

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

143

CR-4819-2022

Date of decision: 04.12.2023

HARSHDEEP SINGH

..Petitioner

Versus

GURDEEP KAUR AND ANR.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. C.L. Sharma, Advocate
for respondent

ANIL KSHETARPAL, J(Oral)

1. The plaintiff assails the correctness of the order passed by the trial Court on 17.09.2022. The trial Court has directed the plaintiff to affix *ad valorem* Court fee on the market value of the property
2. In order to comprehend the issue involved in the present case, the relevant facts, in brief, are required to be noticed.
3. The plaintiff filed a suit for grant of decree of declaration to the effect that the property was ancestral coparcenary property and his grandfather Sh. Balwant Singh had no right to sell the same. He sought relief of possession along with the decree of declaration that various sale deeds executed by Sh. Balwant Singh are not binding on his rights and the trial Court held that the plaintiff is not the executant of the sale deeds, however, he is seeking decree of declaration that the aforesaid sale deeds are null and void. The Court concluded that the plaintiff is required to affix *ad valorem* Court fee as he has also sought consequential relief of possession.

4. This Bench has heard the learned counsel representing the parties at length and with their able assistance perused the paperbook.

5. The learned counsel representing the petitioner contends that in view of the judgment passed by the Supreme Court in **Suhrid Singh alias Sardool Singh v. Randhir Singh and others, (2010) 12 SCC 112**, the non-executant is not required to pay *ad valorem* Court fee as he is not expected to file a suit for annulment of the instrument in terms of Section 31 of the Specific Relief Act, 1963. He further submits that in view of the amendment to Section 7(v) of the Court Fees Act, 1870, as applicable to State of Punjab, the Court fee is required to be calculated as per the valuation fixed by the State with respect to the agricultural land.

6. On the other hand, the learned counsel representing the respondent while supporting the impugned order, submits that the plaintiff is required to affix *ad valorem* Court fee.

7. In fact, Full Bench of this Court in **Niranjan Kaur v. Nirbigan Kaur 1982 PLR 127**, held that if the executant of an instrument prays for its annulment, such suit shall be governed by Section 31 of the Specific Relief Act, 1963. However, a non-executant is not required to seek the annulment of the instrument. This view was approved by the Supreme Court in **Suhrid Singh alias Sardool Singh's case (supra)**.

8. Qua the relief of possession of land, house and garden, Section 7(v) of the Court Fees Act, 1870, provides for fixing *ad valorem* Court fee in accordance with the value of the subject matter. There is an amendment in Section 7(v) by State of Punjab, Haryana, Himachal Pradesh, Delhi & Union Territory of Chandigarh, which reads as under:-

Punjab, H.P., Delhi & U.T. of Chandigarh As in Haryana

where the subject-matter is [(a) where the subject-matter ***land, and—*** (a) where the land is land other than land forms an entire estate, or a situated within municipal definite share of an estate, limits or Abadi deh whether paying annual revenue to under cultivation or not, Government, according to the market or forms part of such an estate value thereof which shall be and is recorded in the deemed to be—

Collector's register as (i) in the case of land which separately assessed with such is irrigated by perennial revenue, canal, sixty rupees per acre; and such revenue is (ii) in the case of land which permanently settled— ten is irrigated by non-perennial times the revenue so payable: canal or by well, fifty rupees per act; and

(b) where the land forms an (iii) in the case of land which entire estate, or a definite is Barani, Sailab, Bhud, share of an estate, paying Thur sem, Banjar or of like annual revenue to nature, thirty rupees per Government, or forms part of acre; and such estate and is recorded as aforesaid;

and such revenue is settled, but not permanently— five times the revenue so payable.

(b) where the subject-matter is house, garden, or land situated within municipal limits or Abadi Deh whether under cultivation or non, according to its market value;]

9. Thus, for seeking relief of possession, the value of subject matter of the suit is required to be calculated in accordance with the aforesaid amendment.

10. Keeping in view the aforesaid facts, the impugned order is set aside. The trial Court is requested to calculate the amount of Court fee on the basis of the provisions of Section 7(v) of the Court Fees Act, 1870.

11. With these observation, the revision petition is disposed of.

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

December 04th, 2023
Ay

(ANIL KSHETARPAL)
JUDGE

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