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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-6978-2023 (O&M)

Date of Decision : 12.11.2025

Bhupinder Kaur alias Bhupinder Kaur Boparai

... Petitioner

Versus

Diamon Sandhu alias Sukhdeep Singh Sandhu and Others

...Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ramnish Puri, Advocate for the petitioner.

Mr. Rakesh Sobti, Advocate for respondent Nos.1 to 4.

Mr. Neeraj Yadav, Advocate for respondent No.5.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 17.10.2023 whereby the application filed by the petitioner herein under Order VII Rule 11(b) read with Section 151 of the Code of Civil Procedure, 1908 and Section 7 of the Court Fees Act, 1870, has been rejected.

2. The brief facts relevant to the present lis are that the plaintiff-respondent Nos.1 to 4 herein filed a suit for declaration to the effect that they are owners in possession of land measuring 92 Kanals 08 Marlas as fully described in the plaint. They also sought declaration that the alleged sale deeds, seven in number, executed by the defendant No.1-petitioner herein on the basis of a General Power of Attorney executed by Rachpal Singh were illegal, null, void and ineffective and are not binding on their rights. The case

set up by the plaintiff-respondent Nos.1 to 4 in the plaint was that Rachpal Singh had executed a power of attorney on 24.12.2001 in favour of his sister i.e. defendant No.1-petitioner herein. Rachpal Singh died on 05.04.2008. Immediately thereafter, three sale deeds were executed by the defendant No.1-petitioner, who is none other than the sister of Rachpal Singh on 28.05.2008 in favour of her son and four sale deeds on 10.06.2008 again in favour of her son qua the total land measuring 92 Kanals 08 Marlas. It was the case set up in the plaint that after the death of Rachpal Singh in order to usurp the property, the sale deeds were executed by the defendant No.1-petitioner herein in favour of her son on the basis of general power of attorney executed by Rachpal Singh on 24.12.2001. The plaintiff-respondent Nos.1 to 4 laid a challenge to the sale deeds not being the executants. In the plaint there was no prayer for possession of the suit property. The defendant No.1-petitioner filed her written statement. In the written statement the stand taken was that the property had been sold and the entire sale consideration received from defendant No.2 (respondent No.5 herein) had already been paid to Rachpal Singh. Subsequently, an application was filed under Order VII Rule 11(b) read with Section 151 CPC and Section 7 of the Court Fees Act, 1870 for rejection of the plaint on the ground that *ad valorem* court fee had not been affixed. Vide the impugned order the application was dismissed. Hence, the present revision petition.

3. Learned counsel for the defendant No.1-petitioner would contend that the sale deeds were executed on the basis of a general power of attorney executed by the predecessor-in-interest of the plaintiff-respondent Nos.1 to 4 who, hence, have stepped into the shoes of Rachpal Singh, the predecessor-in-interest of plaintiff-respondent Nos.1 to 4. In the suit since

challenge is to the sale deeds executed by the predecessor-in-interest of plaintiff-respondent Nos.1 to 4 through his general power of attorney holder they would be required to affix *ad valorem* court fees. In support of his arguments he has relied upon judgments of this Court in the cases of **Smt. Parkasho @ Parkash Kaur vs. Smt. Surinder Kaur & Ors. [2012 (24) RCR (Civil) 183]** and **Mandeep Kaur & Anr. vs. Harpreet Singh & Ors. [CR-6930-2025 decided on 29.09.2025]**.

4. *Per contra* learned counsel for the plaintiff-respondent Nos.1 to 4 has contended that plaintiff-respondent Nos.1 to 4 are neither executants of the sale deeds nor have they sought possession and in view of the law laid down by the Hon'ble Supreme Court in case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors. [2010(12) SCC 112]**, no *ad valorem* court fee would be required to be affixed.

5. I have heard learned counsel for the parties.

6. In the present case the application for rejection of the plaint was filed on the ground that *ad valorem* court fee had not been affixed. It is the argument of learned counsel for the defendant No.1-petitioner that since the plaintiff-respondent Nos.1 to 4 have stepped into the shoes of Rachpal Singh, who was the executants of the sale deeds through his power of attorney holder, they would be required to pay *ad valorem* court fee. In support of his argument he has relied upon the judgment in the case of **Parkasho @ Parkash Kaur** (supra). The said judgment would not be of any help to the defendant No.1-petitioner in view of the law laid down by the Hon'ble Supreme Court.

7. 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."

8. In the present case, Rachpal Singh had executed a general power of attorney in favour of defendant No.1-petitioner, who is none other than his sister on 24.12.2001. On 05.04.2008 Rachpal Singh died and after his death, on the basis of said power of attorney, three sale deeds were executed by the defendant No.1-petitioner herein on 28.05.2008 in favour of her son and four sale deeds on 10.06.2008 again in favour of her son. The total land which was transferred by way of the said sale deeds on the basis of general power of attorney dated 24.12.2001 was about 92 Kanals 08 Marlas. The plaintiff-respondent Nos.1 to 4, who are the children and the widow of Rachpal Singh, cannot be treated as the executants of the sale deeds. *Prima facie* the general power of attorney came to an end with the death of Rachpal Singh i.e. on 05.04.2008. The sale deeds have all been executed post the death of Rachpal Singh. Rather, it is a case where it cannot even be considered that the sale deeds were executed by Rachpal Singh since the power of attorney itself had come to an end. Hon'ble Supreme Court in the case of **Suhrid Singh @**

Sardool Singh (supra) has clearly laid down that in case a non-executant of the sale deed is seeking possession in such a case he would be required to pay *ad valorem* court fee. However, if the plaintiff is a non-executant and is in possession and sues for declaration that the deed is null and void and does not bind him or his share, he merely has to pay a fixed court fee of ₹19.50 under Article 17(iii) of Second Schedule of the Court Fees Act, 1870. In the present case, the plaintiff-respondent Nos.1 to 4 are neither the executants nor are they seeking possession of the suit property. The judgment relied upon by learned counsel for the defendant No.1-petitioner in the case of **Mandeep Kaur** (supra) would also not come to his aid inasmuch as it was a case where though no relief of possession was sought, however, the pleadings reveal that the possession was not with the plaintiffs. It is not the case herein where it has specifically been pleaded by the plaintiff-respondent Nos.1 to 4 that they are in possession of the suit property.

9. In view of the law laid down by Hon'ble Supreme Court in case of **Suhrid Singh @ Sardool Singh** (supra), I do not find any merit in the present revision petition and the same is accordingly dismissed. Pending applications, if any, also stand disposed off.

10. It is made clear that any observation made herein shall not be treated as an expression of opinion on the merits of the case.

12.11.2025
jk

(**ALKA SARIN**)
JUDGE

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