



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-412-2016(O&M)

Date of Decision: May 21, 2024

Darshan Lal Wason through LR's and others

...Petitioners

Versus

Kamlesh Rani and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Avnish Mittal, Advocate
for the petitioners.

Mr.Pankaj Bali, Advocate
for respondent No.3.

ARCHANA PURI, J.

Challenge in the present petition is to the order dated 05.01.2016 (Annexure P-1) passed by learned trial Court, whereby, an application filed by the petitioner for issuance of directions to respondents-plaintiffs to pay the ad-valorem Court fee, on the market value of the suit properties and upon failure to pay the Court fee, for dismissal of the civil suit, was dismissed.

In pursuance of notice issued, contesting respondent No.3 made appearance through counsel.

At this stage, it is pertinent to mention that respondents No.1, 2 and 4, who were plaintiffs No.1, 2 and 4, before learned trial Court, had

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withdrawn the main suit and in view of the same, the present revision petition was also held to have become infructuous against respondents-plaintiffs No.1, 2 and 4.

Learned counsel for the parties heard.

The facts germane, to be noticed, are as follows:-

That, initially, respondents-plaintiffs No.1 to 4 had filed a suit for seeking possession of House No.39 and 40 and for seeking declaration to the effect that plaintiffs along with defendants No.4 and 5, are joint owners of 1/5th share of Ishar Singh, in the land in dispute, as detailed in head-note of the plaint and further also challenged the sanctioning of mutation No.339 as well as illegality and validity of sale deed dated 29.07.1982.

After making appearance, the petitioners-defendants No.1 (i) (ii), 2 and 3 had filed an application, thereby, seeking direction to the respondents-plaintiffs to pay the ad-valorem Court fee, on market value of the suit property, failing which, sought dismissal of the suit.

In the application, it was averred that the plaintiffs have challenged the sale deed dated 29.07.1982 executed in favour of Darshan Lal Wason, son of Thakur Dass, father of the applicant, which was executed by Smt.Veera Wali, the predecessor-in-interest of the plaintiff and defendants No.4 and 5. The market value of the suit property is more than Rs.1 crore and therefore, the plaintiffs are required to pay the ad-valorem Court fee.

After hearing learned counsel for the parties, vide impugned order, the said application was dismissed. It was held that defendants were



selling joint family property and had executed sale deed and therefore, suit had been for seeking declaration regarding cancellation of the sale deed and the consequential relief is ancillary one and therefore, no ad-valorem Court fee is required.

Now, it is submitted by learned counsel for petitioners-defendants No.1 (i) & (ii), 2 and 3 that the respondents-plaintiffs had filed a suit for seeking possession of House No.39 and 40 and also for declaration to the effect that plaintiffs along with defendants No.4 and 5, are joint owners of 1/5th share of Ishar Singh in the subject land and had also challenged the sale deed dated 29.07.1982. In this regard, learned counsel for the petitioners has made reference to the contents of the plaint, copy whereof is Annexure P-1 and categorically submitted that plaintiffs themselves have asserted about defendants No.1 (i) & (ii), 2 and 3, having taken the benefit of the absence of plaintiffs and entered into illegal possession of house No.39 and 40. Furthermore, they are not reflected to be in possession in the revenue record, as per contents of paragraph No.10 of the application. Precisely on this account, the decree for possession of House No.39 and 40 has been sought and furthermore, declaration has been sought.

On the other hand, learned counsel for contesting respondent-plaintiff had submitted that since the plaintiff is not an executant to the sale deed and is in joint possession, therefore, ad-valorem Court fee is not required to be affixed.

Undisputedly, the sale deed under challenge bearing No.3047



dated 29.07.1982 was never executed by the contesting respondent-plaintiff No.3 and he had sought declaration qua the sale deed. He is not signatory to the sale deed. But anyhow, perusal of the copy of the plaint Annexure P-1 reveals that respondents-plaintiffs themselves assert about defendants-petitioners to have taken illegal possession of the houses in dispute, which in itself, establish that respondents-plaintiffs, are out of the possession of the suit property.

In this regard, beneficial reference is made to judgment passed in ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, decided on 29.03.2010, in Civil Appeal Nos.2811-2913 of 2010***, wherein, it was held by the Hon'ble Supreme Court that once a relief of possession has been sought, with regard to the declaration for cancellation of the sale deed by the person, who is not signatory to the sale deed, then ad-valorem Court fee, is required to be paid.

In the light of the aforesaid case law, since the respondents-plaintiffs have sought declaration, vis-a-vis, legality and validity of the sale deed and had also sought relief of possession of the property, of which, they themselves assert about the petitioners-defendants to be in illegal possession, it clearly reflects that respondents-plaintiffs are not in possession of the suit property. Thus, in the light of the aforesaid case law, the ad-valorem Court fee ought to be affixed by the contesting respondent-plaintiff No.3.

In the given circumstances, the revision petition, is hereby allowed and the impugned order is set aside and consequently, the



application filed at the instance of the petitioners is hereby allowed. Learned trial Court is directed to calculate the ad-valorem Court fee, with reference to the plaint averments and give appropriate time to the respondent-plaintiff No.3 to furnish the ad-valorem Court fee, in default whereof, respondent-plaintiff No.3 shall face consequential rejection of the suit.

May 21, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No