

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

**Civil Revision No. 6258 of 2023 (O&M)
Date of Decision: 20.11.2023**

Mahender Kumar

...Petitioner

Versus

Kamla Devi & Ors.

...Respondents

CORAM :HON'BLE MR. JUSTICE KARAMJIT SINGH

**Present:- Mr. Amit Jain, Advocate
for the petitioner.**

KARAMJIT SINGH, J.

1. The present revision petition has been filed by the petitioner/defendant No.8 for setting aside the order dated 22.08.2023 (Annexure P-4) passed by the Court of learned Civil Judge (Jr.Divn.), Gurugram whereby an application under Order 7 Rule 11 CPC filed by the petitioner for rejection of the plaint in civil suit No. 2352 of 2021 titled Kamla Devi & Ors. Vs. Khushi Ram & Ors., has been dismissed.

2. The counsel for the petitioner while assailing the impugned order, *inter alia*, contends that the suit filed by plaintiffs/ respondent Nos.1 to 3 has been under-valued and the petitioner filed application under Order 7 Rule 11 CPC for rejection of the plaint on this very ground. That, however, the learned trial Court dismissed the said application in an illegal manner. That respondents No.1 to 3 are required to file *ad valorem* Court fees with regard to the suit property whose market value is more than Rs.3,80,00,000/- per acre and the total market value comes out to be Rs.31 crore and failing which the plaint is to be rejected. In support of his contentions, the counsel

for the petitioner has referred to decision of this Court in **Anpreet Kaur Khera Vs. Akhtiar Singh & Anr.**, 2018(2) Law Herald 1042.

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

4. Respondents No.1 to 3 have filed suit for declaration and joint possession with consequential relief of permanent injunction with regard to the suit property on the ground that the same was joint Hindu family coparcenary property and defendant No.1 Khushi Ram father of respondents No.1 to 3 executed a transfer deed dated 15.06.2020 with regard to suit property in favour of defendants No.2 to 6 to deprive respondents No.1 to 3 of their legal right over the said property, as defendant No.1 was having no right to dispose of the ancestral property without any legal necessity.

5. Admittedly, respondents No.1 to 3 were not executants of the aforesaid transfer deed and they have not sought possession of the suit property and rather they are claiming to be in joint possession of the same.

6. 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 the facts and circumstances of present case, reading of plaint, nowhere establishes ouster or abandonment of possession of respondents No.1 to 3 over the suit property and rather respondents No.1 to 3 have claimed to be in joint possession of the suit property. So, respondents No.1 to 3 could not be asked to pay Court fees on the market value of the same as they are claiming to be coparceners having right in the suit property by birth. The case law referred by the counsel for the petitioner is not applicable to

the facts of the case at hand. Consequently, no case for interference by this Court is made out.

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

(KARAMJIT SINGH)
JUDGE

20.11.2023
Jiten

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