

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

CR No.1906 of 2022

Date of Decision: 13.05.2022

Manjit Kaur

.....Revisionist-Petitioner

Versus

Rakesh Kumar Soni and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Satbir Rathore, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J. (ORAL)

By way of the present revision-petition, the petitioner-plaintiff (for short 'the plaintiff') has assailed the order dated 06.04.2022 (Annexure P-6) passed by learned Civil Judge (Junior Division), Dasuya (for short 'the trial Court') whereby the application moved by the defendants-respondents (for short 'the defendants') under Order 7 Rule 11 CPC for seeking rejection of the plaint, has been allowed while directing her (plaintiff) to furnish the proper court-fee in accordance with the value of the property in dispute.

The plaintiff has filed a civil suit against the defendants for seeking a decree for declaration to the effect that she is joint owner and is in joint possession of the suit land and that the alleged sale-deeds, as executed by defendant No.1 as her General Power of Attorney holder, in favour of defendants No.2 to 9, are void and are based on fraud and not binding upon her and are, therefore, liable to be set-aside. She has further

prayed for the relief of permanent injunction to restrain the defendants from alienating and changing the nature of the suit property in any manner. The defendants moved the above-said application which has been allowed by the trial Court vide the impugned order as discussed in the opening para of this judgment.

I have heard learned counsel for the petitioner-plaintiff in this revision petition and have also perused the file thoroughly.

Learned counsel for the plaintiff contends that defendant No.1, while misusing the trust and faith as reposed by the plaintiff in him as her Attorney, has executed as many as 10 (ten) sale-deeds in respect of the suit property and has not paid even a single penny to her (plaintiff) out of the sale consideration and in these circumstances, the impugned order passed for saddling the plaintiff with the liability to furnish the court-fee as per the value of the said property, deserves to be set-aside.

However, I do not find the afore-raised contention to be tenable because concededly, the plaintiff had executed Power of Attorney in favour of defendant No.1 on 05.08.2019. Though she had revoked the same on 18.12.2019 but except one sale-deed dated 09.03.2020, the rest of the sale-deeds in question had been executed by defendant No.1 during the period when the said Power of Attorney was in force. In such circumstances, it becomes quite clear that the plaintiff had executed the sale-deeds in question through her Attorney, i.e defendant No.1 and is, therefore, to be considered as the executant (vendor) of the same.

It has categorically been observed by the Apex Court in

Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010 (2)

158 PLR 707 (SC) that “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". In the light of the above-discussed observations, it is explicit that the petitioner is required to affix the court-fee on the plaint in accordance with the value of the suit property.

As a sequel to the fore-going discussion, it follows that the impugned order does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the petition in hand stands dismissed.

(MEENAKSHI I. MEHTA)
JUDGE

13.05.2022
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Whether speaking/reasoned: *Yes*
Whether Reportable: *No*