

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

132

CR-3014-2023**Date of decision : 13.11.2025****Rajan Sharma****..... Petitioner**

versus

Alka Thakur and others**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

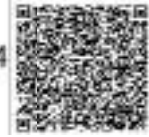
Present: Mr. Vikas Kumar Gupta, Advocate
for the petitioner.

Mr. Vinod Kumar, Advocate
for respondents No.1 to 5.

PANKAJ JAIN, J. (Oral)

1. Challenge is to the order dated 01.03.2023 passed by Civil Judge (Jr. Divn.), Mukerian, whereby on an application filed by defendant under Order VII Rule 11 Code of Civil Procedure, 1908, plaintiff-petitioner has been ordered to pay ad-valorem Court fee on the sale consideration of the sale deeds challenged in the suit.

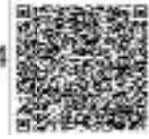
2. Counsel for the petitioner submits that it is not a case wherein the possession is being claimed. Rather the case of the plaintiff pleaded in the plaint is that he be declared to be owner in possession of the suit land declaring various transfer deeds qua the suit land to be illegal, null and void. Reliance is being placed upon judgment passed by Supreme Court in '*Suhrid Singh @ Sardool Singh vs. Randhir Singh and others*' 2010 AIR (SC) 2807 and Civil Revision No.5213 of 2013 titled as '*Dharambir and others vs. Sohan Lal and others*'



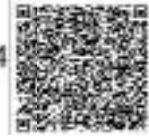
decided on 03.11.2015.

3. After hearing counsel for the parties, this Court finds that the order passed by the Trial Court cannot be sustained. The prayer clause in the plaint reads as under:-

“It is therefore, prayed that the suit for declaration to the effect that the plaintiff and Performa defendant No. 10 and 11 are the owner in possession qua their equal share (7/88 out of total 13 1/2 marla property bearing Khata No. 461/607 Khasra No. 2470 (306) Had Bast No. 621 situated within the revenue estate of Village Bhavnour District Hoshiarpur and owner in possession of house property qua their equal share in house property measuring 14 marla bearing Khata No. 36/42 Khasra No. 699 (4-12) Abadi and Khata No. 37/43 Khasra No. 70C (1-0) duly show red in color in the site plan and marked as ABCDEF situated within the revenue estate of Village Ramgarh Sikri Tehsil Mukerian District Hoshiarpur and owner in possession of the property qua their share in the property measuring 112 kanal 13 Marla bearing Khata No. 362/497 Khasra No. 3018 (10-1), Khata No. 363/498 to 501, Khasra No. 2478 (2-), 2480 (3-8), 2481 (3-2), 2482 (1-4), 2531 (0-7), 2535 (0-6), 2537 (2-7), 2570 (11-5), 2579 (0-9), 2687)2-14), 2686 (1-16), 3005 (1-9), 3020 (48-4), 3023 (44-11), 20-10, 24-1, 3022 (10-2), 3012 (2-1), Khata No. 364/502 Khasra No. 3019 (91-15) situated within the revenue estate of Village Bhavnour Tehsil Mukerian District Hoshiarpur And to the effect that the Gift deeds bearing document No. 337, 338, 339 dated 13.07.2000 and gift deeds bearing document No. 1110 dated 27.03.2001, document No. 193 dated 04.06.2001, document No. 456 dated 20.08.2001 executed by Ram Parkash @ Om Parkash son of Tulsi Ram son of Sunder and others registered in the office of Joint Sub Registrar, Talwara Distric Hoshiarpur qua the share of Ram Parkash Om Parash in favour of D.A.V college Managing Committee, Hoshiarpur i.e. defendant No.6 qua the property mentioned in first part of the head note of the plaint, is null, void, sham and ineffective document and is liable to be set aside, further to the effect that sale deeds bearing document No. 165/1/1106 dated 31.01.2020 in respect of property measuring 0-13M-5Sarsahi



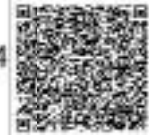
executed by defendant No.6 in favor of deviendant No. 4 and 5 and sale deed bearing document No. 165/1/821 dateo 18.11.2019 and Sale deed bearing document No. 168/1/825 dated 18.11.2019 executed by defendant No.6 in favor of defendant No.1 to 3 are null and void, sham document having no effect on the legal right of the plaintiff and Performa defendant No.10 and 11 and the mutation sanctioned on the basis of alleged Gift deeds and alleged sale deeds are liable to be set aside/cancelled may kindly be decreed with cost in favour of plaintiff and against the defendant in the interest of justice. It is further prayed that consequential relief of Permanent injunction restraining the defendants themselves or through their agents and associates or any other person from interfering into peaceful possession of the plaintiffs over the HOUSE PROPERTY measuring 14 marla bearing Khata No. 31 Khatoni No. 39 and Khasra No.699 (4-12), 700 (1-0) situated within the revenue estate of Village Ramgarh Sikri Had Bast No. 620 Tehsil Mukerian District Hoshiarpur and duly shown red in color in the site plan and Marked as ABCDEF forcibly, illegally or whatsoever except in due course of law AND further restraining the defendants themselves or through their agents and associates or any other person from interfering into peaceful possession of the plaintiffs over the Haveli and landed PROPERTY measuring 112 Kanal 26 % marla bearing Khata No. 362/313 Khatoni No. 497 and Khasra No.3018 (10-1) Khata No. 364/315 Khatoni No. 502 and Khasrs No. 3013 (7-19) Khata No. 367/318 Khatoni No. 505 and Khasra No. 3019 (91-15), Khata No. 363/314 Khatoni No. 498 and Khasra No.2478 (2-0), 2480 (3-8), 2481 (3-2), 2482 (1-4), 2541 (0-7), 2535 (0-6), 2537 (2-7), 2570 (11-5), 2579 (0-9), 2687 (2-14), 2696: (1-16), 3005 (1-9), 3006 (4-14), 3007 (0-10), 3008 (8-3), 3015 (5-10), 3020 (48-4) Khata No. 313/305 Khatoni No. 450 and Khasra No. 3018 (10-1), Khata No. 314/306 Khatoni No. 451 and Khasra No. 2478 (2-0), 2480 (3-8), 2481 (3-2), 2482 (1-4), 2531 (0-7), 2535 (0-6), 2537 (2-7), 2570 (11-5), 2579 (0-9), 2687 (2-14), 2696 (1-16), 3005 (1-9), 3006 (4-14), 3007 (0-10), 3008 (8-3), 3015 (5-10), 3020 (48-4), Khata No. 315/307 Khazoni. No. 455 and Khasra No. 3013 (7-19), Khata No. 461/607 Khasra No. 2470 (306) Had Bast No. 621



situated within the revenue estate of Village Bhavrior Tehsil Mukerian District Hoshiarpur forcibly, illegally or whatsoever except in due course of law may kindly be decreed in favour of plaintiff and against the defendants, in the interest of justice, equity and fair play.”

4. Regarding import of Section 7(iv)(c), Supreme Court in ***Suhrid Singh @ Sardool Singh (supra)***, 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.”

5. The same has been relied upon by this Court in the case of ***Dharambir (supra)*** observing as under:-

“After considering the submission of both the parties, I am of the view that the relief clause of the plaint shows that the suit is for declaration and setting aside of the will and sale deeds. Plaintiffs claim the declaration that they are co-owners in possession. It will be matter of evidence as to in which right the plaintiffs can claim declaration and cancellation of the sale deeds. Therefore, in such circumstances, it is proper that question of payment of the Court fee should be decided after framing issues and allowing the party to lead evidence and should not be summarily decided under Order 7 Rule 10 CPC.”

6. In view of above, this Court finds that the legal proposition being proposed and canvassed by counsel for the petitioner is squarely covered by ratio of law laid down by Supreme Court in ***Suhrid Singh @ Sardool Singh (supra)***. The plaintiff having not claimed possession, is not required to pay ad-valorem Court fee.

7. Keeping in view the peculiar facts and circumstances of the case, this Court finds that the Trial Court shall frame issue with respect to deficiency of Court fee and decide the same in the light of the findings recorded qua possession over the property along with other issues framed in the suit and the final relief to be granted at final stage.

8. In view of above, the present revision petition is allowed. The impugned order dated 01.03.2023 is set aside with the directions as contained in the aforesaid paragraph.



9. Ordered accordingly.

(PANKAJ JAIN)
JUDGE

13.11.2025

Dinesh

Whether speaking/reasoned : Yes

Whether Reportable : No