

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

Civil Revision No. 5089 of 2023(O&M)

Date of Decision: 17.10.2023

Gurpreet Singh & Anr.

...Petitioners

Versus

Sukhwinder Kaur & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Pratula Sethi, Advocate
For the petitioners.**

KARAMJIT SINGH, J.

1. The present revision petition has been filed by the petitioners/ defendants No.1,2 and 5 for setting aside the order dated 19.07.2023 (Annexure P-3) passed by the Court of learned Civil Judge (Sr.Divn.), Ludhiana whereby an application under Order 7 Rule 11 CPC (Annexure P-2) filed by the petitioners for rejection of the plaint in civil suit No. 8775 of 2021 titled Sukhwinder Kaur Vs. Gurpreet Singh & Ors. has been dismissed.

2. The counsel for the petitioners while assailing the impugned order, *inter alia*, contends that the suit filed by plaintiff/ respondent No.1 is not maintainable as per the provisions of Section 34 of Specific Relief Act as the suit of the plaintiff is for mere declaration without seeking consequential relief of possession of the suit property. In this regard the counsel for the petitioners has placed reliance upon the decision of Hon'ble Supreme Court in **Executive Officer, Arulmigu Chokkanatha Swami Koil Trust Virudhunagar Vs. Chandran & Ors. 2017 (1) Law Herald (P&H) 833.**

The counsel for the petitioners has further contended that the plaintiff/respondent No.1 has also sought declaration that the sale deed dated 06.09.2016 alleged to be executed by Pritam Singh father of the plaintiff in favour of defendant No.6 and sale deed dated 16.10.2019 executed by defendant No.6 in favour of defendant No.1 and transfer deed dated 22.01.2021 executed by Pritam Singh in favour of defendants no.1 and 2 with regard to portion of the suit land are illegal, null and void. The counsel for the petitioners further submits that it being so, the plaintiff/ respondent No.1 has to affix *ad valorem* Court fees in order to seeking cancellation of the aforesaid sale deeds/ transfer deed. In this regard the counsel for the petitioners has referred to decision of Co-ordinate Bench of this Court in **Roma Kumari Vs. Ram Niwas & Ors. 2022 (3) Law Herald (P&H) 2523.**

3. I have considered the submissions made by counsel for the petitioners.

4. It is settled position of law that for disposal of an application under Order 7 Rule 11 CPC only the averments made in the plaint are to be considered. From a perusal of plaint (Annexure P-1) it is evident that the plaintiff/ respondent No.1 has filed suit for declaration to the effect that he along with defendants No.3 to 5 is co-owner in joint possession to the extent of 1/4th share out of the entire land measuring 04 *highs* 16 *bighas* situated in village Mangli Unchi, Tehsil and District Ludhiana and is fully described in the head note of the plaint, it being ancestral co-parcenary property in the hands of her father Pritam Singh (since deceased) and the defendants No.1 and 2 being disinherited by Pritam Singh from his estate vide publication dated 23.11.2019. The plaintiff/ respondent no.1 has also sought declaration

to the effect that sale-deed dated 06.09.2016 executed by Pritam Singh in favour of defendant No.6, sale-deed dated 16.10.2019 executed by defendant No.6 in favour of defendant No.1 and transfer deed dated 22.01.2021 executed by Pritam Singh in favour of defendants No.1 and 2 are null and void and are not binding on the plaintiff and further decree for permanent injunction restraining defendants No.1 and 2 from alienating or disposing of the suit property in any manner during the pendency of the suit.

5. Undoubtedly, plaintiff/ respondent no.1 is claiming herself to be in joint possession of the suit land and thus there is no need for the plaintiff to seek consequential relief of possession of the suit land.

6. From the perusal of the plaint, it appears that plaintiff/ respondent No.1 was not party to the impugned sale deeds/ transfer deed. The Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors, 2010(2) Law Herald (SC) 1371**, has categorically held as under:-

“6. Where the 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. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' - two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by 'A' is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding.

But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under [Article 17\(iii\)](#) of Second Schedule of the Act. But if 'B', a non- executant, is not in possession, and he seeks not only a declaration that the 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 the Act. [Section 7\(iv\)\(c\)](#) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of [Section 7](#)."

7. In light of the aforesaid ratio laid down by the Hon'ble Apex Court, this Court is of the view that plaintiff/ respondent No.1 is not required to furnish *ad valorem* court fee on the plaint. The trial Court rightly dismissed the application by the petitioners under Order 7 Rule 11 CPC as no ground is made out at this initial stage to reject the plaint.

8. Consequently, the present petition is hereby dismissed being devoid of merits.

(KARAMJIT SINGH)
JUDGE

17.10.2023
Jiten

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