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

(203)

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Date of decision:- 27.03.2025

Rajbir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Manoj Pundir, Advocate and
Mr. Puneet Munjal, Advocate
for the petitioner.

Mr. Satish Singla, AAG, Haryana
for the respondents No.1 and 2.

Mr. Munish Gupta, Advocate
for respondent No.5.

SUVIR SEHGAL, J. (ORAL)

1. Instant revision petition has been filed by the petitioner/plaintiff assailing order 20.01.2016, Annexure P-4, passed by the learned Civil Judge (Junior Division), Sonipat, whereby on an application filed under Order 7 Rule 11, CPC, petitioner has been directed to affix ad valorem court fee.
2. Mr. Manoj Pundir, Advocate, counsel for the petitioner has argued that the plaintiff has filed a suit, Annexure P-1, for declaration to the effect that registered sale deed dated 28.03.2006 and subsequent mutation entries in favour of defendant No.5 be declared null and void. He submits that the petitioner has specifically pleaded that the General Power of Attorney (GPA)



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on the basis of which the sale deed has been executed is a result of forgery and a criminal complaint has been filed. Counsel contends that as the petitioner is not a signatory to the sale deed and has not sought relief of possession, he cannot be fastened with the liability of payment of ad valorem court fee. He has placed reliance upon judgments of this Court in:-

- (i) CR-6223-2013 titled as Kati Versus Bara Singh and another, decided on 30.11.2015;
- (ii) Smt. Santosh Malhan and another Versus Naina Devi and others, 2014 (30) RCR (Civil) 125;
- (iii) Rambai Versus Kapoori and another, 2014 (4) RCR (Civil) 376;
- (iv) Surjit Singh Versus Karamjit Kaur, 2012 (3) RCR (Civil) 364;
- (v) Teja Singh Versus Amar Kaur and others, 2008 (1) PLR 209 and
- (vi) Niranjan Kaur Versus Nirbigan Kaur, 1982 PLR 127.

3. Mr. Munish Gupta, Advocate, counsel for respondent No.5 has opposed the petition and has contended that as the plaintiff has challenged the GPA as well as the subsequent sale deed and mutation, he is liable to affix court fee in accordance with Section 7(iv)(c) of the Court Fees Act, 1870 (for short “the Act”). He has drawn strength from the judgments of the Supreme Court in:-

- (i) Suhrid Singh @ Sardool Singh Versus Randhir Singh and others, (2010) 12 SCC 112; and
- (ii) M/s Omax Construction Ltd. (now known as M/s Omaxe Ltd.) Versus Dharam Singh and others, Law Finder Doc ID # 1845279.

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4. I have heard counsel for the parties and considered their submissions, besides examining the documents brought on record with this petition.

5. Plaintiff has filed a suit, Annexure P-1, for declaration to the effect that sale deed dated 28.03.2006 and subsequent mutation dated 03.07.2006 in favour of defendant No.5 be declared as null and void as the same has been executed by misusing a fraudulently executed GPA dated 07.03.2006 in conspiracy with other defendants. He has also sought relief of mandatory injunction directing defendants No.1 and 2 to cancel the sale deed and for permanent injunction restraining defendant No.5 from alienating or mortgaging the suit property. Upon being served, defendant No.5/respondent No.5 filed an application, Annexure P-2, under Order 7 Rule 11, CPC for rejection of the plaint on the ground that plaintiff has affixed inadequate court fee. After contest, this application has been accepted by the Trial Court vide order, Annexure P-4, which has been impugned herein.

6. Controversy has been settled in **Suhrid Singh @ Sardool Singh's case (supra)**, wherein Supreme Court has laid down three categories of cases. The first category is that if the executant of a deed seeks to get it annulled, he is required to pay court fee on the basis of the consideration shown in the instrument. The second category is where a non-executant in possession sues for declaration that the deed is null and void and does not bind him. In such a situation, he has to pay a fixed court fee under Article 17(iii) of the Second Schedule of the Court Fees Act, 1870. The third category of cases are where a non-executant not in possession sues not only for declaration, but also seeks possession as a consequential relief, he has to pay ad valorem court fee as



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provided under Section 7(iv)(c) of the Act. Case of the plaintiff clearly falls in the first category.

7. Dealing with an almost similar situation as the case in hand, Supreme Court in **M/s Omax Construction Ltd. (supra)** observed as under:-

“10. Having regard to the well settled principles and going by the prayer of Respondent No.1 in the suit, wherein a substantial prayer is sought for as against the appellant apart from questioning the genuineness of the power of attorney dated 7.7.2005 and the sale deed dated 17.8.2005 wherein Respondent No.1 to protect its possession with reference to the suit schedule property and applying the principles laid down by this Court as rightly held by the Trial court, the Respondent No.1 ought to have paid ad valorem court fee while seeking for such a relief. In fact we find that in no part of the plaint, respondent No.1 has chosen to even refer to the Agreement to Sale dated 3.12.2004 and the payment of substantial amount of Rs.63,42,188/- received from the appellant which payment is not in dispute. Therefore, even if the Respondent No.1 wants to contend that the said payment was only a part of the suit schedule property, it is a matter for consideration by the Trial Court, but having regard to the larger prayer made by Respondent No.1 in the suit it is appropriate that in accordance with Section 7(iv)(c) of the Court Fees Act, the liability to payment of ad valorem court fee is inevitable.”

8. That the judgment of the Supreme Court in **M/s Omax Construction Ltd.’s case (supra)** is fully applicable to the facts of the present case. The judgments of this Court relied upon by the counsel for the petitioner will not come to his aid. This Court does not find any irregularity or illegality in the order passed by the Trial Court.



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9. Petition being bereft of merit, is dismissed, though with no order as to costs.

27.03.2025
Kamal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No