

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.6651 of 2023

Date of Decision: 05.01.2024

Navin Bansal and others

...Petitioners

Versus

Rimpy Goyal and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Pushpinder Kaushal, Advocate
for the petitioners.

MEENAKSHI I. MEHTA, J. (Oral)

By filing the instant revision-petition under Article 227 of the Constitution of India, the petitioners-plaintiffs (here-in-after to be referred as 'the plaintiffs') have laid challenge to order Annexure P-5 handed down by learned Civil Judge (Junior Division), Dera Bassi (for short 'the trial Court') on 02.08.2023 in the *Civil Suit No.479 of 2021* titled as '*Naveen Bansal and others vs. Rimpy Goyal etc*', whereby application Annexure P-3, as filed by respondent-defendant No.1 (here-in-after to be referred as 'respondent No.1') under Order 7 Rule 11 CPC for seeking the rejection of the plaint on the ground of non-affixation of proper court-fee thereon, has been allowed and they (plaintiffs) have been directed to calculate the court-fee as per the Rules and affix/file the same.

2. I have heard learned counsel for the petitioners-plaintiffs in the present revision-petition, at the preliminary stage and have also perused the file carefully.

3. Learned counsel for the plaintiffs contends that plaintiff No.1 alone is the signatory to the sale-deed in dispute qua the suit property but vide the impugned order, the trial Court has erroneously directed all the plaintiffs to affix the *ad-valorem* court-fee on the plaint on the basis of the value/sale consideration as mentioned in the above-said sale-deed and even otherwise, this sale-deed has not been executed in favour of plaintiff No.1 and moreover, the plaintiffs are in possession over the suit property and have only sought the relief of declaration regarding the afore-referred sale-deed being illegal, null and void and therefore, they are not required to pay/affix the *ad-valorem* court-fee on the plaint and in these circumstances, it is explicit that the impugned order is not legally sustainable and hence, it deserves to be set-aside.

4. As regard the contention qua all the plaintiffs having wrongly been directed to pay/affix *ad-valorem* court-fee on the plaint despite only plaintiff No.1 being the signatory to the disputed sale-deed, the same is bereft of any merit because in paras No.1 & 2 in plaint Annexure P-1, the plaintiffs have averred that plaintiff No.1 was the Managing Director and plaintiffs No.2 & 4 remained the Directors as well as share-holders and plaintiff No.3 was also a share-holder in the Company known as 'Pukhraj Promoters Pvt. Ltd' and even otherwise, the very factum of plaintiffs No.2 to 4 having joined hands with plaintiff No.1 to file the above-mentioned Civil Suit, does suffice to show that all the plaintiffs are claiming their right in the suit property.

5. Then, though the sale-deed in dispute has not been executed in favour of plaintiff No.1 but in para No.8 in the plaint (Annexure P-1), it has

been mentioned that plaintiff No.1 was planning to settle abroad and the husband of defendant No.1-vendee was his (plaintiff No.1's) close friend and in para No.9 therein, it has been further averred that due to the afore-said reasons, plaintiff No.1 had got the above-referred sale-deed executed in favour of defendant No.1, in good faith, so that the suit property could be managed by her husband in his absence. Concededly, plaintiff No.1 is also a signatory to the sale deed. Meaning thereby that the afore-said sale-deed had been executed and registered as desired by plaintiff No.1 only and it being so, the above-discussed contention pales into insignificance.

6. Further, though in the afore-said Civil Suit, the plaintiffs have not specifically sought the relief of possession of the suit property but it is pertinent to point it out here that besides claiming other reliefs, they have also sought the relief of permanent injunction to restrain defendant No.1 from alienating this property and from changing its nature as well as from parting with the possession thereof and their prayer for grant of this relief, in itself, leads to an irresistible inference to the effect that they (plaintiffs) are not in possession over the suit property. Moreover, a bare perusal of the disputed sale-deed (Annexure P-6) reveals that it has categorically been mentioned therein that the possession of the suit property had been handed over to the vendee, i.e defendant No.1 and the vendee would have absolute right and authority to use the property as per her discretion. From these recitals also, it becomes crystal clear that the plaintiffs are not in possession of the suit property. To add to it, throughout in their plaint, the plaintiffs have nowhere pleaded the factum of their being in possession over the said property. These facts, coupled with the prayer of the plaintiffs for the relief

of mandatory injunction, by way of directing defendant No.1 to re-transfer the suit property in favour of plaintiff No.1, speak volumes of the fact that under the garb/veil of the above-said relief, the plaintiffs have also sought the relief qua possession of the said property and it is well settled that by cleverly drafting the plaint, the plaintiff cannot evade his statutory liability to affix/pay the proper court-fee on the plaint.

8. It has specifically been observed by Hon'ble the Supreme Court in **Suhrid Singh @ Sardool Singh vs. Randhir Singh and ors, AIR 2010 (SC) 2807**, that *“if the executant of the deed seeks the cancellation of the deed, he has to pay the ad-valorem court-fee on the consideration stated in the sale deed and if a non-executant of sale-deed, who is not in possession, 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 Court-fees Act.”* These observations are fully applicable to the present case and in the light of the same, it becomes explicit that the plaintiffs are required to pay/affix the *ad-valorem* court-fee on the plaint, as directed vide the impugned order.

7. As a sequel to the fore-going discussion, this Court is of the considered opinion that the impugned order Annexure P-5 does not suffer from any illegality, infirmity, irregularity or perversity so as to call for any interference by this Court. Resultantly, the petition in hand, being *sans* any merit, stands dismissed.

05.01.2024
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes