

105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4922-2016

Date of Decision :18.04.2023

TARA CHAND

...Petitioner

versus

JITENDER KUMAR AND ANR

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Pankaj Bali, Advocate for the petitioner.
Mr. Sunil Panwar, Advocate for the respondents.

B.S. Walia, J. (Oral)

[1] Challenge in the revision petition under Article 227 of the Constitution of India is to order, Annexure P/4 dated 15.07.2016 passed by the learned Civil Judge (Jr. Div.), Ambala directing the petitioner to affix ad valorem court fee on the market value of the suit property.

[2] Sole argument of learned counsel for the petitioner is that although the gift deed bears the signatures of the petitioner, yet the same was got executed fraudulently and despite execution of the sale deed, the petitioner continues to be in possession of the gifted property, therefore, in view of the decision of Hon'ble the Supreme Court in **Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, 2010 (4) SCC (Civil) 585**, the petitioner is not required to pay ad valorem Court fee. Learned counsel relies upon the decision of a Co-ordinate Bench of this Court in **Rambai vs. Kapoori and another, 2014 (4) RCR (Civil) 376** which is to the effect that where the cancellation of the sale deed is sought on the ground of fraud, ad valorem court fee is not payable.

[3] The plea on behalf of the petitioner is vehemently controverted by learned counsel for the respondents who contends that a perusal of paragraph No.7 of the plaint reveals that the petitioner/plaintiff is not in possession, therefore, in view of paragraph No.6 of the decision of Hon'ble the Supreme Court in Suhrid Singh's case (Supra) the petitioner is required to pay ad valorem court fee. Relevant extract of the decision in Suhrid's Singh's case (Supra) is reproduced 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. ”

[4] Learned counsel for the respondents contends that since the gift deed was admittedly executed by the petitioner, he has to sue for cancellation of the same as also seek possession for as per the pleadings, it is not the case on behalf of the petitioner that he is not the executant or is in possession of the suit property as evident from the averments in paragraph No.7 of the plaint, therefore, he has to pay ad valorem Court fee as per Section 7 (iv)(c) of the Court Fees Act, 1870.

[5] Learned counsel for the respondents relies on the decision of Hon’ble the Supreme Court in Suhrid Singh’s case (Supra) as well as the decision of a Co-ordinate bench of this Court in **Khajan vs. JSR Land Developer Pvt. Ltd. and other in CR No.3045 of 2011, decided on 09.05.2011** as well as **Udham Singh vs. Tejbir Singh and another, 2015 (11) RCR (Civil) 106** besides, **Ram Kaur vs. Sandeep and another, 2015 (3) PLR 547** in which it was held that where the person is a signatory to the document, cancellation of which is sought notwithstanding fraud, ad valorem court fee would be payable. In Ram Kaur’s case (Supra),

judgment of this Court in case titled as Surjit Singh vs. Karamjit Kaur, 2012 (3) PLR 790 was referred wherein it was stated that the petitioner therein was seeking cancellation of the sale deed on the ground that he was an old man and that deed was got executed under undue influence and fraud and he was not claiming the possession, therefore, he was not required to pay ad valorem court fee. Relevant extract of Ram Kaur's case (Supra) is reproduced as under:-

*“2. I would find that under normal circumstances it is the plaintiff's averment in plaint to determine what should be the court fee payable. However, the Court has the power to see what is true content of the plaint or whether the plaintiff is making any attempt to get over the law of court fee by clever pleadings. In this case, the plaintiff has been party to the document of sale executed in favour of the defendant. The plaintiff wants to contend that it was brought out by fraud and coercion and no consideration was actually paid. When an executant of a document seeks to assail the document, it is another way of seeking for cancellation of the document which a person will be otherwise bound if such a relief is not sought for. Where the plaintiff is a party to the document which was required to be set aside, ad valorem court fee is bound to be paid as per the Court Fees Act. The reliance on judgment in Surjit Singh's case (supra) is in my view not proper, for the learned judge with respect, who has relied on a judgment of the Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010(2) RCR (Civil) 564**, has not correctly applied the same. The reference to the above said judgment of the Supreme Court is the law governing the subject and it sets down the distinction between an executant who seeks to assail the document and non-executant who*

seeks for cancellation. The illustration given clearly points out to the fact that if he is an executant and wants to avoid it, the ad valorem court fee is bound to be paid. Only in a case where the person is non-executant and wants to contend that particular sale deed is not binding and seeks for cancellation of such a sale, the fixed court fee would be paid. The distinction was somehow missed in the said judgment and I, am therefore, with respect, unable to follow the same. The direction given by the trial court for payment of court fee is perfectly justified.”

[6] I have considered the submissions of learned counsel.

[7] Admittedly, the petitioner is seeking cancellation of the gift deed executed by him. Although learned counsel claims that the petitioner is in possession, yet the same stands negated from the contents of paragraph No.7 of the plaint. Contents of paragraph No. 7 of the plaint are reproduced as under:-

“7. -- ---- The defendants had been paying the Batai/Theka to the plaintiff in advance regularly for every calendar year, but now when the plaintiff asked the defendants that the plaintiff will cultivate the land in dispute himself from the next crop and they should handover the vacant possession of the land to him of the land in dispute, the defendants told the plaintiff to wait for some time and when the plaintiff again asked the defendants to do the needful at least in coming April 2013, then he was told by the defendants that the plaintiff has not right title or interest in the land in dispute and they are the owners of the land in dispute by means of gift deed which they have got executed from the plaintiff under the influence liquor in connivance with one NasibNambardar of village Sonta and one Satminder Singh son of Sher Singh both

residents of Sonta, to whom the plaintiff does not know at all as they are the men of the defendants.”

[8] The judgment relied upon by learned counsel by the petitioner in the case of Rambai (Supra) is of no avail since in the said case, the executant of the sale deed was in possession of the suit property and the petitioner therein had not sought the relief of possession whereas in the instant case the position is otherwise.

[9] In the instant case, the petitioner although claims to be in possession but the stand of the petitioner stands falsified from the contents of paragraph No.7 of the plaint wherein the petitioner not being in possession of the gifted land is evident.

[10] Accordingly, in the light of the decision of Hon'ble the Supreme Court in Suhrid Singh @ Sardool Singh's (Supra) case as well as of a Co-ordinate Bench of this Court in Khajan's case (Supra), Ram Kaur's case (Supra) and Udham Singh's case (Supra), I find that the view taken by the learned trial Court does not warrant any interference.

[11] Dismissed.

[12] Since the proceedings were stayed vide order dated 10.08.2016 and the civil suit is of the year 2012, learned trial Court is requested to expedite the trial and conclude the same as expeditiously as possible and in any case within six months from date of deposit of ad valorem court fee, with the ad valorem court fee to be deposited within four weeks of receipt of certified copy of the order.

(B.S. Walia)
Judge

18.04.2023
'Amit'