

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

201

CR No.5190 of 2016

Date of Decision: 27.07.2023

Satyaindar Kumar Chopra

.....*Petitioner*

Versus

Virendra Kumar Chopra and Ors.

.....*Respondents*

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH.

Present: Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. Akshay Jindal, Advocate,
Mr. Vrishank Suri, Advocate and
Mr. Vijay Veer Dhull, Advocate
for the respondents.

GURBIR SINGH, J (ORAL)

1 Challenge in this revision petition is to order dated 05.07.2016 passed by the learned Civil Judge (Jr. Divn.) Gurgaon, whereby an application moved by respondent Nos. 1 and 2 under Order 7 Rule 11 CPC, was allowed and petitioner has been directed to affix the ad-valorem Court fee.

2. Learned counsel for the petitioner submits that petitioner (hereinafter called plaintiff) filed a suit for declaration and consequential relief of permanent injunction against his brother-respondent Nos.1 and wife of his brother respondent No. 2 (hereinafter called defendants No.1 and 2) on the ground that defendant Nos.1 and 2 had purchased a flat. Defendants

No.1 and 2 were in serious financial crisis in USA. They were not able to

arrange the funds for the Unit and they approached the plaintiff. As per oral agreement between plaintiff and defendant nos. 1 and 2, plaintiff agreed to pay a sum of Rs. 69.52 lacs being equivalent to 1/3rd share of the amount of consideration of the said flat and defendant Nos. 1 and 2 assured the plaintiff that they would get his name incorporated in records of defendant No.3 and after making the above said contribution the plaintiff would become co-owner to the extent of 1/3rd share. Plaintiff paid the said amount and he was taken to office of defendant No.3 by defendant Nos. 1 and 2. They assured the plaintiff that his name would be incorporated in the record as owner. Signatures of the plaintiff were also obtained. Defendants no.1 and 2 are now avoiding to incorporate his name in the record.

3 It is submitted that the plea of recovery of the amount is only alternative relief in case main relief is not granted. Plaintiff has filed a suit being a co-owner as he contributed towards the purchase of the unit. Plaintiff has rightly fixed the value of the suit and proper court fee has accordingly been affixed with the plaint. Plaintiff is not liable to pay the ad-valorem Court fee. Reliance is placed on the judgments '(i) Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Ors, 2010 AIR (SC) 2807, (ii) Mr. Pramil Khandelwal Vs. Mr. Shivraj Puri and Anr., 2012(2) PLR 166, (iii) Robust Tyre and Rubber Company Vs. State Bank of India and Ors., 1987(2) PLR 394, (iv) Sh. S.K. Dhadwal Vs. Sh. Prem Singh and Anr., 1991(1) R.R.R. 253 and (v) Mohit Kumar and Ors. Vs. Bharat Singh and Ors., 2016(3) PLR 572'.

4 Learned counsel for the respondents submits that the suit is filed for the declaration of title as co-sharer and for possession of the property and the alternative prayer is made for refund of amount of Rs.53,30,000/- along

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with interest. He also relies on case 'Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others, 2010 AIR (SC) 2807' and submits that plaintiff is liable to pay *ad-valorem* court fee.

5 I have heard the submissions made by learned counsel for the parties.

6 Plaintiff has filed the suit with the following prayer:-

'It is, therefore, prayed that a decree of declaration may be passed in favour of the plaintiff and against the defendants declaring that the plaintiff is co-owner/co-sharer to the extent of 1/3 share in the unit no. C-1702 at The Palm Drive, Sector 66, Gurgaon; he is entitled for the possession of the said unit alongwith defendants no.1 and 2 and further a decree of declaration may be passed in favour of the plaintiff directing the defendant no.3 to acknowledge the plaintiff to be owner of 1/3rd share in the said unit and register the document in favour of the plaintiff regarding the said unit and further a decree of permanent injunction may be passed in favour of the plaintiff restraining the defendants from creating any third party rights or alienating the same; defendant no.2 may be restrained to transfer the said unit in favour of third party or execute any registered document in favour of defendants no.1 and 2. In the alternative it is prayed that if this Hon'ble court comes to the conclusion that the plaintiff is not entitled for the above stated relief that defendants no.1 and 2 may be directed to refund back an amount of Rs. 53,30,000/- paid by plaintiff to them alongwith interest @ 18% per annum. Costs of the suit may also be awarded to the plaintiff. Any other relief which this Hon'ble court deems appropriate and suitable be also granted to the plaintiff.'

7 In the instant case plaintiff is seeking declaration as well as possession and in the alternative, recovery of specific amount along with

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interest which he had contributed towards purchasing the unit. The suit is drafted *inter alia* in such a manner that suit is for declaration of right in the property. In case ‘Niranjan Kaur Vs. Nirbigan Kaur, 1982 PLR 127’ it is held by the Full Bench of this Court that the Court while deciding the question of court fee should look into the allegations made in the plaint to find out what is the substantive relief that is asked for and mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for. Although, possession of the suit property is not yet handed over to defendant Nos.1 and 2 but plaintiff has also sought possession of the suit property to the extent of his share. The claim of plaintiff is based on oral agreement and plaintiff is actually seeking the specific performance of oral agreement. In the alternative he is seeking recovery of specific amount. Since, real claim made out was of specific performance, so court fee which is to be affixed with the plaint is of suit for specific performance. The court fee cannot be avoided by seeking relief in such a manner to disguise the actual relief. The authorities cited by learned counsel for the petitioner are not attracted to the facts of the present case. Thus, learned trial Court has rightly directed the petitioner to affix the ad-valorem court fee warranting no interference by this Court. The petitioner is given three months more time from the date of receipt of copy of this order for paying the court fee.

8 Dismissed.

(GURBIR SINGH)
JUDGE

27.07.2023

jyoti3/renu

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