

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2532-2023 (O&M)
Date of Decision:-03.08.2023

SUSHIL KUMAR

... Petitioner

Versus

GAMDOOR SINGH AND OTHERS

... Respondents

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. C.M. Munjal, Advocate
for the petitioner.

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KARAMJIT SINGH, J. (Oral)

1. The present revision petition has been filed by the petitioner/defendant for setting aside the impugned order dated 5.4.2023 (Annexure P-3) passed by the Court of Civil Judge (Junior Division) Phul, District Bathinda vide which the application filed by the petitioner under Order 7 Rule 11 for rejection of the plaint has been dismissed.
2. Briefly the facts of the case are that respondents-plaintiffs filed suit for declaration that they are owners in possession of the suit land and that the sale deed alleged to be executed by Maghar Singh in favour of the petitioner is null and void and is liable to be set aside and further the mutation sanctioned on the basis of said sale deed is also illegal and

further suit for permanent injunction restraining the petitioner from alienating the suit land and further restraining the petitioner from interfering into their peaceful possession over the suit land. The suit has been contested by the petitioner.

3. During the pendency of the suit, the petitioner filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground that the plaint is insufficiently stamped and further the suit is hopelessly time barred. The application was contested by the respondents and the learned trial Court dismissed the said application vide impugned order dated 5.4.2023.
4. At the time of arguments, the counsel for the petitioner conceded that as far as issue of limitation is concerned the same involves question of facts and law and thus cannot be adjudicated at the initial stage without recording of evidence. However, at the same time, the counsel for the petitioner submits that the plaintiff is bound to pay the Court fee as per the value of the property, as the respondents have stepped into the shoes of their father Maghar Singh (since deceased) and they are challenging the sale deed in question which was validly executed by Maghar Singh in favour of the petitioner for valuable consideration and the possession of the suit land was also handed over to the petitioner by the vendor at the time of execution of sale deed. The counsel for the petitioner further submits that in case the respondents fail to furnish the ad-valorem Court fees, the plaint deserves to be rejected.
5. I have considered the submissions made by counsel for the petitioner.

6. In the present case, respondents are non-executants of the sale deed in question and they are seeking a declaration that the said sale deed is illegal or non-est and is not binding on them. The said sale deed is stated to be executed by their father namely Maghar Singh in favour of the petitioner. In the instant case, the respondents are claiming themselves to be in possession of the suit land and as such no relief with regard to possession of suit property has been sought by the respondents and they are seeking declaration to the effect that respondents are owners in possession of the suit land and they have also challenged one mutation which is stated to be sanctioned in favour of petitioner on the basis of sale deed in question.
7. In **Suhrid Singh @ Sardool Singh vs. Randhir Singh and Ors., 2010 (12) SCC 112**, the Hon'ble Supreme Court held that if suit for declaration is filed by one 'B' who was not a party to execution of sale deed, to the effect that sale deed was null and void and 'B' is in possession of the property in question, then he has merely to pay fixed Court fee under Article 17(iii) of Second Schedule of Court Fees Act, 1870. But if 'B' a non-executant is not in possession and he seeks not only a declaration that 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 Court Fee Act, 1870.
8. In the given circumstances as the respondents are non-executants of sale deed in question and they are claiming to be in possession and they simply sought declaration that the sale deed is illegal null and void, there is no statutory provision where under the respondents can

be asked to furnish ad-volarem Court fee. So there is no illegality in the impugned order.

9. Consequently the revision petition is dismissed being devoid of merits. However, if during trial, it appears on record that the respondents are not possession of the suit property and that there is deficiency in the Court fee, then the trial Court could direct the respondents to make good the deficiency in the Court fees as per law.

03.08.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No