

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**123****CR No.889 of 2024****Reserved on : 14.02.2024****Date of Decision : 20.02.2024**

Jagtar Singh

....Petitioner

VERSUS

Kirandeep Kaur and Another

....Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Sukhmeet Singh, Advocate for the petitioner.

ALKA SARIN, J.

1. The challenge in the present revision petition under Article 227 of the Constitution of India is to the order dated 12.09.2023 (Annexure P-4) 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 allowed and the plaintiff-petitioner has been directed to affix *ad valorem* court fee failing which the plaint would be rejected.

2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner filed a suit for declaration that four sale deeds and corresponding mutations are illegal, null and void and also sought relief of permanent injunction and consequential relief of possession. It has been averred in the plaint that the sale deeds, of which the plaintiff-petitioner is admittedly an executant, were executed when the plaintiff-petitioner was not capable of understanding the contents of the same and further that the sale deeds were executed without consideration. It was submitted that the plaintiff-petitioner

is of unsound mind. An application (Annexure P-2) was filed under Order VII Rule 11 CPC read with Section 151 CPC for rejection of the plaint by defendant-respondent No.2 on the ground that the plaintiff-petitioner was required to affix the *ad valorem* court fee and that the plaint was liable to be rejected on the ground of deficiency of the court fee. Reply (Annexure P-3) was filed by the plaintiff-petitioner stating therein that the sale deeds have been challenged as no consideration was received by him, he was not of sound mind and, as such, there was no requirement to affix the *ad valorem* court fee.

3. Learned counsel for the plaintiff-petitioner has contended that though the plaintiff-petitioner is an executant of the sale deed, however, since the plaintiff-petitioner has only sought the relief of declaration qua the said sale deeds and did not seek the relief of cancellation, he is not liable to pay ad valorem court fee. As per counsel, the sale deeds are vitiated by fraud.

4. I have heard learned counsel for the plaintiff-petitioner.

5. According to the learned counsel, since the sale deeds are vitiated by fraud and also since the plaintiff-petitioner is only seeking a declaration, hence, no *ad valorem* court fee would be payable. Hon'ble Supreme Court in 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.”

6. In the present case, admittedly the plaintiff-petitioner is the executant of the sale deeds. It is also the admitted fact that the sale deeds are registered documents. That being so, there is no escaping from the law laid down by the Hon’ble Supreme Court in case of ***Suhrid Singh @ Sardool Singh*** (*supra*).

7. The argument raised by learned counsel for the plaintiff-petitioner that since the plaintiff-petitioner is only seeking a decree of declaration and *ad valorem* court fee is not to be affixed is wholly untenable in law. It has clearly been held in the case of ***Suhrid Singh @ Sardool Singh*** (*supra*) that where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed and when a non-executant seeks annulment of a deed, he has to seek a declaration that it is invalid and non-est and once a person is an executant of the deed and seeks cancellation of the deed he is bound in law to pay *ad valorem* court fee on the consideration stated in the sale deed. 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)*, I do not find any merit in the present revision petition and the same is dismissed. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

20.02.2024
jk

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