme Court in case of **Suhrid Singh @ Sardool Singh** (*supra*), there is no illegality or error of jurisdiction in the impugned order dated 14.02.2022 (Annexure P-5) passed by the Trial Court. I do not find any merit in the present revision petition and the same is dismissed. The

petitioner is, however, granted six weeks, time from the date of passing of this order to affix the ad-valorem court fee.

Dismissed. All pending applications also stand disposed off accordingly.

(ALKA SARIN)
JUDGE

22nd April, 2022
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NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO