

Harbans Kaur v. Amrik Singh @ Beer Singh, 2015 PLRonline 0208 (P&H)

(ID #419802)

PUNJAB AND HARYANA HIGH COURT

Before: Justice Sabina.

Harbans Kaur v. Amrik Singh @ Beer Singh

Civil Revision No. 6466 of 2013.

31.7.2015.

Court Fees Act, 1876, Section 7 - Case of the petitioner is that at the time of execution of transfer deed, no consideration had passed between the parties and the transfer deed in question was a result of fraud and misrepresentation - Petitioner has filed suit for declaration and has not sought the relief of possession - Petitioner was not required to affix ad valorem Court fee. [Para 6]

For the Petitioner :- G.S. Punia, Senior Advocate with Harveen Kaur. For the Respondent :- Sherry K. Singla,.

Cases Referred :-

1. *Ajmer Singh v. Punjab Singh (minor)*, (2007-3)147 PLR 228.
2. *Nand Kaur v. Gurdev Kaur*, 1977 (59) PLR 500.
3. *Shakuntla v. Rohtas Singh*, 2008(4) RCR (Civil) 80
4. *Smt. Aruna Bansal v. Smt. Janak Dulari*, 2001(1) RCR (Criminal) 654.
5. *Smt. Shanti Devi v. Smt. Suchitra @ Santosh*, 2009 (2) PLR 325.
6. *Suhrid Singh @ Sardool Singh v. Randhir Singh*, (2010-2)158 PLR 707 (SC), 2010 PLRonline 0006,
7. *Surjit Singh v. Karamjit Kaur*, 2012(3) RCR (Civil) 364.
8. *Teja Singh v. Amar Kaur*, (2008-1)149 PLR 209
9. *Zora Singh v. Kehar Singh*, 1981(1) RLR 491.

JUDGMENT

Sabina, J. – Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 23.9.2013 (Annexure P-1).

2. Learned senior counsel for the petitioner has submitted that the respondent is the son of the petitioner. In fact, the transfer deed in question was a result of fraud. Petitioner had merely filed suit for declaration that the transfer deed dated 27.7.2011 was null and void and was a result of fraud and misrepresentation. Petitioner was in possession of the suit property and had not claimed the relief of possession while filing the suit. The transfer deed was without consideration. Hence, the petitioner was not liable to affix ad valorem Court fee. In support of his arguments, learned senior counsel has placed reliance on '**Surjit**

Singh v. Karamjit Kaur 2012(3) RCR (Civil) 364', wherein it was held as under:-

*"5. I have heard learned counsel for the petitioner as well as learned counsel for the respondent. The provisions of Section 7 of the Court Fee Act came up for consideration before Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh v. Randhir Singh and others**, (2010-2)158 PLR 707 (SC), 2010 PLRonline 0006, in which it was held as follows :-*

"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 advalorem 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 advalorem 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."

6. If the principle laid down in the above said judgment is followed in the present case, the plaintiff-petitioner, who is executant of the deed has sought declaration that the transfer deed dated February 23, 2011 in favour of the defendant-respondents is null and void. Since the plaintiff himself is executant of the deed and he seeks cancellation of the deed, he is no doubt required to pay advalorem court fee for the consideration paid on the sale deed but in the present case no sale consideration has been paid by the defendants. Even the possession has also not been claimed by the plaintiff-respondent."

3. Learned counsel for the respondent, on the other hand, has opposed the petition and has submitted that petitioner was liable to affix ad valorem Court fee as the petitioner was the executant of the transfer deed and had challenged the same. In support of his arguments, learned counsel has placed reliance on '**Smt. Shanti Devi v. Smt. Suchitra @ Santosh and another 2009(2) RCR (Civil) 657 : 2009 (2) PLR 325'**, wherein it was held as under :-

"3. Learned counsel for the petitioner refers to decision of this Court in **Zora Singh and others v. Kehar Singh and others 1981(1) RLR 491** that a suit for permanent injunction alleging a gift deed to be null and void was held to be required to be valued as one for cancellation of a document and provision of Article 1 Schedule 1 was attracted and not Section 7 Clause IV (b) and the Court Fees Act. Another decision of the same issue was rendered in **Nand Kaur and others v. Gurdev Kaur and others, 1977 Volume 59 PLR 500** where it was held that for a suit for declaration by a donor challenging a gift which he had made, the assessment of Court fee shall be under Article 1 Schedule 1 and ad valorem court fee was payable under the said Article. The impugned decision rendered by the Court below conflicts with the decisions cited above and the reasoning that a cancellation would be necessary only in case of sale deed and not with reference to gift deed is wholly erroneous. "

4. Learned counsel for the respondent has next placed reliance on '**Shakuntla v. Rohtas Singh and others 2008(4) RCR (Civil) 80**', wherein it was held as under :-

"3. The trial Court, however, by relying upon the ratio of law laid down in **Ajmer Singh v. Punjab Singh (minor)**, (2007-3)147 PLR 228 has observed that even in such eventuality where cancellation of a sale deed is sought on the ground of fraud, the petitioner would be required to affix ad valorem court fees. The ratio of law laid down in the case of **Smt. Aruna Bansal v. Smt. Janak Dulari**, 2001(1) RCR (Criminal) 654 and **Teja Singh v. Smt. Amar Kaur & Ors.**, (2008-1)149 PLR 209 was distinguished as question of the possession is not involved."

5. In the present case, parties are closely related to each other as the respondent is the son of the petitioner. The case of the petitioner is that at the time of execution of transfer deed, no consideration had passed between the parties and the transfer deed in question was a result of fraud and misrepresentation. Petitioner has filed suit for declaration and has not sought the relief of possession. The present case is covered by the decision given by this Court in *Surjit Singh's case* (supra). Hence, the petitioner was not required to affix ad valorem Court fee.

6. Accordingly, this petition is allowed. Impugned order dated 23.9.2013 (Annexure P-1) is set aside.