



CR-586-2019 (O&M)

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

CR-586-2019 (O&M)

Date of decision : 24.02.2025

Manju Bala

..... Petitioner

versus

Kaka @ Vinod Kumar & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Raj Kumar Arya, Advocate
for the petitioner.

Mr. Manu Loona, Advocate
for respondents No.1 & 2.

PANKAJ JAIN, J. (ORAL)

1 Challenge is to the order dated 10.12.2018 (Annexure P-5) whereby the petitioner-plaintiff has been asked to pay *ad-valorem* Court fee. For convenience, parties hereinafter are referred to by their original position in the suit i.e. the petitioner as plaintiff and the respondents as defendants.

2 Plaintiff filed suit for declaration making following prayer :-

“Hence the suit, for the reasons and submission made above it is therefore prayed that a decree for declaration to the effect that irrespective of transfer deed dated 15.01.2016 bearing No. 3383 qua land executed by Smt. Jaskori widow of Sh. Sheo Narain in favour of defendants No. 1 and 2 the plaintiff is owner of land measuring 21 kanal 11 Marla i.e. 1/12 share out of total land measuring 258 kanal 16 Marla Khwast No. 1/1 Khatoni No. 1 as per Jamabandi for the year 2013-14, situated in the revenue estate of Village Beganwali, Hadbast No. 240



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Tehsil and District Fazilka being class I heirs of deceased Smt. Jaskori widow of Sheo Narain son of Lachman Ram and plaintiff is also entitled to the joint possession of the above said land..... with consequential relief in the shape of permanent injunction that defendant No. 1 and 2 be retained from alienating/transferring the above said land in any manner in favour of anybody else, may kindly be passed in favour of the plaintiff against the defendants with costs.”

3 From the aforesaid, it is evident that though the plaintiff is not an Executant to transfer deed dated 15.01.2016 yet she wants to avoid it to her extent of 1/12 share and is also praying for joint possession. While considering the import of Section 7(iv) (c) of the Court fees Act, 1870 Supreme Court in the case of ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh & ors., 2010(2) RCR (Civil) 564*** observed 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



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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.

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "coparcenery" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds."

4 In view of above, present petition is disposed off with the modification in the impugned order that the plaintiff shall be required to pay *ad-valorem* Court fee qua the property involved i.e. *qua* her share of 1/12 only.

5 Petition stands disposed off.

24.02.2025

Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No