

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

CR No.2005 of 2022

Date of Decision: 24.05.2022

Roma Kumari

.....Revisionist-petitioner.

Versus

Ram Niwas and others

.....Respondents.

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

Argued by:- Mr. Namit Khurana, Advocate
for the revisionist-petitioner.

MEENAKSHI I. MEHTA, J.

By way of the instant revision petition, the petitioner (arrayed as plaintiff No.5 in the Civil Suit) has assailed the order dated 20.04.2022 (Annexure P-4) passed by learned Civil Judge (Junior Division), Karnal (for short, 'the trial Court') whereby the application (Annexure P-2) moved by respondents No.1 to 6-defendants (here-in-after to be referred as 'the defendants') under Order 7 Rule 11 CPC for seeking the rejection of the plaint on the ground of non-affixation of the proper court-fee on the same, has been allowed and the plaintiffs have been directed to pay the *ad-valorem* court-fee on the sale consideration of both the sale deeds under challenge, while observing that otherwise, their plaint would be rejected.

2. The petitioner and plaintiffs No.1 to 4-performa respondents No.7 to 10 (here-in-after to be referred as 'the performa respondents'), have filed a civil suit against the defendants for seeking a decree for

declaration to the effect that two sale deeds dated 08.02.2017 and the mutations entered and sanctioned on the basis thereof, are illegal, null and void and the same are not binding upon their rights, while further praying for the consequential relief of permanent injunction to restrain the defendants from alienating the said land. The defendants filed the above-said application which has been allowed vide the impugned order, as discussed in the opening para of this judgment.

3. I have heard learned counsel for the revisionist-petitioner in the present revision petition and have perused the file carefully.

4. Learned counsel for the petitioner has contended that in the civil suit, the petitioner and the performa respondents, i.e her co-plaintiffs, have not claimed the relief of possession of the suit land and they have merely sought the decree for the afore-referred declaration along-with the consequential relief of permanent injunction and in these circumstances, the present matter squarely falls within the ambit of Section 7(iv)(c) of the Court-Fees Act, 1870 (for short, 'the Act of 1870') and it being so, the petitioner and the performa respondents were not required to affix the *ad-valorem* court-fee on the plaint as per the sale consideration mentioned in both the above-said sale deeds and therefore, the impugned order is not legally sustainable and is liable to be set-aside.

5. However, the afore-raised contention is devoid of any merit because as per the averments canvassed in the plaint and as is also revealed from the bare perusal of the photostat copies of both the sale deeds in question, these sale deeds were executed by performa respondent No. 7-

plaintiff No.1 on her own behalf as well as on behalf of the petitioner and her co-plaintiffs No.2 to 4-performa respondents No.8 to 10, being their Attorney and thus, she (performa respondent No.7), along-with the petitioner and performa-defendants No.8 to 10, was the executant of these sale deeds. In **Suhrid Singh @ Sardool Singh Versus Randhir Singh and others 2010(2)R.C.R.(Civil)564**, Hon'ble Supreme Court has categorically 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 afore-quoted observations clinch the entire controversy between the parties regarding the valuation of the suit for the purpose of affixation of the court-fee on the plaint and in the light of the same, it becomes explicit that the case of the plaintiffs being identical to that of **'brother A'** as referred to in these observations, the *ad-valorem* court-fee is required to be affixed on the plaint as per the sale consideration mentioned in the said sale deeds.

6. The plea regarding the petitioner and the performa respondents having only sought the decree for declaration with the consequential relief of permanent injunction, without seeking the relief of the possession of the suit land, does not hold much water in view of the fact that as discussed earlier, the petitioner and the performa respondents are the

executants of the said sale deeds and in view of the above-cited observations as made by the Apex Court in **Suhrid Singh @ Sardool Singh (supra)**, they are required to seek the cancellation of these sale deeds and they cannot evade the affixation of the court-fee on the plaint as per the sale consideration, as mentioned therein, by clothing their prayer as that for declaration qua the illegality and nullity of the said sale deeds with consequential relief of permanent injunction, as envisaged under Section 7(iv) (c) of the Act of 1870.

7. 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 warrant any interference by this Court. Resultantly, the revision petition in hand, being *sans* any merit, stands dismissed.

May 24, 2022
Yag Dutt

(MEENAKSHI I. MEHTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>