

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-4257 of 2013 (O&M)
Date of decision: 06.12.2022

Sukhdev Singh

..Appellant

Versus

Karamjet Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashish Aggarwal, Sr. Advocate, with
Mr. Vipul Aggarwal, Advocate and
Mr. Govind Chauhan, Advocate
for the appellant.

Mr. P.S.Jammu, Advocate
for respondent no.4 to 7.

ANIL KSHETARPAL, J(Oral)

1. The Regular Second Appeal in the States of Punjab, Haryana and Union Territory, Chandigarh, is governed by Section 41 of the Punjab Courts Act, 1918 and not by Section 100 of the Code of Civil Procedure, 1908, as held by a five Judge Bench of the Supreme Court in **Pankajakshi (Dead) through LRs vs. Chandrika and others, (2016) 6 SCC 157.**

2. The appellant herein is one of the plaitniffs in the suit who has challenged the orders dated 06.11.2009 and 23.02.2010, passed by civil Judge (Junior Division), Chandigarh. A suit filed in 2006 has been dismissed by the trial court under Order VII Rule 11 of the Code of Civil Procedure, 1908 on account of failure to pay the ad valorem court fee, when the trial of the case was at the advance stage. In the impugned order, the trial court has found that the correctness of various transfer deeds has been challenged.

3. This Bench has heard the learned counsels representing the

parties at length and with their able assistance perused the paper book.

The prayer clause of the plaintiffs' suit reads as under:-

“(i) A decree be issued to effect that: Plaintiff No.1 and 2 alongwith defendants no.1, 2, 3, 6 and 7 are the only legal heirs of late Shri Uttam Singh as of the properties described under:

i) Booth No.24 and 24/1,24/2,24/3, 24/4, 24/5, Sector 27

ii) S.C.F. 14, Sector 20-D, Chandigarh.

iii) Booth No.32, Sector 20-D, Chandigarh.

iv) S.C.F. No.24, Sector 27-C, Chandigarh.

v) Kothi No.2054, Sector 21, Chandigarh, (RP No.117373)

vi) Agriculture land situated in village Fattowal, District Kapurthala, Punjab as per Jamabandi enclosed herewith, such as No.20 and 21 of Muraba NO.25, No.16, 17, 19, 20, 21, 22, 23, 24 and 25 consisting of nine (9) kilas of Muraba No.26, 24 and 25 consisting of two (2) killas of Muraba No.27, 5/2 share in Muraba No.33, No.1, 2, 3 and 9 of Muraba No.34.

(ii) And are entitled to succeed/inherit the properties according to their share i.e the plaintiffs along with defendant no.6 and 7 to the extent of $\frac{1}{4}$ share;

(iii) And further declaration to the effect that defendant no.5 and 5-A who alleged to be the beneficiary of the

Estate of Uttam Singh be kindly declared as nonest, illegal, and further for declaration that they are not entitled for the suit property further Mohinder Singh was not the son of Uttam Singh. And that the documents if any in respect of the benefit of defendant no.5 and 5-A, out of the properties of Ganga Singh, Uttam Singh and Mohinder Singh be treated as fake, invalid and illegal.

And further

Further suit for declaration that late Mohinder Singh was not the son of Uttam Singh and the Will dated 08.09.1999, 20.07.1998, 29.07.1998 and any other document purporting to be a Will be declared as forged and fabricated in respect of the properties mentioned in the body of the suit or the properties mentioned in the alleged forged and fabricated Will.

And further

Any document which entitles the defendants no.5 and 5-A to the estate of Ganga Singh and Uttam Singh be declared as nullity.

And further

Suit for permanent injunction restraining the defendant no.5 and 5-A from proclaiming herself to be the owner of the properties as described in the body of the plaint on the basis of the forged and fabricated Will and further alienating or disposing off the properties in any manner.”

4. It is evident from the reading of the prayer clause that the plaintiffs in the suit have not sought annulment of any transfer deed which was executed by them. The law on the subject is clear like a crystal. If the executant wants annulment of the document which was executed by him then, the suit is required to be filed under Section 31 of the Specific Relief Act, 1963 for cancellation of document. Hence, in such suits, the ad valorem court fee is payable. Reference in this regard can be made to a full bench judgment of this court in *Niranjana Kaur vs Nirbigan Kaur, AIR, 1981 P&H 368* and a judgment passed by the Supreme Court in *Suhrid Singh alias Sardool Singh vs. Randhir Singh and others, (2010) 12 SCC 112*.

5. The learned counsel representing the respondents despite being repeated opportunities failed, to draw the attention of the Court to any provision in the Court Fees Act, 1870 which require the plaintiffs to pay the ad valorem court fee.

6. The learned counsel representing the respondents submits that the appellant, while prosecuting the appeal, has admitted the liability of the plaintiffs in the suit, to affix the proper court fee on 10.10.2014. The order dated 10.10.2014 reads as under:-

“Learned senior counsel for the appellant contends that the plaint was rejected by the trial Court under Order 7 Rule 11 of the Code of Civil Procedure, on account of deficiency in Court fee, when the trial was almost complete. Accordingly, even the appeal filed by the plaintiffs was dismissed. Learned Senior Counsel, without any prejudice to his case contends that the

plaintiffs are ready and willing to affix the appropriate court fee in terms of the order passed by the trial Court.

Notice of motion for 17.02.2015.

Process dasti as well.”

7. It is evident that the learned senior counsel had offered to pay the amount without prejudice to his case. Such a statement will neither operate as estoppel against the appellant nor such statement can be treated as admission on the plaintiff's part to pay the court fee.

8. Hence, the orders dated 06.11.2009 and 23.02.2010 are set aside. The trial court is requested to proceed with the case. The trial court shall have liberty to frame an issue on the question of payment of court fee and decide the same, in accordance with law.

9. The appeal is allowed.

10. All the pending miscellaneous applications, if any, are also disposed of.

December 06, 2022

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(ANIL KSHETARPAL)
JUDGE

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