

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

CR No.918 of 2021

Date of decision: 14th September, 2022

Bhagwant Kaur

... Petitioner

Versus

Harinder Singh & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Hitesh Ghai, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.

The petitioner is impugning order dated 18.02.2021 (Annexure P1) passed by the Court of learned Additional Civil Judge (Senior Division), Patiala whereby an application filed by her under Order VI rule 11 CPC for rejection of the plain for want of affixation of appropriate Court fee, was dismissed.

Learned counsel submits that the impugned order suffers from patent illegality having been passed by ignoring the relevant material on record. He submits that the trial Court failed to appreciate that the respondent has in essence sought cancellation of transfer deed bearing Vasika No.4820 dated 29.07.2016 and by way of clever drafting, he has couched the said relief in the form of a declaration. Learned counsel further submits that once the validity of the transfer deed has been challenged, the respondent would have to affix ad-valorem Court fee as per the value of the property mentioned in the

transfer deed. He still further submits that though the respondent/plaintiff is claiming to be in possession of the suit land, however evidently it is false, which fact stands substantiated as he has mentioned different addresses in the plaint as well as in the prayer sought therein. Lastly, it has been contended that the trial Court ignored the fact that the consequential relief of separate possession has also been sought in the plaint, therefore, the respondent is liable to affix the ad-valorem Court fee.

I have heard learned counsel for the petitioner and perused the relevant material on record.

The petitioner filed an application under Order VI rule 11 CPC seeking rejection of the plaint only on the ground that since the transfer deed has been challenged, the respondent had failed to affix ad-valorem Court fee.

A perusal of the averments made in the plaint annexed as Annexure P2 reveals that the respondent has therein prayed for declaration to the effect that transfer deed bearing Vasika No.4820 dated 29.06.2016 is null and void. It flows from the pleadings therein that the respondent is not an executant of the transfer deed rather he is a third party. Further, the respondent is claiming himself to be in joint possession with defendants No.1 to 4 to the extent of 1/5th share each. A Court, while deciding an application under Order VI rule 11 CPC, has to restrict itself to the averments made in the plaint without going into the question of their truthfulness or otherwise at that stage. Thus,

the submissions of the learned counsel cannot be accepted that the respondent is not in possession, in the light of specific averments wherein the respondent has claimed himself to be in joint possession of the suit property with the defendants. Therefore, when a non-executant claiming himself to be in possession of the suit property, seeks declaration to the effect that the transfer deed under challenge is null and void, he would not be entitled to affix ad-valorem Court fee as per the settled law and held by the Hon'ble Supreme Court in '**Surhid Singh @ Sardool Singh vs. Randhir Singh**' 2010 AIR (SC) 2807. It would also be relevant to observe here that the petitioner did not plead or urge any other ground. Hence, the impugned order cannot be said to be illegal or perverse. In the circumstances, there being no merit in the instant petition, the same is hereby dismissed.

(MANJARI NEHRU KAUL)
JUDGE

September 14, 2022

rps

Whether speaking/reasoned Yes/No

Whether reportable Yes/No