

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.3709 of 2022

Date of Decision: September 08, 2022

Anita Sharma

...Petitioner

Versus

Rooma Tanwar & another

...Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr.Munish Behl, Advocate,
for the petitioner.

MANOJ BAJAJ, J.

Plaintiff-Anita Sharma has filed this revision petition under Article 227 Constitution of India to challenge the order dated 17.08.2022 (Annexure P-5), whereby application under Order 7 Rule 11 CPC filed by the defendant-respondents, has been allowed, and the plaintiff has been directed to pay ad valorem court fee.

The brief facts of the case are that Anita Sharma (plaintiff) brought a suit for declaration seeking annulment/cancellation of sale deed dated 09.07.2018 being result of fraud and cheating. As a consequential relief, she also prayed for a decree for permanent injunction restraining the defendants from interfering in plaintiff's peaceful possession of the suit property. As per pleadings, plaintiff purchased House No.960 measuring 125 sq.yards, situated in Shiv Colony, Faridabad through registered sale deed dated 24.01.2018. After purchase, she constructed the basement,

ground floor and first floor, wherein she is residing along with her family. Plaintiff's husband had borrowed a sum of Rs.2.5 lacs from respondent/defendant No.2, who had obtained his signatures on many blank papers, stamp papers and cheques etc., and thereafter, the defendants in collusion with each other, converted the same in false and fabricated documents. Subsequently, they filed various suits, complaints under Section 138 Negotiable Instruments Act, 1881 and criminal cases against the husband of the plaintiff. On 09.07.2018, the defendants called the plaintiff and her husband at their house and offered them, that if, the house in question is transferred in their name, then they would make payment of Rs.16,35,000/- to the plaintiff and shall also withdraw all the cases pending against her husband. The price of the house in dispute was assessed as Rs.25.00 lacs. The defendants compelled the plaintiff to put her signatures on various typed papers, and she being helpless, under the threat of defendants, agreed for the same. However, the defendants with dishonest intention, got the sale deed dated 09.07.2018 executed in the name of defendant No.1, mentioning therein that the amount of Rs.16,35,000/- stands paid to the plaintiff, whereas, in fact, no amount was paid to her. On this cause of action, the above suit was filed.

After service of notice, the defendant-respondents appeared and filed written statement, along with an application under Order 7 Rule 11 CPC seeking rejection of the plaint, and Civil Judge (Junior Division), Faridabad vide order dated 17.08.2022 allowed the same and directed the plaintiff to pay ad valorem court fee within one month.

Learned counsel for the petitioner-plaintiff has argued that the

court has wrongly directed the petitioner to affix the ad valorem court fee as no sale consideration in respect of the sale deed dated 09.07.2018 challenged by way of the civil suit was passed on to the plaintiff-vendor, therefore, the impugned order deserves to be set-aside, particularly when the petitioner-plaintiff has not prayed for any relief of possession. In support of his argument, he has relied upon the decisions in **Tarun Kumar and Ors. Versus Pankaj Kapoor and Ors.**, 2016(5) R.C.R. (Civil) 296, **Sukha Singh @ Sukhdarshan Singh Versus Basakha Singh and another**, 2014 (61) R.C.R. (Civil) 903 and **Rakesh Kumar Versus Kundal Lal**, 2017(1) PLR 273.

After hearing the learned counsel and considering the above submissions, this court finds that admittedly the sale deed challenged through the civil suit was executed by the petitioner-plaintiff and as per its contents, payment of Rs.16,35,000/- was paid to her. Since the plaintiff herself has challenged the sale deed seeking declaration to declare the instrument as null & void and has prayed for a consequential relief of injunction, therefore, the trial court has rightly sustained the objection raised by the defendants by directing the plaintiff to affix the ad valorem court fee.

The decisions relied upon by the learned counsel are not applicable in the present case, as in **Rakesh Kumar's case** (supra), as per the contents of the written statement, the plaintiff never received the amount of Rs.45.00 lacs from the defendants, therefore, it was held that the plaintiff is not required to pay the court fee, as the plaintiff is in possession of the suit property. Similarly, in **Tarun Kumar's case** (supra), as per impugned sale deed, only delivery of symbolic possession was recorded and the cheques

issued towards sale consideration were not honoured and possession also remained with the plaintiff, therefore, it was held that the plaintiff is not required to pay ad valorem court fee. In Sukha Singh @ Sukhdarshan Singh's case (supra), this court found that the sale deed under challenge in the civil suit does not contain the fact of passing on consideration from the defendants to the plaintiff, so the application filed by defendants under Order 7 Rule 11 CPC was dismissed.

Resultantly, this court finds that the impugned order dated 17.08.2022 (Annexure P-5), passed by the Civil Judge (Junior Division), Faridabad is based upon the correct appreciation of pleadings, law on the subject and does not suffer from any illegality or impropriety, therefore, does not warrant any interference.

Dismissed.

September 08, 2022
ramesh

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No