



CR-2516-2024 (O&M)

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

CR-2516-2024 (O&M)

Date of Decision: 07.08.2024

Bhupinder Singh

... Petitioner

VS.

Kulwinder Singh and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present : Mr. Raghav Goyal Chandiwalla, Advocate
for the petitioner.

Mr.S.S.Grewal, Advocate and
Ms. Preeti, Advocate, for the respondents.

RITU TAGORE, J.

1. Challenge in this revision petition, is to the order dated 19.02.2024 (Annexure P-4), passed by learned Civil Judge (Jr. Division) Kharar in case No. CS-357-2023, whereby the petitioner-plaintiff has been directed to affix *ad valorem* Court fee on the plaint of the suit, with stipulation that failure to comply will result in the rejection of the plaint.

2. Learned counsel for the petitioner contends that petitioner-plaintiff, instituted a suit (Annexure P-1), for a declaration, claiming that sale deed dated 11.04.2023 bearing Vasika No.2023-

**CR-2516-2024 (O&M)**

2024/198/1/14, executed by the petitioner-plaintiff in favour of respondents/defendants regarding the suit land as described in the head note of the plaint, is illegal, null and void, being the result of misrepresentation and fraud. The petitioner additionally seeks the relief of possession, in the event, he is subsequently dispossessed by respondents from the suit land, during the currency of the suit.

3. Learned counsel submits that, the respondents/defendants, upon receiving notice from the learned trial Court, appeared and filed an application (Annexure P-2) under Order 7 Rule 11 of Code of Civil Procedure, 1908 (hereinafter referred as 'CPC'), pleading to direct the petitioner to affix the appropriate court fee on the plaint, based on the sale consideration mentioned in the sale deed dated 11.04.2023. Learned counsel submits that learned trial Court after considering the response of the petitioner (Annexure P-3), erroneously and arbitrarily allowed the application, failing to appreciate that the petitioner is in possession of the suit land and has filed the suit *simpliciter* for declaring the sale deed as illegal on grounds of fraud and misrepresentation, which does not necessitate the payment of *ad valorem* Court fee on the plaint. Based on these submissions, learned counsel prays that the order should be set aside, relying on **Surjit Singh Vs. Karamjit Kaur, 2012 (3) RCR (Civil) 364.**

**CR-2516-2024 (O&M)**

4. Conversely, the learned counsel for the respondents/defendants defended the order, stating that it is valid in the eyes of law. Learned counsel submits that the petitioner's plaint indicates that petitioner, the executant, is seeking to declare the sale deed dated 11.04.2023 as illegal on the grounds of fraud, misrepresentation etc, and is also seeking possession of suit land. Therefore, the case falls under Section 7 (iv) (c) of Court Fees Act, 1870 (for short 'the Act'). Learned counsel submits that in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & ors, 2010 AIR (Supreme Court) 2807**, Hon'ble the Supreme Court while addressing the issue of payment of Court fee, has authoritatively ruled that where an executant of a deed wants it to be annulled, he has to pay *ad valorem* Court fee on the consideration stated in the sale deed. The learned counsel submits that the principles established in **Suhrid Singh @ Sardool Singh (supra)** squarely apply to the present case, making Section 7 (iv) (c) applicable. It is stated by the learned counsel for the respondents that petitioner purposely undervalued the suit property and paid inadequate Court fee. The learned trial Court rightly directed the petitioner/plaintiff to pay appropriate Court fee. Stating, no merit in the revision, learned counsel, prays for its dismissal.

5. I have heard learned counsel for the parties and have perused the paper book and other documents attached therein with their valuable assistance.

**CR-2516-2024 (O&M)**

6. As explicit from the record, the petitioner has filed a suit (Annexure P-1), seeking a declaration that the sale deed dated 11.04.2023 executed by him in favour of the respondents be declared as null and void, alleging that it was obtained through fraud and misrepresentation as detailed in the pleadings. Additionally, the petitioner seeks possession of the subject land contending that if he is forcibly dispossessed by the respondents, possession should be restored to him. However, contents of the sale deed dated 11.04.2023 indicate that petitioner/plaintiff had already transferred the possession of the subject land to the vendees/respondents. Therefore, contents of the sale deed, *prima facie* do not support the petitioner's claim that the possession of the suit land is still with him.

7. In **Suhrid Singh @ Sardool Singh (supra)**, the issue of payment of Court fee was dealt with. In para No. 6 of the judgment, Hon'ble the Supreme Court held that:-

“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-

**CR-2516-2024 (O&M)**

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."

8. Evidently, the petitioner/plaintiff is an executant of the sale deed and handed the possession of the suit land to the vendees. In the light of the facts of the case, this Court finds that the case of petitioner/plaintiff is covered by first principle of **Suhrid Singh @ Sardool Singh (supra)**, and the petitioner/plaintiff is required to pay *ad valorem* Court fee as per consideration shown in the sale deed. The reasoning adopted by the learned trial Court, directing the petitioner/plaintiff to make good the deficiency in the Court fee is both correct and valid.

9. As a sequel to the foregoing discussion, it is held that there is no illegality, irregularity, infirmity or perversity in the impugned order dated 19.02.2024, passed by the learned trial Court .

10. Resultantly, the revision petition is dismissed.

11. Pending application(s), if any, shall also stands disposed of.

07.08.2024
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(RITU TAGORE)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No