

268

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

CR-87-2021 (O&M)

Date of Decision: 11.05.2023

Smt. Santosh

....Petitioner

Versus

Smt. Nirmla Devi and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Jagbir Singh, Advocate
for the petitioner.

Ms. Rajni Rohilla, Advocate
for Mr. S.S. Verma, Advocate
for respondent No.1 to 3.

Mr. Vikrant Rana, Advocate
for respondents No.4 & 5.

ARUN MONGA, J. (ORAL)

Impugned herein is an order dated 18.12.2020 (Annexure P-4) passed by learned Additional Civil Judge (Sr. Divn.) Charkhi Dadri, whereby application (Annexure P-3) under Order VII Rule 11 of Code of Civil Procedure, 1908 filed by respondent No.4/defendant No.4, was allowed and plaintiff/petitioner was directed to affix *ad valorem* Court fees as per valuation of considerations recorded in the sale deeds which are under challenge in the civil suit.

2. Plaintiff/petitioner stating herself to be in possession of suit land and seeks declaration from the Ld. Court below to the effect that she is owner in possession of land measuring 110 Kanals 8 Marlas to the extent of 1/12th share i.e. 55 Kanals 4 Marlas, on the basis of Jamabandi for the year 2014-15.

2.1. Declaration is also sought that the alleged sale deed dated 04.09.2017, shown to be executed by plaintiff in favour of respondent No.1/defendant No.1 and its mutation dated 20.11.2017 regarding land measuring 24 Kanals 0 Marla; further alleged sale deed dated 11.06.2018, shown to be executed by plaintiff in favour of respondent No.2/defendant No.2 regarding land measuring 20 Kanals 0 Marla; further alleged sale deed dated 23.11.2017 executed by respondent No.1/defendant No.1 in favour of respondent No.4/defendant No.4 regarding land measuring 24 Kanals 0 Marla; further alleged sale deed dated 04.09.2017 executed by respondent No.3/defendant No.3 in favour of respondent No.4/defendant No.4 and its mutation dated 07.06.2018 regarding the land measuring 12 Kanals 0 Marla; and further alleged sale deed dated 11.03.2019 executed by respondent No.2/defendant No.2 in favour of respondent No.5/defendant No.5 regarding the land measuring 20 Kanals 0 Marla, are all wrong, illegal, null and void being without consideration and any legal necessity and also based on fraud and does not affect the coparcenary interest and are not binding on the rights of plaintiff and revenue record showing the names of respondents No.1 to 5/defendants as owners are also wrong and illegal, along with consequential relief of permanent injunction to restrain the defendants from interfering in the peaceful possession and to restrain them from alienating the suit property.

2.2. Respondent No.4 in his written statement has taken the plea that said sale deeds were executed by petitioner/plaintiff in accordance with law after appearing before the Sub-Registrar. It is further pleaded that whole of the amount of Rs.55 lakh in both sale deeds was given in advance. No amount was made either by way of cheque or bank draft. An application under Order VII Rule 11 CPC for rejection of plaint was also filed on the

ground that *ad valorem* Court fee has not been paid while seeking the cancellation of the registered sale deeds, which has been allowed. Hence, the instant revision petition.

3. Learned counsel for petitioner would argue that fraud perpetrated by petitioner is *prima facie* made out from the bare contents of sale deeds No.3064 dated 04.09.2017 and 1341 dated 11.06.2018. In the sale deeds, there was no initial agreement to sell and no payment was made either through cheque, bank draft or RTGS. No payment was made even before the Sub-Registrar. Further in both sale deeds, it has been pleaded that whole of the amount had been received in the house as cash. However, there is no explanation when coming forth as to how and when such a huge amount of Rs.55 Lakh was arranged by respondent No.4 from other i.e. either from any bank or which other source.

4. On the other hand, learned counsels appearing for respondent(s) vehemently oppose the revision and submit that no fault can be found with the findings of Ld. Trial Court in view of the facts and circumstances of the present case.

5. Heard.

6. Vide impugned order, Ld. Trial Court seems to have got swayed with the fact that petitioner/plaintiff has also filed a complaint before the police against respondents that she has been defrauded and her thumb impressions were taken earlier in the bank, followed by at another place. But she was made to understand that she will be given the loan from the bank and her thumb impressions were required at several places. However, this fact has not been mentioned in the plaint. Only on this ground, the application has been allowed and the petitioner has also been directed to

7. Having heard the argument of learned counsel for parties, given that the receipt of sale consideration has been denied by plaintiff and there are also allegations of execution of the purported sale deeds fraudulently by taking her signatures on the same, unless the cloud is cleared on the veracity of sale deeds as well as on receipt of sale considerations, it would be inappropriate at this stage to make plaintiff/ petitioner to pay the Court fee *qua* the sale proceeds, which is the subject matter of *lis* since there is a serious dispute *qua* the receipt of the same.

7.1. In fact, summing up the controversy, a Coordinate Bench of this Court, presiding over by Lisa Gill, J., issued notice of motion vide order dated 02.03.2021, which reads thus:

“This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

*It is submitted that judgement of the Hon’ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(4) SCC (Civil) 585**, is not applicable in the present facts and circumstances where the petitioner-plaintiff has merely sought a declaration to the effect that the sale deeds in questions are null and void being a result of fraud. Possession of the property is with the petitioner-plaintiff.*

*Learned counsel for the petitioner placed reliance upon judgements **Om Parkash Vs. Smt. Bimla Devi and others, CR No. 5932 of 2012, d/o 22.05.2014** and **Ram Bai Vs. Kapoori and another, CR No. 2489 of 2012, d/o 04.08.2014**. It is submitted that said decisions have attained finality.*

Notice of motion.

Mr. Vikrant Rana, Advocate, appears on behalf of respondents no.4 and 5 and accepts notice on their behalf.

Notice be issued to respondents no.1 to 3 for 07.05.2021.

Learned trial Court to adjourn the matter beyond the date fixed in this revision.”

7.2. I am in agreement with the preliminary submissions noted herein above while issuing notice in the revision petition.

8. In the premise, revision petition is disposed of with a request to Ld. Trial Court to first frame a preliminary issue *qua* the rival contentions of parties on payment of sale consideration and render its finding on the same

after respective evidence is adduced by both the parties and depending upon the outcome thereof, to proceed further with rest of the issues and the trial. Needless to say, in case finding is returned that sale consideration was indeed received by plaintiff then she will have to affix the *ad valorem* Court fee as per the value mentioned in the sale deed.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

May 11, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No