

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****135****CR-213-2024 (O&M)****Reserved on : 10.09.2024****Date of Decision : 25.09.2024**

Rajan and Another

....Petitioners

VERSUS

Sunita Rani

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Saurabh Kaushik, Advocate for the petitioners.

ALKA SARIN, J.

1. The challenge in the present revision petition under Article 227 of the Constitution of India is to the order dated 24.11.2023 passed by the Trial Court whereby the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'CPC') read with Section 151 CPC has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent filed a suit for declaration to the effect that the sale deed dated 03.08.2017 in favour of defendant-petitioner No.1 and the transfer deed dated 31.07.2020 executed by the defendant-petitioner No.1 in favour of his wife defendant-petitioner No.2 are illegal, null and void and are a result of fraud and misrepresentation. A decree of permanent injunction was also sought for restraining the defendant-petitioners from changing the nature of the suit property and from obstructing the plaintiff-respondent from using the suit property and dispossessing her and for restraining the defendant-petitioners from further alienating the suit property. It was averred that though the entire sale consideration was paid by the plaintiff-respondent

while purchasing the suit property on 03.08.2017, the sale deed had been registered in the name of the defendant-petitioner No.1 who had subsequently transferred it in favour of his wife defendant-petitioner No.2.

3. An application was filed by the defendant-petitioners under Order VII Rule 11 CPC for rejection of the plaint inter-alia on the ground that the plaintiff-respondent had failed to affix the *ad valorem* court fee on the value of the suit property as mentioned in the sale deed. A reply was filed by the plaintiff-respondent. Vide the impugned order the Trial Court dismissed the said application.

4. Learned counsel for the defendant-petitioners has contended that since the plaintiff-respondent had sought a declaration regarding the sale deed dated 03.08.2017 and the transfer deed dated 31.07.2020, she is liable to affix *ad valorem* court fee on the market value of the suit property or atleast the value as mentioned in the sale deed. It is submitted by cleverly wording the plaint that the plaintiff-respondent cannot avoid payment of *ad valorem* court fee.

5. I have heard learned counsel for the defendant-petitioners.

6. A reading of the plaint reveals that the sale deed dated 03.08.2017 is not in favour of the plaintiff-respondent though she had allegedly paid the sale consideration. The plaintiff-respondent has alleged fraud on the part of the defendant-petitioner No.1. The plaint also reveals that the plaintiff-respondent is not seeking possession of the suit property and has rather sought an injunction for restraining the defendant-petitioners from dispossessing her. Hon'ble Supreme Court in the case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors. [2010(12) SCC 112]** has 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. The plaintiff-respondent is not the executant of the sale deed dated 03.08.2017 or the transfer deed dated 31.07.2020. She has made the averments in the plaint regarding her possession of the suit property and is not seeking its possession in the plaint. That being so, there is no escaping from the law laid down by the Hon’ble Supreme Court in the case of **Suhrid Singh @ Sardool Singh** (*supra*). It has clearly been held in the case of **Suhrid Singh @ Sardool Singh** (*supra*) that it is only a person who is a non-executant and is in possession and sues for a declaration that the deed is null or void, who would not have to affix *ad valorem* court fee and in case a person being a non-executant is not in possession, who seeks possession, in that case he would have to affix *ad valorem* court fee.

8. In view of the above and keeping in view the law laid down by Hon’ble Supreme Court in case of **Suhrid Singh @ Sardool Singh** (*supra*), there is no illegality or error of jurisdiction in the impugned order dated 24.11.2023 passed by the Trial Court. I do not find any merit in the present

revision petition and the same is dismissed. Pending applications, if any, also stand disposed off accordingly.

25.09.2024
jk

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking : Speaking
Whether reportable : YES/NO