

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

CR-4080-2022 (O&M)

Date of decision : 27.09.2022

Rajinder Kaur

... Petitioner(s)

Versus

Prem Kumar Gupta and Others

... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Arvinder Singh, Advocate for the petitioner.

ALKA SARIN, J. (ORAL)

The present revision petition has been preferred under Article 227 of the Constitution of India challenging the order dated 26.07.2022 (Annexure P-8) to the extent whereby the defendant-petitioner has been held liable to pay *ad valorem* court fee on the counter-claim filed by her.

Learned counsel for the defendant-petitioner has contended that the defendant-petitioner was not liable to pay *ad valorem* court fee since she, being the defendant in the present suit, had only filed a counter-claim and no *ad valorem* court fee needs to be paid on the counter-claim. Learned counsel in support of his argument has relied upon upon the judgment of this Court in the case of **Harbans Singh & Ors. Vs. Swaran Singh [2018 (1) Law Herald 891]**.

Heard.

Order 8 Rule 6A of the Code of Civil Procedure, 1908 (CPC)

reads as under :

“6A. Counter-claim by defendant - (1) A defendant in a suit may, in addition to his right of pleading a set-off under rule 6, set up, by way of counter-claim against the claim of the plaintiff, any right or claim in respect of a cause of action accruing to the defendant against the plaintiff either before or after the filing of the suit but before the defendant has delivered his defence or before the time limited for delivering his defence has expired, whether such counter-claim is in the nature of a claim for damages or not:

Provided that such counter-claim shall not exceed the pecuniary limits of the jurisdiction of the court.

(2) Such counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original claim and on the counter-claim.

(3) The plaintiff shall be at liberty to file a written statement in answer to the counter-claim of the defendant within such period as may be fixed by the court.

(4) The counter-claim shall be treated as a plaint and governed by the rules applicable to plaints.”

Order 8 Rule 6A(2) states that a counter-claim shall have the same effect as a cross-suit so as to enable the Court to pronounce a final judgment. Order 8 Rule 6A(4) states that the counter-claim shall be treated as a plaint and governed by the rules applicable to the plaints, which would necessarily entail the payment of court fee.

Hon'ble Supreme Court in case of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors. [2010 (12) SCC 112]** has 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."

In the present case, the defendant-petitioner is an executant of the agreements to sell through her GPA holder. Though the counter-claim has been filed for declaration that the alleged agreements to sell dated

19.09.2017 and 15.10.2018 are illegal, null and void, however, in effect what the defendant-petitioner is seeking is for cancellation of the said agreements to sell. Merely by terming the counter-claim suit as for declaration, the defendant-petitioner cannot avoid the payment of *ad valorem* court fee. As per the law laid down by Hon'ble Supreme Court in the case of **Suhrid Singh @ Sardool Singh** (*supra*), an executant of a document, if he seeks to challenge the same, would necessarily have to seek cancellation. Further, simply because the agreements were executed through GPA holder, which fact is not denied in the present case, the defendant-petitioner cannot avoid the payment of *ad valorem* court fee. The acts done by the attorney would be considered as binding on the defendant-petitioner.

The judgment in the case of **Harbans Singh** (*supra*) relied upon by learned counsel for the defendant-petitioner is totally distinguishable on facts inasmuch as in the said case the relief sought in the counter-claim was only for declaration. However, in the present case the counter-claim is in effect for setting aside the agreements to sell dated 19.09.2017 and 15.10.2018 executed by the GPA holder of the defendant-petitioner.

In view of the above, I do not find any illegality or infirmity in the order passed by the Court below. The present revision petition, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

27.09.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO