



120 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1505-2025 (O&M)
Date of decision : 12.03.2025

Mukesh Devi Petitioner

versus

Lakhwinder (minor) & ors. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Ravi Dutt Sharma, Advocate
for the petitioner.

PANKAJ JAIN, J. (ORAL)

1 Challenge is to order dated 20.02.2025 (Annexure P-5) whereby application filed by the defendant-petitioner under Order VII Rule 11 read with Section 151 CPC 1908 seeking rejection of the plaint stands declined. For convenience, parties hereinafter are referred to by their original position in the suit, i.e. the petitioner as defendant No.1, respondents No.1 to 3 as plaintiffs and respondent No.4 as defendant No.2.

2 Plaintiffs filed suit for declaration claiming that the Transfer Deed dated 08.02.2017 executed in favour of defendants is illegal, null and void and is not binding on his rights. Further prayer was for declaration that the plaintiffs are in joint possession along with defendants over the suit property. Further prayer is for granting decree for permanent injunction restraining the defendants from alienating the suit land or creating any charge thereupon.



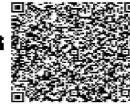
3 Defendants No.1 & 2 moved an application under Order VII Rule 11 CPC claiming that the suit was not properly valued. Plaintiffs were required to pay *ad valorem* court fees on the consideration amount of the sale deed impugned in the plaint whereas plaintiffs filed suit affixing Court fee. Thus, the plaint deserves to be rejected. The other plea raised was that since plaintiffs have impugned Transfer Deed dated 08.02.2017, the suit seeking declaration would be beyond the period of limitation as the same could have been filed within three years from the date of execution of the transfer deed. The Trial Court rejected the said application.

4 Learned counsel for defendant No.1 while assailing the impugned order submits that the Court of the First instance has gone wrong in dismissing the application. He submits that from bare reading of the plaint itself, it is evident that the suit filed was not properly valued. He further submits that the suit is beyond limitation as is evident from para Nos.15 & 16 of the plaint.

5 I have heard learned counsel for defendant No.1 and have gone through records of the case.

6 So far as the issue with respect to Court fee is concerned, Mr. Ravi Dutt Sharma, Advocate is not in a position to dispute that the plaintiffs are not the executant of the said deed. The issue with respect to valuation of a suit challenging deed not filed by the executants has been answered by 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 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 view of above, this Court finds that the plaintiffs not being the executant were not required to pay ad valorem court fees.

8 So far as the issue of limitation is concerned, trite it is that limitation being a mixed question of law and fact cannot be adjudicated at



preliminary stage except when from the plaint it is evident that suit has been filed beyond the period of limitation.

9 In view of above, the impugned order is modified to the extent that the Trial Court shall frame issue with respect to limitation and shall decide the same at the time of final adjudication of the suit.

10 Needless to say, anything observed herein or in the impugned order shall not be construed as an expression on merits of the case.

11 Revision petition stands disposed off.

12.03.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No