

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-3737-2015 (O&M)
Date of Decision: February 21, 2024

Surinder Pal Kaur and another
...Petitioners

Versus

Gurnam Singh and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.P.S.Dhaliwal, Advocate
for the petitioners.

Respondents No.1 to 4 proceeded against ex-parte.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 17.04.2015 (Annexure P-4), passed by learned trial Court, whereby, an application under Order 7 Rule 11 CPC was allowed and a direction was given to the petitioners to pay Court fee, on the ad valorem value of the suit property.

Parties are referred to, as making appearance, before learned trial Court.

The material facts, as culled out from the paperbook, are as follows:-

That, initially, petitioners, who were plaintiffs before learned trial Court had filed a suit for seeking declaration to the effect that the land, as

detailed in the head-note of the plaint, situated in village Fatehgarh Channa, as per jamabandi for the year 2006-07, is coparcenary property of Hindu Joint family of the parties, in which, the parties being legal heirs of late Sh.Sukhraj Singh, as real son of defendant No.1-Gurnam Singh and members of Joint Hindu Family, are right holders and co-sharers and owners and also challenged the transfer deed dated 14.09.2012, prepared regarding transfer of the aforesaid land to the extent of 745/23607 share i.e. 12 Kanal 8 Marla, by Gurnam Singh, in favour of defendants No.2 to 4, in equal shares and also the same to be not binding upon the plaintiffs and the mutation of transfer of ownership, if so entered, to be set aside. Furthermore, relief of permanent injunction was also sought that the defendants No.2 to 4 may be restrained from selling out, mortgaging the land in dispute, in favour of any one and changing the nature of the suit land, on the basis of the said transfer deed dated 14.09.2012.

From the plaint, it is evident that Gurnam Singh-defendant was having four sons namely, Jagraj Singh, Balaur Singh-defendants No.2 and 3 and Sukhraj Singh and Gulab Singh, who were/are members of Hindu Joint Family and having right of ownership in the suit land, since their birth, out of which, Sukhraj Singh and Gulab Singh, had died and the plaintiffs are natural legal heirs of Sukhraj Singh, whereas, defendants No.4 and 5 are legal heirs of Gulab Singh. It is averred in the plaint that defendant No.1, in connivance with other defendants, with the intention to defeat the interest of the plaintiffs, had executed and got registered the said transfer deed dated 14.09.2012, regarding the land, as detailed therein, which has been now challenged by the plaintiffs, being legal heirs of Sukhraj Singh and being

members of the Joint Hindu Family.

The respondents (who were defendants before learned trial Court) had made appearance before learned trial Court and filed an application under Order 7 Rule 11 CPC, thereby, seeking dismissal of the suit. In the application, it was averred that as per the sale deed, the value of the land is Rs.23,25,000/- and the plaintiffs have made prayer to declare the said transfer deed to be null and void and they were required to pay the Court fee, on the value of the said transfer deed. As such, a prayer was made for making the plaintiffs to pay the Court fee or in the event of non-payment of the Court fee, the suit filed by the plaintiffs may be ordered to be dismissed.

Reply to the aforesaid application was filed by the plaintiffs.

After hearing learned counsel for the parties, vide impugned order, learned trial Court had allowed the application and had held that the plaintiffs are liable to pay the Court fee, on the ad valorem value of the suit property and a direction was given to pay the Court fee, on the specific date, which was fixed.

Feeling aggrieved, the petitioners have filed the present revision petition.

Even though, notice was issued to the respondents and at one time, learned counsel for respondents No.1 to 4 made appearance, but thereafter, none had made appearance and as such, they were proceeded against ex-parte.

Learned counsel for the petitioners heard.

As already observed aforesaid, the petitioners, who are

plaintiffs before learned trial Court, had filed a suit for seeking declaration qua the suit property to be coparcenary property of Joint Hindu Family of the parties and also challenged the transfer deed dated 14.09.2012, executed by respondent-defendant No.1-Gurnam Singh, in favour of respondents-defendants No.2 to 4, in equal shares. Besides challenge to the said transfer deed, a relief of permanent injunction has also been sought, to restrain the defendants from selling out, mortgaging the land in dispute, in favour of any one and changing the nature of the suit land, on the basis of the said transfer deed dated 14.09.2012.

The transfer deed, as such, was not executed by the petitioners. It is in fact, executed by defendant No.1-Gurnam Singh. Moreover, the petitioners have only sought declaration qua the legality and validity of the said transfer deed and they have not sought relief of possession and therefore, in view of the law laid down in *Suhrid Singh @ Sardool Singh vs. Randhir Singh and other, 2010(2) RCR (Civil) 564*, no ad valorem Court fee, is required to be filed, at the instance of the petitioners.

Consequently, the present revision petition is hereby allowed and the impugned order is set aside and the application under Order 7 Rule 11 CPC stands dismissed.

February 21, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No