

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

CR-341-2017 (O&M)
Date of Decision:- **30.11.2023**

BIMLA DEVI AND ANOTHER

... Petitioner(s)

Versus

RAM SINGH AND OTHERS

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. Abhay Chauhan, Advocate for
Mr. J.K. Chauhan, Advocate
for the petitioner(s).

Mr. Karan Vir Nanda, Advocate
for the respondent(s).

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KARAMJIT SINGH, J. (Oral)

1. The present revision petition has been filed by the petitioners/ plaintiffs for setting aside the order dated 08.11.2016 (Annexure P-4) passed by the Court of learned Civil Judge (Jr.Divn.), Dera Bassi (SAS Nagar, Mohali) by virtue of which an application (Annexure P-2) filed by respondents No.1, 4 and 5 under Order 7 Rule 11 CPC for rejection of the plaint in civil suit No. CS-81 of 2016 titled Smt. Bimla Devi & Anr. Vs. Ram Singh & Ors., has been allowed.
2. The brief facts of the case are that petitioners filed suit seeking decree for declaration to the effect that they are joint owners and in joint possession of 2/5th share in the suit land and that general power of

attorney executed by respondent No.1 Ram Singh in favour of respondent No.2 which was registered on 08.11.2013 and different sale deeds dated 12.08.2015 executed by respondent No.2 being attorney of respondent No.1 in favour of respondent No.4 and sale deed dated 09.12.2015 executed by respondent No.2 being attorney of respondent No.1 in favour of respondent No.5 are illegal, *null and void*, on the ground that the suit property is ancestral in the hands of respondent No.1 qua the petitioners who are his daughters. Respondents No. 1,4 and 5 filed an application under Order 7 Rule 11 CPC seeking rejection of plaint on the ground that the petitioners are not in possession of any portion of the suit property and have sought joint possession cleverly to avoid *ad valorem* Court fee which they are required to affix on the basis of market value of the suit property. The application was contested by the petitioners.

3. After hearing counsel for the parties, the learned trial Court while passing the impugned order, held that no doubt the petitioners are non-executant of sale deeds and power of attorney in question, but they are to pay *ad valorem* Court fees as per value mentioned in the sale deeds as they are seeking not only declaration but also possession of the suit property.
4. Being aggrieved, the petitioners have filed the present revision petition.
5. I have heard the counsel for the parties.

6. The counsel for the petitioners while assailing the impugned order has, *inter alia*, contended that the petitioners have not sought joint possession of the suit property rather their suit is for declaration to the effect that they are joint owners and in joint possession of the suit property which is ancestral in the hands of their father qua them. The counsel for the petitioners has further contended that admittedly the petitioners were not executants of power of attorney and sale deeds in question and thus, in the light of law laid down by Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors, 2010(12) SCC 112**, the impugned order is erroneous and deserves to be set aside.
7. On the other hand the counsel for contesting respondents while supporting the impugned order has submitted that both the petitioners are married daughters of respondent No.1 Ram Singh and they are residing in their matrimonial homes and were not in possession of any portion of the suit property at the time of filing of the suit. Thus, the trial Court while relying upon the law laid down by Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh's case** (supra) rightly gave directions to the petitioners to furnish *ad valorem* Court fees as per value of the sale deeds in question. It has been further contended that the petition deserves to be dismissed being devoid of merits.
8. I have considered the submissions made by counsel for the parties.
9. For the purpose of disposal of an application filed under Order 7 Rule 11 CPC, only the averments made in the plaint are to be considered. The defence taken by the other party in the written statement or

otherwise would be wholly irrelevant at this stage. There cannot be any dissection or segregation of the language of various paragraphs in the plaint.

10. Admittedly, petitioners were not executants of the sale deeds and power of attorney in question. From the perusal of the plaint, it could be easily made out that petitioners have sought declaration to the effect that they are joint owners and in joint possession of the suit property, which was ancestral in the hands of their father qua them. The petitioners have also sought decree for permanent injunction to restrain the respondents from creating charge over the suit property and further restraining them from interfering in the peaceful possession of petitioners over the suit property. In the plaint, there is no prayer on behalf of the petitioner seeking possession or joint possession of the suit property.
- 11 The Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh's** case (supra) has categorically 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](#). ”

12. In the facts and circumstances of present case, reading of plaint, nowhere suggests that the petitioners being ousted from the suit property are claiming its possession/joint possession. Rather the petitioners have taken the plea that they are in joint possession of the suit property and also seeking decree for permanent injunction. They have sought declaration to the effect that petitioners are joint owners and in joint possession of the suit property. The learned trial Court fell into error while observing that as the petitioners are seeking

possession of the suit property, they are liable to pay advolrem Court fee as per the value of the land, detailed in the impugned sale deed.

13. In the light of the settled position of law as discussed above coupled with the facts that petitioners are non-executants of sale-deeds and power of attorney in question and they have not sought possession/joint possession of the suit property, the petitioners cannot be asked to affix advolrem Court fee. So the impugned order being illegal deserves to be set aside.
14. Consequently, the present revision petition is allowed and impugned order 8.11.2016 (Annexure P-4) passed by the Court of Civil Judge (Junior Division), Dera Bassi is hereby set aside. The trial Court is hereby directed to proceed ahead with the suit in an expeditious manner. The parties are directed to appear before the trial Court for further proceedings on the date already fixed in the suit.
15. Observations made here-in-above are not to be constructed as expression of opinion on the merits of the case.

30.11.2023
Jiten/Gaurav Sorot/yogesh

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No