



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

CR No.3068 of 2024 (O&M)

Reserved on: 24.02.2025

Pronounced on: 18.03.2025

Mehnga Singh

....Petitioner

Versus

Narinder Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Argued by: Mr. Rishabh Gupta, Advocate
for the petitioner.

VIKRAM AGGARWAL, J

The present revision petition is directed against the order dated 16.03.2024 (Annexure P-7) passed by the Court of learned Additional District Judge, Jalandhar, vide which the application filed by the petitioner-defendants (hereinafter referred to as petitioner-defendant) for rejecting the appeal filed by respondents No.1 to 3-plaintiffs-proforma respondents No.4 to 7 (hereinafter referred to as respondents-plaintiffs) on the ground of insufficient Court fee was dismissed.

2. A suit for declaration to the effect that the respondents were the owners in joint possession of Kothi No.207 measuring 7.5 marlas, situated in the Revenue Estate of Dayal Nagar, near Avtar Nagar, Jalandhar (hereinafter referred to as the disputed property) was filed. A further declaration was sought that sale deeds dated 26.09.2000 and 13.02.2002 were null and void and not binding upon the rights of the respondents-plaintiffs, the same being the result of fraud and misrepresentation. Relief of permanent injunction

restraining the petitioner-defendant from interfering into their peaceful possession over the disputed property was also sought. The suit was opposed by way of written statement (Annexure P-2).

3. Vide judgment and decree dated 07.05.2022 passed by the Court of learned Civil Judge (Senior Division) NRI Court, Jalandhar, the suit was dismissed. A finding was also returned that the respondents-plaintiffs were bound to make good the deficiency in the Court fee within one month failing which, the District Collector would recover the same as arrears of land revenue. Aggrieved by the said judgment and decree, an appeal (Annexure P-4) was preferred by the respondents-plaintiffs. During the pendency of the appeal, an application was filed by the petitioner-defendant for opposed the same on the ground that the ad-valorem Court fees on the sale deeds had not been paid. The application was rejected by way of a reply (Annexure P-6). The said application was, however, dismissed by way of the impugned order leading to the filing of the present revision petition.

4. Notice of motion was issued vide order dated 18.05.2024. However, no one put in appearance on behalf of the respondents-plaintiffs as a result of which they were proceeded against *ex parte* vide order dated 05.02.2025.

5. Learned counsel for the petitioner was heard.

6. Learned counsel strenuously urged that the impugned order is not sustainable. It was submitted that under Issue No.9, it was found by the learned trial Court that ad-valorem Court fee was required to be paid by respondents No.1 to 3/plaintiffs, for, their case that the sale deeds had been got registered as a result of a fraud was rejected. The said findings on Issue No.9 have not been challenged by the respondents-plaintiffs in the appeal

meaning thereby that they have accepted the same. Despite the same, even the appeal has been filed without the ad-valorem Court fee on the sale deeds. On account of this reason, the application for rejection of the memorandum of appeal was filed which was erroneously dismissed by the First Appellate Court. Learned counsel submitted that in fact, the appeal was not maintainable without complying with the earlier direction of the trial Court in depositing the ad-valorem Court fee. In support of his contentions, learned counsel placed reliance upon the judgments of Supreme Court of India in the case of ***Sardar Tajender Singh Ghambhir and another Vs. Sardar Gurpreet Singh and others 2015 AIR (SC) 242 and Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010 AIR(SC) 2807.***

7. I have considered the submissions made by learned counsel for the petitioner.

8. The suit filed by the respondents-plaintiffs was dismissed vide judgment and decree dated 07.05.2022 and a finding was returned that the sale deeds under challenge had been executed by the respondents-plaintiffs themselves through their attorney and they were not the result of a fraud. Accordingly, under Issue No.1, it was held that the sale deeds could not be declared to be illegal null and void. The issue of limitation was also decided against the respondents-plaintiffs. Other issues including the issue of ad-valorem Court fee (Issue No.9) was decided against the respondents-plaintiffs. Placing reliance upon the judgments of the Supreme Court of India in the case of ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others*** (supra), it was held that the respondents-plaintiffs were bound to affix ad-valorem Court fee on two sale deeds Ex.D-10 and D-11 whereas on the third sale deed dated 13.03.2002, it was found that they were not liable to

pay the ad-valorem Court fee since it had not been executed by them. Accordingly, the suit was dismissed and the following direction was passed as regards payment of Court fee:-

“Accordingly, on the basis of the findings given above the suit is dismissed with cost. The plaintiffs are bound to make good the deficiency in the Court fee within one month from the date of the judgment. The copy of the judgment is forwarded to the District Collector for information and necessary action. In case the plaintiffs do not make good the deficiency in the Court fee within one month from the date of the judgment then the District Collector shall recover the same from the plaintiffs as arrears of the land revenue. Intimation in this regard be sent to the Court by the District Collector. Decree sheet be prepared. File be consigned to the record room.”

