

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No.1221 of 2021
Pronounced on: 04.09.2023.

Baldev Singh

....Petitioner

Versus

Major Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. J.K. Singla, Advocate
for the petitioner.

Mr. B.S. Jatana, Advocate
for the respondent.

VIKRAM AGGARWAL, J.

1. The present revision petition assails the order dated 26.02.2021 passed by the Civil Judge (Senior Division) Mansa, vide which the application filed by the petitioner-defendant under Order 7 Rule 11 of the Code of Civil Procedure (for short 'the CPC') was dismissed.

2. The facts, as emanating from the revision petition, are that respondent-plaintiff-Major Singh, who is the real brother of the petitioner-defendant-Baldev Singh filed a suit for declaration to the effect that he was the owner in possession of land measuring 16 Kanals 7 Marlas situated at Village Dhalewan, Tehsil and District Mansa (hereinafter referred to as the land in dispute) and that the petitioner-defendant had no concern with the same. The deed of transfer of ownership dated 08.03.2016 having been executed by the petitioner-defendant was stated to be illegal and the mutation dated 31.03.2016 sanctioned on the basis thereof was also stated to be illegal and both the transfer deed and the mutation were sought to be set aside.

3. It was the case of the respondent-plaintiff that the petitioner-defendant was not only the real brother of the respondent-plaintiff but was also his co-brother (two sisters having been married to both brothers). However, the

petitioner-defendant executed a transfer deed dated 08.03.2016 which, according to the respondent-plaintiff was illegal and arbitrary and not binding upon his rights. Mutation sanctioned on the basis of the transfer deed was also said to be illegal and not binding upon his rights. The value of the suit for declaration for the purposes of jurisdiction was assessed at Rs.195/- Court fee of Rs.50/- was affixed. The value of the suit for permanent injunction was assessed at Rs.130/- and Court fee of Rs.50/- was also affixed for the same.

4. An application under order 7 Rule 11 CPC was filed by the petitioner-defendant for rejection of the plaint. It was averred that the respondent-plaintiff had himself executed the transfer deed dated 08.03.2016 and had thereafter, challenged it himself. The value of the land was mentioned at Rs.13,00,000/- in the said transfer deed. It was, therefore, averred that *ad valorem* Court fee was required to be affixed and since the same had not been affixed, the plaint deserved to be rejected.

5. The application was opposed by way of a reply in which it was averred that the deed of transfer had not been executed by the respondent-plaintiff with his consent and that the same was the result of a mis-statement, cheating and fraud. It was averred that he had not received any amount through the deed of transfer and, therefore, he was not bound to affix the Court fee on the value of the consideration of the deed of transfer of ownership.

6. The trial Court dismissed the application by way of the impugned order holding that adequate Court fee had been affixed by the respondent-plaintiff, leading to the filing of the present revision petition.

7. I have heard learned counsel for the parties and have also gone through the paper book.

8. Learned counsel for the petitioner submitted that the trial Court gravely erred in dismissing the application filed by the petitioner under Order 7 Rule 11 CPC. Initiating arguments, learned counsel for the petitioner submitted that in fact the transfer had been done for consideration but with a view to avoid the payment of stamp duty, only the transfer deed had been executed. Learned counsel submitted that there was no reference in the plaint that there was no consideration in the transfer deed and, therefore, *ad valorem* Court fee should have been affixed as per the value mentioned in the transfer deed. Reference was made to Section 7(iv)(c) of the Court Fees Act, 1870. Reference was also made to Section 3 of the suits of Valuation Act 1887. Reference was further made to the High Court Rules and Orders, Volume I Chapter-III, Part-A and it was submitted that *ad valorem* Court fee was required to be affixed. In support of his contentions, learned counsel placed reliance upon judgment of the Hon'ble Supreme Court of India in ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(3) ICC 182 and judgment dated 22.04.2022 of this Court in CR No 1048, titled as Ranbir Singh @ Ranvir Singh Vs. Kanchan and another.***

9. On the other hand, learned counsel for the respondent submitted that the present revision petition is not maintainable since the question of Court fee is essentially a matter between the Court and the plaintiff. On merits, it was submitted that since no consideration had passed at the time of execution of the transfer deed, no *ad valorem* Court fee was required to be paid. It was further submitted that the suit was only a suit for declaration and no possession had been sought and, therefore, *ad valorem* Court fee was not required to be paid. Learned counsel submitted that as per Section 7(iv)(c), *ad valorem* Court fee was required to be affixed only where a declaratory decree was being sought along with consequential relief and since, in the present case, no consequential relief had been sought, the Court fee would be payable as per Schedule II Article 12 (iii) of

the Court Fees Act. It was, therefore, submitted that the trial Court had not committed any illegality in dismissing the application filed by the petitioner-defendant under Order 7 Rule 11 CPC for rejection of plaint. In support of his contentions, reliance was place upon judgments of the Hon'ble Supreme Court of India in **Sri Rathnavarmaraja Vs. Smt. Vimla, 1991 AIR (Supreme Court) 1299, Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 AIR(Supreme Court) 2807** and judgments of this Court in **Nachhatar Singh (deceased through LRs) Vs. Atma Singh and another, 2019 AIR(Punjab and Haryana) 43, Ajmer Vs. Sarti, 2017 (2) PLR 802, Surjit Singh Vs. Karamjit Kaur, 2012 (3) RCR(Civil) 364, Harbans Kaur Vs. Amrik Singh @ Beer Singh, 2015(4) RCR(Civil) 770 and Chandro Vs. Randhip Mann and others, 2016(2) RCR(Civil) 1028.**

