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2023:PHHC:166256

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

**CR-2862-2019 (O&M)**

Date of decision: 11.10.2023

Atul Kumar and others

... Petitioners

Versus

Ashwani Kumar and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE GURBIR SINGH**

Present: Mr. Prateek Sodhi, Advocate, for the petitioners.

Mr. K.B.S. Mann, Advocate, for respondents No.6 to 8.

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**GURBIR SINGH, J.**

1. Challenge in this revision petition filed under Article 227 of the Constitution of India is to the order dated 16.03.2019 (Annexure P-4) passed by learned Civil Judge (Junior Division), Amritsar, whereby the application filed by respondent No.6 and 7 has been allowed and petitioners have been ordered to affix ad valorem court fee on the plaint.

2. The brief facts as culled out from the petition are that the petitioners-plaintiffs (hereinafter called, "plaintiffs") filed a civil suit for declaration to the effect that they are the owners in possession of properties i.e. MIG, A-3, Block 41, Housing Board Colony, Sector 6, Parvano, Himachal Pradesh (item No.A) and one plot, measuring 450 square yards situated in Amritsar (item No.B), to the extent of 3/4th share in each property and the sale deeds allegedly executed by respondents-defendants No.1 to 3 (respondents herein called, "defendants") and by defendants No.4 and 5 are

illegal, null and void and not binding upon the plaintiffs and further sought for permanent injunction restraining the defendants from alienating, mortgaging, transferring or creating any charge in any manner, and in the alternative, suit for joint possession to the extent of  $\frac{3}{4}$  share.

2.1 In the suit, it has been pleaded that Ram Parkash (since deceased) was the owner of the properties, mentioned above. The plaintiffs and defendant No.1 are the children of Ram Parkash and defendants No.2 and 3 are his grandsons i.e. sons of defendant No.1. Said Ram Parkash died intestate in the year, 2004 and the plaintiffs and defendant No.1 inherited the suit properties in equal share i.e.  $\frac{1}{4}$ th share each. After some time, plaintiffs came to know that defendant No.1 in connivance with his sons i.e. defendants No.2 and 3 propounded a false and fabricated Will, alleged to have been executed by Ram Parkash in favour of defendants No.2 and 3 i.e. his grandsons, and on the basis of said Will, defendants No.1 to 3 in connivance with each other allegedly executed a sale deed in favour of defendants No.4 and 5 with regard to property mentioned as item No.B. Said defendants No.1 to 3 further executed sale deed in favour of defendants No.4 and 5. Defendant No.5 is the sister-in-law of defendant No.1 i.e. real sister of wife of defendant No.1. Said defendants No.4 and 5 further sold the said property to defendants No.6 and 7 through alleged attorney defendant No.8.

2.2 Upon notice, defendants No.6 to 8 appeared whereas defendants No.1 to 5 were proceeded against ex-parte. Defendants No.6 and 7 filed an application dated 17.07.2018 (Annexure P-2) under Order 7 Rule 11 read with Section 151 CPC for rejection of the plaint on the ground that appropriate court fee has not been affixed with the plaint.

2.3 Vide order dated 16.03.2019, said application was allowed and the plaintiffs were directed to affix ad valorem court fee on the plaint. It is the said order which has been challenged by way of present revision petition before this Court.

3. Learned counsel for the petitioners would contend that the petitioners-plaintiffs were not the executants to the alleged sale deeds in dispute. When a person is not a party or signatory to a document, then he is not liable to pay ad valorem court fee. The petitioners are claiming right over the suit property by way of inheritance from its undisputed rightful owner who never alienated the suit property during his lifetime. The trial Court has wrongly observed that the petitioners are claiming the relief of joint possession.

4. On the other hand, learned counsel for respondents No.6 to 8 has argued that the plaintiffs are seeking declaration that the sale deeds are null and void, so the plaintiffs are required to pay ad valorem court fee. Reliance is placed on the judgment in ***Baljeet Singh Versus Krishna Devi and another, 2018(4) PLR 27.***

5. I have heard the submissions of learned counsel for the parties and have gone through the paper book.

6. In the case in hand, declaration is sought by the petitioners-plaintiffs that they are owners in possession of the property, mentioned in the plaint, to the extent of 3/4th share in each of the property and the alleged sale deeds executed by defendants No.1 to 3 and defendants No.4 & 5 are illegal, invalid, without consideration, null and void and not binding on the plaintiffs and in the alternative, sought for joint possession to the extent of 3/4th share,

on the ground that the suit property was owned by Ram Parkash, who died intestate. After his death, plaintiff and defendant No.1 succeeded to the entire estate to the extent of 3/4th share. Plaintiff No.1 is in exclusive possession of the property as described at item No.A in the headnote of the plaint. Since the plaintiffs are neither executants of the sale deeds nor they received any amount of consideration and have sought declaration that the sale deeds are null and void, so, the courts below has wrongly held that they are liable to pay ad valorem court fee with the plaint.

7. In case ***Jaswinder Singh and others Versus Jasbir Kaur and another, 2013(1) R.C.R. (Civil) 727***, the plaintiffs claimed in the suit that they are coparcener and suit property is a joint Hindu Family coparcenary property and they are entitled to joint possession over it by virtue of their birth in the family. There was no dispute that the petitioners were not the executants of sale deed and they wanted the sale deed to be ignored. It is held by this Court that the plaintiff has pre-existing right in the property. Plaintiff is not bound to pay court fee particularly when he is not the executant of the sale deed.

8. In case ***Kulwant Kaur and others Versus Joginder Kaur and others, 2011 (3) Civil Court Cases 200***, this Court, while referring to the relevant case law on this aspect, has held in a suit for declaration claiming relief of joint possession as a consequence where plaintiff is non-executant of impugned sale deeds, that the case is covered under Section 7(iv)(c) of the Court Fees Act (for short, “the Act”) and the plaintiff is not required to affix ad valorem court fee.

9. In case *Suhrid Singh @ Sardool Singh Versus Randhir Singh and others, 2010(2) R.C.R. (Civil) 564*, it is held by Hon'ble Apex Court that where a 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. In that case the prayer was also for a declaration that the deeds do not bind the "co-parcenary" and for joint possession. The plaintiff in that case was not the executant of the sale deed. It was held that the court fee was computable under Section 7(iv)(c) of the Act. The orders whereby the trial Court and the High Court directed for payment of court fee on the sale consideration under the sale deeds were set aside and directed the trial Court to calculate the court fee in accordance with Section 7(iv)(c) read with Section 7(v) of the Act.

10. In *Baljeet Singh's case (supra)*, cited by the respondents, plaintiff was the signatory to the sale deed and has sought cancellation of sale deed on the ground that the sale deed was the result of fraud made by the defendant. Said judgment is not of any help to the respondents.

11. In the instant case, the plaintiffs are not the signatory to the sale deed, they are seeking declaration of their share on the basis of natural succession and have also sought the relief of joint possession.

12. In view of above, since the petitioners-plaintiffs are not the signatories to the sale deeds, so they are not required to pay ad valorem court fee. The order passed by the learned trial Court is against the law and the same deserves to be set aside.

13. Accordingly, the revision petition is allowed and the order passed by the learned trial Court is set aside. The petitioners-plaintiffs are not required to pay ad valorem court fee with the plaint at this stage. The suit shall be continued. If at the final stage, learned trial Court comes to the conclusion that ad valorem court fee is required to be paid with the plaint, then it can pass order in accordance with law.

14. Pending application, if any, shall also stand disposed of.

**(GURBIR SINGH)**  
**JUDGE**

**October 11, 2023**

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