

In the High Court of Punjab and Haryana, at Chandigarh

Civil Revision No. 4122 of 2019

Date of Decision: 12.09.2022

Kamla Kaur and Others

... Petitioner(s)

Versus

Harcharan Singh

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Naveen Sharma, Advocate
for the petitioner(s).

Mr. Shehbaz Thind, Advocate
for the respondent.

Anil Kshetarpal, J.

1. The plaintiff (respondent herein) has filed a suit for grant of decree of declaration that he is owner in exclusive possession of the suit property and the registered power of attorney dated 08.04.2015 and the alleged sale deed dated 04.09.2015 is illegal, null and void. An application filed by the defendants under Order VII Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”), to reject the plaint as the plaintiff has failed to pay the *ad valorem* court fee, has been dismissed on the ground that he is not an executant of the sale deed.

2. Heard the learned counsel representing the parties, at length and with their able assistance, perused the paper-book.

3. It would be noted here that the registered power of attorney was allegedly executed by Sh.Harcharan Singh (plaintiff) in favor of Sh.Charan

Singh (defendant No.2), who, on the basis of the aforesaid power of

attorney, sold the property vide registered sale deed dated 04.09.2015. Thus, in substance, the plaintiff is an executant of the sale deed. The trial Court has wrongly held that the plaintiff is not an executant of the sale deed.

4. The learned counsel representing the respondent (plaintiff) submits that the suit is based upon the plea of fraud, therefore, the plaintiff is not required to pay *ad valorem* court fee. It would be noted here that the sale deed has been executed on the basis of a registered power of attorney, allegedly executed by the plaintiff (respondent herein). The plaintiff's case with regard to the allegation that the sale deed is a result of fraud shall be examined by the Court while deciding the suit. In *Niranjan Kaur v. Nirbigan Kaur 1981 AIR (Punjab & Haryana) 368*, a Full Bench of this Court has held that such suit shall be governed by Article 1 of the Court Fees Act, 1870, and hence, *ad valorem* court fee on the amount of sale consideration shall be required to be paid. The Supreme Court in *Suhrid Singh alias Sardool Singh v. Randhir Singh and Others (2010)12 SCC 112* held that once the executant of the document wants its annulment/cancellation, the *ad valorem* court fee is payable.

5. Keeping in view the aforesaid facts, the present revision petition is allowed and the order passed by the trial Court is set aside. The plaintiff is granted six weeks' time to pay the *ad valorem* court fee on the amount of sale consideration recited in the sale deed dated 04.09.2015.

(Anil Kshetarpal)
Judge

September 12, 2022
"DK"

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