

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

137

2023:PHHC:154379

**CR-1029-2021(O&M)
Date of decision: 04.12.2023**

SATBIR AND ANOTHER**..Petitioner****Versus****CHETAN YADAV****..Respondent****CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Ms. Pratibha Yadav, Advocate
for the petitioners.

ANIL KSHETARPAL, J(Oral)

1. The petitioners before this Court are the plaintiffs. They have filed a suit for grant of decree of declaration that the sale deed executed by them on 07.06.2017, should be declared to have been obtained by fraud and misrepresentation. On an application filed by the defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908, the trial Court has directed the plaintiffs to affix proper *ad valorem* Court fee on the plaint. The correctness of the aforesaid order has been challenged in this revision petition.
2. This Bench has heard the learned counsel representing the petitioners at length and with her able assistance perused the paperbook.
3. On 30.11.2023, the following order was passed:-

“As per the office report, notice issued to the respondent through his counsel has been received back served, however, he remains unrepresented.

The learned counsel representing the petitioners submits that the ad-valorem court fee is not payable in view of Section 7(v)(c) of the Courts Fees Act, 1870. He submits that there is an amendment made by the Haryana Government in the aforesaid section relating to the agricultural land.

The attention of the learned counsel representing the petitioners has been drawn to the Full Bench

Judgment passed by this Court in Niranjan Kaur v. Nirbigan Kaur 1982 PLR 127 and Suhrid Singh alias Sardool Singh v. Randhir Singh and others, (2010) 12 SCC 112.

He prays for a short accommodation.

Adjourned to 04.12.2023.

To be listed in the urgent list.”

4. The learned counsel representing the petitioners has been once again heard. She submits that the case is governed by Section 7(iv)(c) of the Court Fees Act, 1870, and therefore, the *ad valorem* Court fee is not payable.

5. She relies upon the judgment passed in CR-5124-2015, titled as “Dharamdutt @ Harpal Vs. Geeta Devi, decided on 19.12.2015 and Smt. Beena and others Vs. Rajinder Kumar and others, 2006(1) PLJ 96.

6. This Court has considered the submissions of the learned counsel representing the petitioners.

7. It may be noted here that in a situation, where the plaintiffs are the executants of an instrument, they are required to seek annulment of the aforesaid instruments by filing a suit under Section 31 of the Specific Relief Act, 1963. This distinction was explained in Suhrid Singh alias Sardool Singh v. Randhir Singh and others, (2010) 12 SCC 112. Even a Full Bench of this Court in Niranjan Kaur v. Nirbigan Kaur 1982 PLR 127, has also explained the aforesaid distinction. The executant of an instrument cannot merely claim a declaration without seeking the annulment/cancellation of the aforesaid instrument. As per the judgments passed by the Supreme Court as well as Full Bench of this Court, the *ad valorem* Court fee is payable once the executant wants annulment of an instrument.

8. This Court has carefully read the judgment passed in Dharamdutt @ Harpal’s case (supra). In the aforesaid case, the plaintiff

filed a suit for grant of decree of declaration challenging the release deed executed by him in favour of his daughter. In that context, the Court held that such suit would be governed by Section 7(iv)(c) of the Court Fees Act, 1870.

9. This Court has also carefully read the judgment passed in **Smt. Beena's case (supra)**. In the aforesaid case, the defendant had sold the property, which was challenged by the plaintiff by filing a suit for declaration that such sale deeds were null and void because the land was ancestral. Thus, in the aforesaid case, the plaintiffs were not the executants of the instruments. Hence, the judgments passed in **Dharamdutt @ Harpal's case (Supra)** as well as **Smt. Beena's case (supra)**, are not applicable.

10. Keeping in view the aforesaid facts, no ground to interfere is made out.

11. Dismissed accordingly.

12. All the pending miscellaneous applications, if any, are also disposed of.

December 04th, 2023

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*