In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 2289 of 2020

Date of Decision: 06.09.2022

Harish Chander Arora

... Petitioner(s)

Versus

Raj Kumar

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sherry K. Singla, Advocate
for the petitioner(s).

Mr. Namit Khurana, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The dispute is with regard to liability to pay *ad valorem* court fee on the amount recited in the sale deed dated 06.08.2018. The application, filed by the defendant under Order VII Rule 11 CPC, was dismissed by the trial Court while relying upon the judgment passed in ***Rambai v. Kapoori and Another 2014(4) RCR (Civil) 376*** and ***Tarun Kumar and Others v. Pankaj Kapoor and Others 2016(5) RCR (Civil) 296***.

2. The learned counsel representing the petitioner contends that in view of the judgment passed in ***Suhrid Singh alias Sardool Singh v. Randhir Singh AIR 2010 2807*** and a Full Bench judgment of this Court in ***Niranjan Kaur v. Nirbigan Kaur 1982 PLR 127***, the judgment passed by the learned Single Judges could not be relied upon.

3. On the other hand, the learned counsel representing the respondent contends that in view of the judgment relied upon by the trial

Court, no *ad valorem* court fee is payable.

4. It is not in dispute that the plaintiff being the executant of the sale deed is required to file a suit for cancellation of the sale deed under Section 31 of the Specific Relief Act, 1963 (hereinafter referred to as "the 1963 Act"). There is a fundamental difference between a suit filed for annulment/cancellation of a document and a mere suit for declaration. The suit for declaration is filed under Section 34 of the 1963 Act. If an executant wants to avoid a document, he is required to file a suit for its annulment. The Full Bench in ***Niranjan Kaur's case*** *(supra)*, framed the question in para 1, which is extracted as under:-

> *"Where the plaintiff, who is a party to a document relating to the agricultural land, files a suit for its cancellation or for declaring it voidable against him, is such a suit governed by section 7(iv)(c) or Article 1 Schedule I of the Court Fees Act".*

5. While answering, the Full Court held that even if the plaintiff claims that a fraud has been played, still *ad valorem* court fee is payable because such suit is governed by Article 1 of Schedule 1 of the Court Fees Act, 1880. Similarly, the Supreme Court, while deciding the ***Suhrid Singh alias Sardool Singh's case*** *(supra)*, once again, held that the executant of a document is required to file a suit for its annulment and hence, *ad valorem* court fee is payable on the sale consideration.

6. This Court has carefully read the judgments passed in ***Rambai's case*** *(supra)* and ***Tarun Kumar's case*** *(supra).* In both the judgments, the Court proceeded to decide the matter in the peculiar facts of the respective cases. In ***Tarun Kumar's case*** *(supra)*, the Court noticed that both the

cheques reflecting the payment of sale consideration were ultimately dishonoured. In ***Rambai's case*** *(supra)*, the Court noticed that the petitioner was more than 100 years old pardanashin lady.

7. Hence, the aforesaid judgments are given in the peculiar facts of the respective cases and do not lay down any *ratio decidendi* governing such cases in general.

8. Keeping in view the aforesaid facts, the present revision petition is allowed. The order, under challenge, is set aside. The respondent/plaintiff is granted one month's time to deposit the *ad valorem* court fee on the amount of sale consideration from the date of receipt of a certified copy of this order.

(Anil Kshetarpal)
Judge

September 06, 2022
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No