

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-6116-2018 (O&M)

Date of Decision: April 24, 2023

Rajender Singh

...Petitioner

Versus

Pawan and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Deepak Girotra and Mr.Rishab Goyal, Advocates
for the petitioner.

None for respondents No.1 and 2, despite service
(as observed in the order dated 21.05.2019).

None for respondent No.3

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 03.07.2018 (Annexure P-4), whereby, an application under Order 7 Rule 11 read with Section 151 CPC (Annexure P-2), filed by respondents No.1 and 2 has been allowed.

The material facts as culled out from the paperbook are that, petitioner-plaintiff Rajender Singh had filed a suit for declaration with consequential relief of permanent injunction against respondents No.1 and 2 (defendants No.1 and 2 before the Court below), who are the sons of brother of the petitioner, thereby, claiming himself to be owner in possession of the land measuring 122 Kanal 2 Marla, situated at village Bhainsru Kalan,

District Rohtak, to the extent of 305/9768 share and house measuring 126 sq. yards, situated within the *Lal Dora* of the said village. Further, it was also stated that he was owner in possession of a plot measuring 92 sq. yards, situated within *Lal Dora* of village Bhainsru Kalan and respondents No.1 and 2 are his nephews. After the death of father of respondents No.1 and 2, the petitioner, who had no child, started looking after respondents No.1 and 2, educated and maintained them. Further, it is asserted in the plaint that, while living at Nangloi, often the petitioner use to go to his village and house. On 23.06.2017, when he came to his village for getting the above-mentioned land cultivated, then respondents No.1 and 2, along with some property dealer came there and land and house of the petitioner-plaintiff was shown by them to the property dealer. On query, petitioner-plaintiff came to know that respondents-defendants No.1 and 2 intend to sell the suit property, thereby, asserting themselves to have become owners of the same. However, the petitioner had never transferred any property in favour of respondents No.1 and 2. On further query, the petitioner came to know about respondents No.1 and 2 to have succeeded in getting the alleged release deed No.377 dated 01.06.2017, executed and registered in their favour from the office of defendant No.3. The alleged release deed and subsequent mutation No.1925 sanctioned on 15.06.2017 are illegal, null and void and result of fraud played by the defendants. Respondents No.1 and 2 had projected to the petitioner that they want to avail some loan from financial institution and on the pretext of standing as guarantor, they had taken the petitioner along with them to some office and had obtained his thumb impression, while being projected to have taken on the deed of

guarantee.

Thereupon, the suit had been filed, thereby, seeking declaration to the effect that release deed dated 01.06.2017 and subsequent mutation, on the basis thereof, are illegal, null and void and that the petitioner is not bound by the same and he is owner of the suit properties, with consequential relief of permanent injunction, restraining respondents No.1 and 2 from further alienating the suit properties and from dispossessing the petitioner from the suit properties.

In pursuance to the notice issued, when the respondents-defendants had made appearance, they had filed an application under Order 7 Rule 11 read with Section 151 CPC, thereby, seeking rejection of the plaint, on account of deficient Court fee or in the alternative, for issuance of direction to the petitioner-plaintiff to pay the *ad valorem* Court fee, as per market value of the suit land.

Vide impugned order dated 03.07.2018, learned Court below had directed to pay the *ad valorem* Court fee.

Feeling aggrieved, the petitioner had filed the present revision petition.

None made appearance to contest the above-said revision petition.

I have heard learned counsel for the petitioner and perused the record.

Learned counsel for the petitioner has submitted that the petitioner is owner in possession of the suit properties. In fact, the release deed was illegally and fraudulently got executed and registered, without

any consideration and was given to blood relation, which fact has not been appreciated by learned Court below, while passing the impugned order. Moreover, it is submitted that the Haryana Government has also waived the stamp duty to be paid for registration of such release deed of immoveable property, in blood relations. The petitioner is in possession of the suit properties and thus, to challenge the said release deed, no *ad valorem* Court fee is required to be paid. As such, a prayer has been made for setting aside of the impugned order dated 03.07.2018.

While considering the application, so filed by respondents No.1 and 2, learned Court below had placed reliance upon ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and other, 2010(2) RCR (Civil) 564***, thereby, observing that the Hon'ble Supreme Court has settled the legal proposition qua the payment of Court fees in a suit for declaration or cancellation of any deed in question. It was also observed therein that it has been stated that where the executant of deed seeks cancellation of deed, he has to pay the *ad valorem* Court fee, on the consideration amount, stated in the sale deed. The relevant paragraph of the aforesaid judgment was quoted in the impugned order and the same reads as herein given:-

“XXXX..... 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 5 under Article 17(iii) of Second Schedule of the Act. But if ‘B’, a nonexecutant, 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.”

Even though, reliance has been placed upon the aforesaid decision of the Hon'ble Apex Court, but however, if the principle laid down in the above judgment is followed, in the present case, then also, it is pertinent to mention that petitioner-plaintiff, who is executant of release deed, had sought declaration that release deed dated 01.06.2017 in favour of respondents-defendants No.1 and 2 is null and void, which has been fraudulently obtained.

If the petitioner-plaintiff himself is executant of the sale deed and he seeks cancellation of the same, he is no doubt required to pay the *ad valorem* Court fee, for consideration paid on the sale deed, but however, present case is distinguishable from the proposition of the three options, so given, vis-a-vis, the payment of ad valorem Court fee, as quoted in the aforesaid judgment. It is pertinent to mention that in the case in hand, it is not the sale deed, which is challenged by the petitioner-plaintiff, but in fact, it is the release deed and that too, among the blood relations.

It is specific assertion made in the plaint, about the said release deed, to have been illegally and fraudulently got executed and registered, without consideration. Moreover, the stamp duty to be paid for registration of the such release deed of immoveable property has also been waived off by the Haryana Government. Even, the possession has also not been

claimed by the petitioner-plaintiff. He had sought only declaration and permanent injunction, vis-a-vis, alienation and to restrain respondents-defendants from dispossessing him. Meaning thereby, he asserts himself to be in possession of the suit property.

Taking into consideration, the aforesaid factors, the petitioner-plaintiff, is not required to pay *ad valorem* Court fee, in terms of the assertions, so made by the respondents No.1 and 2, in the application under Order 7 Rule 11 read with Section 151 CPC.

Consequently, the present petition is allowed and the impugned order dated 03.07.2018 is hereby set aside.

April 24, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No