

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****202****CR-655-2019 (O&M)****Date of Decision : 22.01.2025**

Sagar

....Petitioner

VERSUS

Kanta Rani

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ravinder Malik (Ravi), Advocate
for the petitioner.

Mr. Nikhil K. Vashisht, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed challenging order dated 19.05.2018 whereby the application filed by the defendant-respondent herein under Order VII Rule 11 of the Code of Civil Procedure, 1908 has been allowed and the plaintiff-petitioner herein has been directed to affix *ad valorem* court fees as per the market value.

2. The brief facts relevant to the present *lis* are that the plaintiff-petitioner herein filed a suit for declaration and permanent injunction. The plaintiff-petitioner sought declaration that the property, which was transferred in the name of Kanta Rani vide transfer order dated 22.06.2015 by the M.C. Thanesar on the basis of sale deed dated 22.07.2010, was invalid and not binding on the rights of the plaintiff-petitioner. The sale deed was said to have been executed by the father of the plaintiff-petitioner. In the prayer clause it was specifically claimed by the plaintiff-petitioner that he is

owner in possession of the suit property and further sought injunction restraining the defendant-respondent from alienating, selling, transferring, leasing and mortgaging or disposing any part of the suit property. The defendant-respondent herein filed an application under Order VII Rule 11 CPC for rejection of the plaint on account of deficient court fees. A reply was filed to the said application. Vide the impugned order dated 19.05.2018 the said application was allowed and the plaintiff-petitioner herein was directed to affix the *ad valorem* court fees.

3. Learned counsel for the petitioner relying on the judgment of **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors. [2010(12) SCC 112]** would contend that the plaintiff-petitioner being a non-executant and in possession of the suit property has sued only for declaration that the deed is null and void and not binding on him or his share and that he would be required to affix the court fees under Article 17(iii) of Second Schedule of the Court Fees Act, 1870.

4. *Per contra* learned counsel for the respondent would contend that since the plaintiff-petitioner is not in possession of the suit property, he would be required to affix the *ad valorem* court fees.

5. Heard.

6. Hon'ble Supreme Court in case of **Suhrid Singh @ Sardool Singh** (supra) 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.”

7. In the present case, the plaintiff-petitioner is not the executant of the sale deed and claims to be in possession of the suit property and is suing for a declaration that the deed is null and void and not binding upon his rights. That being so, in view of the law laid down by Hon’ble Supreme Court in case of **Suhrid Singh @ Sardool Singh** (supra) no *ad valorem* court fees would be payable.

8. In view of the above, the impugned order is not sustainable in law and the same is set aside. Accordingly, the present revision petition is allowed.

9. Disposed off in the above terms. Pending applications, if any, also stand disposed off.

(ALKA SARIN)
JUDGE

22.01.2025

jk

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