

HARJINDER SINGH v. KULDEEP KAUR , (2022-2)206 PLR 565 , 2022 PLRonline 7665

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Anil Kshetarpal.

HARJINDER SINGH and another – Petitioners,

Versus

KULDEEP KAUR – Respondent.

Civil Revision No. 361 of 2022

Suit for Declaration – Plaintiff is not seeking possession – The plaintiff is only praying for declaration that she is the joint owner in joint possession – A non-party to the document is not required to seek annulment thereof – This suit for declaration that the aforesaid document is not binding is sufficient – Hence, no ad valorem court fee is payable.

Cases referred to:-

1. 1961 AIR (Supreme Court) 129, *Sri Rathnavarmaraja v. Smt. Vimla.*

Mr. Jaskamal Singh Grewal, for the petitioner(s).

Anil Kshetarpal, J. – (4th February, 2022) –

1. The defendant No.1 and 2 assail the correctness of the order passed by the trial Court while dismissing the application filed by them under Order VII Rule 11 CPC to reject the plaint on the ground that the plaintiff has not paid the ad valorem court fee.

2. Admittedly, the plaintiff is not a party to the transfer deed dated 04.03.2020. The aforesaid transfer deed dated 04.03.2020 was executed by late Sh.Jarnail Singh.

3. The plaintiff has filed the suit claiming that the property is a coparcenary property and they are in joint possession of the same. The trial Court, on appreciation of the evidence, has dismissed the application.

4. The learned counsel representing the petitioners contends that the plaintiff is seeking relief of possession. The caption of the suit filed by the plaintiff is extracted as under:-

“SUIT FOR DECLARATION to the effect that suit land at letter A and B is a coparcenary property of plaintiff, defendants and plaintiff is joint owner in joint possession to the extent

of 453/644 share out of recorded share of defendants in suit land at letter A, defendants are only joint owner in joint possession to the extent of 191/644 share out of same. Transfer deed no. 2019-2020/18/1/1386 dated 04.03.2020 executed by late Jarnail Singh son of Bachna Singh regarding 32K-4/35/100M share in favour of defendants out of his recorded share out of suit land at letter A and mutation and subsequent revenue entries on the basis of said transfer deed in the name of defendants are illegal, null and void and has no effect on the rights of plaintiff and confer no title upon defendants.

AND

SUIT FOR PERMANENT INJUNCTION restraining defendants their agents and servants from alienating suit land at letter A more than their 191/644 share by way of sale, mortgage, gift, exchange or in any other manner and from changing the nature of the same and from ousting the plaintiff from her 453/644 share from suit land mentioned at letter A illegally, forcibly and without due course of law".

5. It is evident that the plaintiff is not seeking possession. The plaintiff is only praying for declaration that she is the joint owner in joint possession to the extent of 453/644 share in the property.

6. Furthermore, a revision petition, filed on behalf of the defendants against the order passed by the trial Court refusing to reject the plaint on the ground of insufficient court fee, is not maintainable in view of the judgment passed by the Hon'ble Supreme Court in *Sri Rathnavarmaraja v. Smt. Vimla*¹ 1961 AIR (Supreme Court) 1299. Moreover, a non-party to the document is not required to seek annulment thereof. This suit for declaration that the aforesaid document is not binding is sufficient. Hence, no ad valorem court fee is payable. Consequently, the present revision petition is dismissed.

R.M.S.

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Petition dismissed.