9. Aggrieved by the said decision, an appeal was preferred which is stated to be pending. While filing the appeal, ad-valorem Court fee was not paid. The Appellate Court rejected the application filed by the petitioner that since it was the specific case of the appellants/plaintiffs that fraud had been played upon them by their attorney and had therefore executed the sale deeds Ex.D-10 and D-11, it would be a disputed question of facts and law as to whether the respondents-plaintiffs would be liable to pay ad-valorem court fee as ordered by the trial Court or not. In the considered opinion of this Court, the Appellate Court erred in holding so. The trial Court had duly found that the sale deeds were not the result of a fraud and the respondents-plaintiffs had been directed to make good the deficiency in the Court fee. The Appellate Court should, in fact, have called upon the respondents-plaintiffs to abide by the said direction and also affix ad-valorm Court fee with the appeal in terms of the ratio laid down by the Supreme Court of

India in the case of ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others (supra)***. The respondents-plaintiffs were the executants of the sale deeds, though through a power of attorney holder and, therefore, were liable to pay the ad-valorem Court fee. If the argument raised by the respondents-plaintiffs and the reasoning given by the Appellate Court would to be accepted, in every case, it would be said that since the sale deed was executed by way of a fraud which was a mix question of law and facts, no ad-valorem Court fee would be payable at the time of filing of the suit. The respondents-plaintiffs cannot be said to be non-executants just because the sale deeds had been executed through a power of attorney holder. A Coordinate Bench, while dealing with an identical issue in the case of ***Baljeet Singh Vs. Krishna Devi and another 2018(4) PLR 27*** held that where the allegation was that the sale deed had been executed on account of fraud played by the defendants, ad-valorem Court fee would be payable. Accordingly, the order of the trial Court vide which the plaintiff had been directed to pay the ad-valorem Court fee after an application under Order 7 Rule 11 CPC was filed was upheld. The Coordinate Bench relied upon the judgment in the case ***of Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others*** as also the judgment of a Division Bench of this Court in the case of ***Tarsem Singh Vs. Vinod Kumar, 2011(31) RCR(Civil) 709***.

“Learned counsel for the petitioner has further relied upon various other judgments passed by the learned Single Benches on peculiar facts of the case. In the considered opinion of this Court, such judgments cannot be treated as precedent particularly when a Full Bench of this Court in the judgment reported as Niranjan Kaur v. Nirbigan Kaur, 1981, PLJ 423, has clearly held that if an executants of the document is seeking cancellation thereof, the Court fee would be payable as per Article 1 Schedule I of the Court

Fee Act and not as per Section 7(iv)(c) of the Act. This is what has been also held by the Hon'ble Supreme Court in the case of Suhrid Singh @ Sardool Singh v. Randhir Singh and others, 2010(2) SCC, 112, AIR 2010 Supreme Court 2807. Still further, a Division Bench of this Court in the judgment reported as Tarsem Singh and others v. Vinod Kumar and others, 2011(31) RCR (Civil), 709 while considering the similar question has also held as under:-

- i) If the executants of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.*
- ii) But if a non-executant seeks annulment of deed i.e., when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventually, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.*
- iii) But if the non-executant is not in possession and seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.”*

In view of the above, this Court finds that the order dated 16.03.2024 passed by the Court of learned Additional District Judge, Jalandhar, is not sustainable. Accordingly, it is set aside and the application filed by the petitioner-defendant is allowed. The petitioner-defendant would be liable to deposit the ad-valorem Court fee, as had been directed by the trial Court, not only as regards the Civil Suit but also as regards the Civil Appeal preferred by the petitioner-defendant.

The needful be done within a period of one month from today. The revision petition is accordingly disposed of.

Pending application(s), if any, shall also stand disposed of.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on : 18.03.2025
Rekha

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