

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

**Civil Revision No. 7588 of 2018(O&M)
Date of Decision: 05.07.2023**

Gurmail Kaur & Anr.

...**Petitioners**

Versus

Ramesh & Ors.

...**Respondents**

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Chirag Wadhwa, Advocate
For the petitioners.**

**Mr. Subhash Ahuja, Advocate
For the respondents.**

KARAMJIT SINGH, J.

The present revision petition has been filed by petitioners/defendants against the order dated 01.09.2018 passed by the Court of Civil Judge(Jr.Divn.), Karnal whereby the application filed by the petitioners under Order 7 Rule 11 CPC seeking rejection of plaint is dismissed.

The brief facts of the case are that respondents/plaintiffs filed suit for declaration to the effect that sale deed dated 04.09.2009 is illegal, null and void with consequential relief of permanent injunction restraining the defendants from interfering into peaceful possession of the plaintiffs' over the suit property and further restraining the defendants from alienating the same. Upon notice, the defendants appeared and filed an application under Order 7 Rule 11 CPC on the ground that the plaintiffs have undervalued the suit for the purpose of Court fee and that plaintiffs should affix *ad-valorem* Court fee.

The application was contested by the plaintiffs and finally dismissed by the learned trial Court vide order dated 01.09.2018.

Being aggrieved, the present revision petition has been filed by the petitioners.

I have heard the counsel for the parties.

The law regarding computation of Court fees in civil suits wherein sale deeds are challenged, has been fully enumerated by the Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors.** 2010(12) SCC 112. The Hon'ble Supreme Court while passing the said judgment observed as follows:-

“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."

I have gone through the impugned order passed by the learned trial Court. The said order is not based on the settled position of law as per decision in Suhrid Singh's case (supra). Thus, the impugned order cannot be sustained in eyes of law and is liable to be set aside.

Accordingly, the present revision petition is allowed and the impugned order is set aside and the learned trial Court is directed to decide the application of defendants filed under Order 7 Rule 11 CPC in the light of the law laid by Hon'ble Apex Court in Suhrid Singh's case (supra), after hearing both the parties. The parties are directed to appear before the trial Court on 07.08.2023. The trial Court is directed to decide the application under Order 7 Rule 11 CPC preferably within one month from the date of appearance of parties i.e. 07.08.2023.

05.07.2023
Jiten

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No