

JASVEER KAUR v. KIRANPREET KAUR, (2022-1)205 PLR 518

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice G.S. Sandhawalia.

JASVEER KAUR – Petitioner,

Versus

KIRANPREET KAUR and others – Respondents.

CR-1703-2021

(i) Constitution of India, Article 226 - Ad valorem - Court fee - Plea - Respondent is a widow lady and claiming that the property was ancestral in nature and her father-defendant No.1 had got the land by inheritance - Their brother, died issueless and the petitioner had got transfer deed executed in her favour whereas the challenge was that defendant No.1 had no right to transfer the land in excess of his share - In such circumstances, this Court is of the opinion that the plaintiff not being the executant to the transfer deed, is not liable to pay ad-valorem Court fee. [Para 4]

(ii) Civil Procedure Code, 1908 (V of 1908) Order 7, Rule 11 - Revision was not maintainable under Order 7 Rule 11 [CPC](#) where there was a claim regarding the joint possession in the family property, it was held that Court fee is computable not on the basis of sale consideration. [Para 5]

Cases referred to:-

1. (2010-2)158 PLR 707 (SC) , *Suhrid Singh @ Sardool Singh v. Randhir Singh*.
2. 2015(2) RCR (Civil) 281, *Smt. Santra Devi v. Hari Singh*.
3. 2014 PLRonline 0104, *K.C.Gupta v. Rajat Gupta*.
4. 2014(1) ICC 1054, *Tarsem Singh v. Vinod Kumar*.

Mr. Tribhawan Singla, for the petitioner. (through video conferencing.)

G.S. Sandhawalia , J. (Oral) - (26th August, 2021) - The present revision petition has been filed under Article 227 of the Constitution of India, by the petitioner-defendant No.2 against the order of the Trial Court whereby her prayer for rejection of the plaint on account of not affixing the ad-valorem Court fees on the transfer deed dated 20.03.2010, has not

been accepted.

2. The reasoning given by the Trial Court is that the plaintiff was not party to the transfer deed under challenge and not being the executant and had only sought the relief of declaration. The plaintiff was also seeking her share in the joint possession which was adverse to the interest of other co-sharers. Resultantly, while placing reliance upon the judgments of the Apex Court in *Suhrid Singh @ Sardool Singh v. Randhir Singh*¹ (2010-2)158 PLR 707 (SC) , and *Smt. Santra Devi v. Hari Singh*² 2015 (2) RCR (Civil) 281, the application was dismissed.

3. Counsel for the petitioner has vehemently submitted that apart from joint possession, exclusive possession had been prayed for.

4. A perusal of the plaint would go on to show that the dispute is inter se the family members namely the daughters. The plaintiff-respondent is a widow lady and claiming that the property was ancestral in nature and her father-defendant No.1 had got the land by inheritance. Their brother, Avtar Singh died issueless and the petitioner-Jasveer Kaur had got transfer deed executed in her favour whereas the challenge was that defendant No.1 had no right to transfer the land in excess of his share. In such circumstances, this Court is of the opinion that the plaintiff not being the executant to the transfer deed, is not entitled to pay ad-valorem Court fees, in view of the law which has been relied upon by the Trial Court in *Santra Devi* (supra). Relevant portion of the judgment reads as under:

“5. When the impugned order is read in relation to the pleadings of the plaintiffs in the plaint, it clearly transpires that the plaintiffs only seek declaration of their share with claim of joint possession of the land to the extent of 7/24 share as legal heirs-cum-successors of deceased Khazan Singh, who with his brother Prabhu son of Ami Lal was coowner in joint possession in equal share of the suit land.

6. When the plaintiffs have neither sought cancellation of the sale deed nor have claimed exclusive possession and rather have invoked the jurisdiction of the court, only claiming the property to be joint Hindu family property and their share therein with relief of joint possession, no case for payment of advalorem court fee is made out. Reference in this regard may be made to the judgment of this Bench in *S. Ajit Singh Kohar v. Shashi Kant* bearing CR No.5638 of 2014 decided on 25.8.2014.

Relevant position of this verdict as under:

5. In a recent judgment of this Court dated 28.11.2013 in Civil Revision No. 7253 of 2013, interpreting Rule 11[c] of Rule VII CPC in identical circumstances relying upon the decision of Hon'ble Supreme Court in *Sri Ratnavaramaraja v. Smt. Vimla*, AIR 1961 SC 1299 and Full Bench decision of this Court in *Arjan Motors v. Girdhara Singh and others*, 1978 PLJ 36, while observing that decisions in *Saleem Bhai and others v. State of Maharashtra and others*, 2003(1) R.C.R.(Civil) 464 and *P.K. Palanisamy v. N. Arumugham* , 2009 PLRonline 0006 were not applicable to the facts of the case, it has been held that when the trial Court has not come to a conclusion about quantification of damages to be recovered from defendant for defaming the plaintiff, damages could not be assessed by the plaintiff as this

determination was to be made by the Court.

Further, in *Subhash Chander Goel v. Harvind Sagar*, 2003 AIR 248 [Punjab], in similar circumstances, in a suit for damages for maligning reputation, it was held that since exact value of the relief to be granted could not be ascertained, affixation of court fee of Rs.50/- was acceptable.

6. Sequently, the impugned order is set-aside leaving the petitioner to pay the court fee on the sum to be adjudicated as damages by the lower Court in due course of time, but not at this initial stage, notwithstanding that the petitioner though, leaving the entire matter to the court for adjudication of the quantum of damages, he himself has given the quantum of damages to be Rs.2.00 Crores.”

7. The observations of the lower court are far from the pleadings of the plaintiffs and did not engage the attention these deserved from it on the factual and legal point adverted to by the plaintiffs resulting in total miscarriage of justice on the question of payment of court fee.”

5. Even otherwise, this Court is of the opinion that the present revision petition is not maintainable. In similar circumstances, in *K.C.Gupta & another v. Rajat Gupta & others*³ 2014 PLRonline 0104, this Court came to the conclusion that the revision was not maintainable under Order 7 Rule 11 CPC where there was a claim regarding the joint possession in the family property, it was held that Court fee is computable not on the basis of sale consideration, by placing reliance upon *Surhrid Singh @ Sardool Singh* (supra) and a Division Bench of this Court in *Tarsem Singh v. Vinod Kumar & others*⁴ 2014 (1) ICC 1054.

Accordingly, finding no illegality or irregularity in the order passed by the Trial Court, the present revision petition is dismissed in limine.

R.M.S.

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Petition dismissed.