

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No. 129

CR-5936-2023

Date of Decision:-06.10.2023

Kanta & Another

... Petitioners

Versus

Mahender

.. Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. Shobhit Rapria, Advocate for the petitioners.

KARAMJIT SINGH, J. (Oral)

1. The present petition has been filed by the petitioners/defendants against the order dated 01.08.2023 (Annexure P-1) passed by the Court of Learned Civil Judge, Junior Division, Sonapat whereby the application filed by the petitioners under Order 7 Rule 11 CPC (Annexure P-2) has been dismissed.

2. The Counsel for the petitioners inter alia contends that the impugned order is liable to be set aside being bad in law. It is further contended that respondent/plaintiff-Mahender has filed suit for declaration to the effect that the plaintiff is owner in possession over the suit property and sale deed No.8786 dated 21.11.2022 is null and void and same be set aside with consequential relief of permanent injunction. The counsel for the petitioners further submits that the petitioners filed an application under Order 7 Rule 11 CPC to reject the plaint as the respondent had not affixed ad-valorem Court fees in proportion to the sale consideration given in the aforesaid sale deed and the suit is under valued and Court fees of Rs.50/- is affixed on the plaint. Counsel for the petitioners further submits that the law with regard to Court fees to be affixed by the plaintiff in such like cases has been settled by the Hon'ble Supreme Court in Suhrid Singh @ Sardool

Singh versus Randhir Singh and Another reported in 2010 (12) SCC 112.

Counsel for the petitioners further submits that the learned Trial Court without taking into consideration the ratio laid down in *Suhrid Singh @ Sardool Singh's case (supra)*, passed the impugned order and wrongly held that no ad-valorem Court fees is required to be payable.

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

4. The law regarding computation of Court fees in civil suits wherein sale deeds are challenged on any ground, has been fully enumerated by the Hon'ble Supreme Court in *Suhrid Singh @ Sardool Singh's case (supra)* wherein it has been 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](#).

5. I have gone through the impugned order passed by the learned Trial Court whereby the application filed by the petitioners under Order 7 Rule 11 CPC has been dismissed, without noticing the law laid down by the

Hon'ble Apex Court Suhrid Singh @ Sardool Singh's case (supra). Thus, while passing the impugned order, the learned Trial Court committed material irregularity and consequently the impugned order is bad in law.

6. For the forgoing reasons, the present revision petition is allowed and the impugned order is set aside and the learned Trial Court is directed to decided the application of the petitioners filed under Order 7 Rule 11 CPC afresh, in the light of the law laid down by Hon'ble Supreme Court in Suhrid Singh @ Sardool Singh's case (supra), after hearing both the parties. The petitioners are directed to appear before the Trial Court for further proceedings on the date already fixed in the civil suit. The trial Court should make sincere efforts to adjudicate the application under Order 7 Rule 11 CPC preferably within 1 month from the next date fixed in the Court below.

7. Keeping in view, the nature of the order being passed, no notice is required to be issued to the respondent. However, if he feels dissatisfied with this order he may move an application to recall the same.

06.10.2023

yogesh

**(KARAMJIT SINGH)
JUDGE**

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