

CR-776 of 2018

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

CR-776 of 2018

Reserved on: 27.07.2023

Pronounced on: 01.09.2023

Sonu

.....Petitioner

Versus

Mrs. Usha Devi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Kul Bhushan Sharma, Advocate,
for the petitioner.

Mr. Johan Kumar, Advocate,
for the respondents.

NAMIT KUMAR, J.

1. Instant revision petition has been preferred by the plaintiff-petitioner under Article 227 of the Constitution of India impugning the order dated 18.12.2017 passed by the Court of learned Civil Judge (Senior Division), Faridabad, whereby application filed by defendant-respondents under Order 7 Rule 11 CPC has been allowed and petitioner has been directed to affix the *ad valorem* court fee on the sale consideration of the sale deed.

2. The brief facts leading to the filing of present revision petition are that petitioner filed a suit for declaration to the effect that he is absolute owner in possession of agricultural land measuring 4 kanals 16 marlas situated at MaujaTajpur, Tehsil and District Faridabad and defendants or any other person have got no right title or interest

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qua the same in any manner and that the impugned sale deed bearing document No.3660 dated 14.10.2013 registered in the office of Sub Registrar, Tigaon, Faridabad, qua the suit property is wrong, illegal, null, void, *ab initio*, false and frivolous document and same is not binding upon the plaintiff in any manner with consequential relief of permanent injunction restraining the defendants from interfering in peaceful possession of the plaintiff over the suit property. Respondent-defendants filed an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that *ad valorem* court fee was required to be paid by the plaintiff. Petitioner-plaintiff filed reply to the said application and in the said application vide impugned order dated 18.12.2017, petitioner-plaintiff has been directed to pay the *ad valorem* court fee on the sale consideration of the above sale deed. Hence, present revision petition.

3. Learned counsel for the petitioner contended that the trial Court has erred in law in not taking into consideration that the suit land is an agricultural land (*chahi* land) and court fee is payable as per the provisions of Section 7(v) of the Court Fee Act, 1870 as amended in the State of Haryana and not on *ad valorem* basis. He further submitted that suit for declaration with consequential relief of permanent injunction was filed on the ground that cheque issued in lieu of sale deed dated 14.10.2013 had been dishonoured, therefore, cancellation of the same did not amount to payment of consideration and, in fact, the sale deed was without consideration and this fact has not been taken into consideration by the Court below. Learned counsel for the

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petitioner has further relied upon **2018 (2) Law Herald 1042, Annpreet Kaur Khera vs. Akhtiar Singh and another**, wherein this Court has made following observations:

“In the considered opinion of this Court, such direction issued by the learned trial Court is wholly erroneous. The dispute in the present case is with regard to the agriculture land measuring 51 kanals and 6 marlas and some construction over 18 marlas of land in the shape of house and 7 shops constructed separately. Learned counsel submits that as per the State amendment in Section 7 (IV) in case of agriculture land, the Court fee is payable on the basis of 10 time of the revenue payable and not on the value of the property or the sale deed. However, he admits that the Court fee shall be payable on the value of the property described under heading 'B' and 'C' in the plaint i.e. house and 7 shops.”

Learned counsel for the petitioner has, thus, submitted that the impugned order is liable to be set aside.

4. On the other hand, learned counsel for the respondents contended that the impugned order is legal and valid. He submitted that the trial Court has rightly directed the plaintiff to pay the court fee and has relied upon a judgment of Hon'ble Supreme Court rendered in **2010(2) RCR (Civil) 564, Suhrid Singh @ Sardool Singh vs. Randhir Singh @ others**, which is relied upon by a Division Bench of this Court in **2011 (31) RCR (Civil) 709, Tarsem Singh and others vs. Vinod Kumar and others**. The operative part of the judgment passed by the Division Bench reads as under:

“In Suhrid Singh’s case (supra), the plaintiff challenged the alienation on the ground that the sale deed executed by

his father, Rajinder Singh, in respect of the ancestral property is illegal and not binding on him and that as a coparcener, the plaintiff is entitled to joint possession thereof. In the said suit, the plaintiff had affixed a fixed Court fee on the relief of declaration; joint possession and for permanent injunction, but the learned trial Court returned a finding that ad valorem Court fee is payable on the sale consideration as the plaintiff has sought cancellation of the sale deed in the aforesaid case. The Hon'ble Supreme Court has held to the following effect:-

“7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the co-parceners” and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the Court fee was computable under Section 7(iv)(c) of the Act. The trial Court and the High Court were therefore, not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore, Court fee had to be paid on the sale consideration mentioned in the sale deeds.”

In view of the said example given an example in para No. 6 of the judgment and the finding recorded in para No. 7, we hold as follows:-

- i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay ad valorem Court fee on the consideration stated in the said sale deed.*
- ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.*

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the ad valorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.

In view of the aforesaid judgment of the Hon'ble Supreme Court, the issue leading to payment of the Court fee is decided in terms of the parameters laid down above. The single bench judgments rendered prior to the Supreme Court judgment mentioned above run counter to the aforesaid view and thus overruled. The Reference is answered accordingly. The Single Bench judgments rendered, so far as they run counter to the aforesaid view, are thus overruled."

5. After hearing learned counsel for the parties, considering the fact that in view of the amendment made by the State of Haryana in Section 7(IV) of the Court Fee Act, 1870, it is found that in case of agricultural land, the court fee is payable on the basis of 10 times of the revenue payable and not on the value of the property or the sale deed of the suit property.

6. Since the land in dispute is admittedly is an agricultural land, the cheque given by defendant No.1 to the plaintiff towards sale consideration was dishonoured and he has set up a case that he is in possession of the property and has not made any prayer for grant of decree of possession, this revision petition deserved to be allowed.

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7. Accordingly, the present petition is allowed and the impugned order dated 18.12.2017 (Annexure P-1) is hereby set aside.

8. It is directed that the petitioner will pay the court fee as per amended Section 7(IV) of the Court Fee Act regarding agricultural land i.e. fee, payable on the basis of 10 times of the revenue payable and not on the value of the property or the sale deed.

01.09.2023
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No