10. I have duly considered the submissions made by learned counsel for the parties.

11. Before advertng to the merits of the issue, I would first deal with the objection raised by learned counsel for the respondent/plaintiff that the question of Court fee is a matter between the plaintiff and the State and that where it has been decided against the contention of the defendant, the defendant would have no right to move the superior Courts by way of appeal or revision. Reliance was placed upon a judgment of the Hon'ble Apex Court in ***Sri Rathnavarmaraja's*** case (supra). In this case, a suit was filed by the plaintiff Smt.Vimla seeking a decree of possession. The properties of which the possession was sought were valued and accordingly Court fee was affixed. An objection was raised by the Office with regard to the Court fee on which the Presiding Officer ordered that the Court fee paid by the plaintiff was adequate. In the written statement, the defendant raised an objection with regard to the adequacy of the Court fee upon which the trial

Court addressed the issue. An application was filed by the defendant for

appointment of a Commissioner to value the properties. The same was dismissed and it was held that the Court fee was adequate. The defendant preferred a revision petition. The High Court set aside the order of the trial Court and the trial Court was directed to ascertain the value of the properties for the purposes of Court fee in accordance with law. A Commissioner was appointed. Valuation was done. Additional Court fee was affixed. Both sides, however, again came to the High Court. The High Court again directed the trial Court to hear both parties and to take a decision. The matter reached the Hon'ble Supreme Court and the Hon'ble Supreme Court held that the matter was essentially between the State and the plaintiff and the defendant would have no right. This judgment, in the considered opinion of this Court, would not apply to the facts of the present case, since in the present case, an application under Order 7 Rule 11 CPC has been decided which had been moved by the defendant and, therefore, the defendant would have every right to challenge the order passed on the said application. Even otherwise, the present revision petition has been preferred under Article 227 of the Constitution of India and not under Section 115 CPC.

12. Reverting to the facts of the case, it is settled law that for the purposes of deciding an application under Order 7 Rule 11 CPC, only the contents of the plaint and at best, the documents attached with the plaint are to be gone into. The plaint is on record as Annexure P-1. It was a suit for declaration simplicitor filed by the respondent-plaintiff challenging the deed of transfer of ownership dated 08.03.2016 executed by the respondent-plaintiff in favour of the petitioner-defendant. The grounds of challenge were fraud etc. No consequential relief of possession was sought. In fact, it was the specific stand that the respondent-plaintiff was the owner in possession of the land in dispute and that the possession had not been delivered after the execution of the transfer deed. The transfer deed is also on record as Annexure P-4. The vernacular of the same is also

on record. The transfer deed clearly shows that it was in fact an exchange deed. No doubt, the value of the land was mentioned at ₹13,00,000/- but it nowhere mentioned that some consideration had been exchanged. In fact, it mentions that the transfer deed was being executed in exchange of the land in lieu of the share of their mother-Jangir Kaur.

13. Now coming to the law on the subject, the Hon'ble Supreme Court of India held in the case of ***Suhrid Singh @ Sardool Singh*** (supra) that where the plaintiff is a non-executant, is in possession and sues for a declaration that the deed is null or void, he has to merely pay a fixed Court fee. It was further held that if he is a non-executant and is not in possession and he seeks not only a declaration but also the relief of possession, he has to pay an *ad valorem* Court fee as provided under Section 7(iv)(c) of the Act. It was further held that where the executant of a deed wanted the same to be annulled, he would have to seek cancellation of the deed, whereas in the case of a non-executant, it would be a declaration. It was held that in case of the executant seeking cancellation of the deed, *ad valorem* Court fee would have to be paid on the consideration stated in the sale deed. Now it is to be seen as to under which category, the present case would fall. Here, it is not a sale deed but a transfer deed. The challenge to the same is by the executant i.e., the respondent-plaintiff. There is no consideration mentioned in the transfer deed. In fact, in the reply filed to the application under Order 7 Rule 11 CPC, it has specifically been stated that no consideration had passed. It, therefore, means that *ad valorem* Court fee as envisaged by the provisions of Section 7 (iv)(c) would not be applicable and the ratio laid down by the Hon'ble Apex Court in ***Suhrid Singh @ Sardool Singh's*** case (Supra) would not apply to the present case, nor would the judgment of the Co-ordinate Bench in the case of ***Randhir Singh @ Ranvir Singh's*** case (supra) apply to the facts of the present case.

14. In fact, the present case would be covered by the judgment of the Co-ordinate Bench in the case of *Nachattar Singh's* case (supra) wherein it was held that where a suit was filed for cancellation of the transfer deed on the ground of fraud and no consideration was shown in the said deed, the plaintiff would not be required to pay the *ad valorem* Court fee. The judgment of the Hon'ble Apex Court in the case of *Suhrid Singh @ Sardool Singh's* (supra) was also discussed in this judgment and it was held that the law laid down in *Suhrid Singh @ Sardool Singh's* case (supra) would apply as a ratio and thereafter, individual cases would have to be tested on the threshold of their own facts. A similar view was taken by Co-ordinate Benches in the cases of *Ajmer Vs. Sarti (supra)*, *Surjit Singh Vs. Karamjit Singh (supra)*, *Harbans Kaur Vs. Amrik Singh @ Beer Singh (supra)* and *Chandro Vs. Randip Mann and others (supra)*. I am in agreement with the said views, keeping in view the facts of the present case, discussed in the preceding paragraphs.

15. In view of the aforementioned facts and circumstances, this Court arrives at the conclusion that the respondent/plaintiff was not required to affix *ad valorem* Court fee in the suit filed by the respondent-plaintiff and, therefore, the impugned order, vide which the application under Order 7 Rule 11 CPC was dismissed, though not a speaking order and wherein the matter has not been discussed in detail, is not liable to be set aside in view of the reasons aforementioned.

In view of the above, the present revision petition is found to be devoid of merit and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

Pronounced: 04.09.2023
Rekha

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