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

**CR-544-2020 (O&M)
Date of decision: 01.05.2023**

Vidya Devi

...Petitioner

VS

Geeta Garg and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. H.P.S.Bhinder, Advocate,
For the petitioner.

Mr. R.S.Chugh, Advocate,
For the respondents.

ARUN MONGA, J. (ORAL)

Present revision petition is to set aside impugned order dated 05.11.2019 passed by learned Civil Judge (Junior Division), Sohna, vide which application filed under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint moved by the respondents was allowed and petitioner was directed to affix the deficient *ad valorem* court fee.

2. Succinct facts first, as pleaded in the instant petition.

2.1. Plaintiff in the suit (petitioner herein) entered into an agreement to sell dated 12.04.2016 to sell the land in question in favour of defendant No.6 for a total sale consideration of Rs.71,00,000/-. Agreement to sell was reduced into writing and defendant No.6 paid earnest money to the tune of Rs.8 lakh to petitioner. Sale deed was agreed to be executed on or before 10.09.2016 on payment of balance sale consideration of Rs.63,00,000/- by defendant No.6.

2.2. In the month of September-2016, defendant No.6 approached petitioner to get the sale deed executed in favour of his wife and son

(respondents No.1 and 2 herein). They wanted to get the sale deed on a stamp paper as per prevailing collector rate at that time. Petitioner acceded to the request and got executed the sale deed dated 16.09.2016. Respondents No.1 and 2 paid Rs.2,86,500/- in cash to petitioner and also issued two cheques of Rs.18,00,000/-each drawn on Axis Bank Ltd., Sohna.

2.3. Respondents No.1,2 and 6 assured petitioner that the remaining sale consideration of Rs.24,13,500/- will be paid within a period of 15 days. It was settled that the possession of the land in question will be delivered by petitioner to respondent No.1 and 2 on receipt of balance sale consideration of Rs.24,13,500/- and on clearance of above said two cheques. The cheque issued by defendant No.1 was cleared and encashed by petitioner. However, the cheque issued by defendant No.2 was dishonoured and criminal complaint under Section 138 of NI Act was filed by the petitioner.

2.4. Respondents No.1, 2 and 6 failed to make payment of remaining sale consideration of Rs.24,13,500/- + 18,00,000= Rs.42,13,500/- So, petitioner refused to deliver the possession of the land in question and instead filed a suit for declaration to the effect that all sale deeds and mutation are illegal and liable to be cancelled.

2.5. Respondent filed an application under Order 7 Rule 11 CPC for rejection of plaint on the ground of deficient court fee was allowed and petitioner was directed to pay *ad valorem* Court fee. Hence, the instant petition.

3. Learned counsel for the petitioner submits that provisions of Order 7 Rule 11 are not applicable to the facts of the present case and the suit of the petitioner/plaintiff has not been properly valued for the purpose of court fee and jurisdiction. No *ad valorem* court fee is required to be paid.

4. Learned counsel for the respondent(s) vehemently opposes the civil revision and supports the impugned order.
5. I have heard learned counsel for parties and gone through the case file.
6. Order assailed herein is premised *inter alia* on the following reasoning:

“4. File perused and it is clear that plaintiff has filed present suit in the form of declaration that all sale deeds and mutation are illegal and liable to be cancelled. Further, it is clear from plaint that plaintiff has executed sale deed bearing No. 2755 dated 16.09.2016 in favour of defendant No. 2. Now, he has challenged the same due to non-payment of agreed sale consideration. It means plaintiff is the executant of the aforesaid sale deed. When plaintiff is the executant of sale deed and challenged the same then plaintiff has to claim cancellation of sale deed and being executant he is liable to pay ad-valorem court fee. However, plaintiff has claimed that he did not handed over the possession of property in dispute. But, it is clear from relief clause that he has sought the relief of possession by way of mandatory injunction in alternative. If plaintiff is in actual possession over the property in dispute then he has not to claim plea of possession.

On the other side, defendant has claimed his actual possession over property in dispute. At this stage, prima-facie appear that plaintiff is out of possession and therefore, he has sought the relief of possession.

5. Further, plaintiff has also challenged the sale deed bearing No.4893 dated 27.10.2017 and sale deed bearing No. 1008 dated 11.07.2017. Alleged sale deed were executed by defendants No. 1 & 2 in favour of defendant No. 3 to 5. Plaintiff is not the executant of alleged sale deed but plaintiff is out of possession. When plaintiff is out of possession and challenge the sale deeds then he is also liable to pay the ad-valorem court fee on the afore-said sale deeds as per section 7(iv)(c) of the Court Fee Act, 1870. In this regard, I placed reliance on Suhrid Singh @ Sardool Singh v Randhir Singh (SC) 2010 AIR (SC) 2807.

However, plaintiff has placed reliance on Subhash Chandra Goyal case (supra) but finding of this authority is not applicable in the present application as facts are different as it is possible to calculate the ad- valorem court fee at this stage

6. In view of above-said discussion, present application is hereby allowed accordingly. Plaintiff is directed to pay ad-valorem court fee.”

7. A perusal of above leaves no manner of doubt that there is no irregularity either in facts or in law, so as to exercise extraordinary revisional jurisdiction vested with this Court. Order impugned herein has been passed as per the ratio enunciated in the judicial precedents cited therein.
8. Remaining contentions in the petition have been duly considered and rejected by Learned Court below by giving sound and convincing reasons in the impugned order, more particularly in the part extracted above. I am inclined to agree with the view thereon taken by learned Court below.
9. In the premise, petition herein is dismissed.
10. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

01.05.2023
Vandana

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