

**Jaswinder Singh and Others Vs Jasbir Kaur and Another
 Komal Preet Kaur and Others Vs Darshan Singh and Others
 Kuldeep Kaur and Others Vs Jasbir Kaur and Others**

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Dec. 4, 2012

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 7 Rule 11
Court Fees Act, 1870 â€" Section 7, 7(iv)(b), 7(iv)(c)

Citation: (2013) 170 PLR 15 : (2013) 1 RCR(Civil) 727

Hon'ble Judges: A.N. Jindal, J

Bench: Single Bench

Advocate: Rakesh Gupta, for the Appellant; Aman Dhir, Advocate for Respondent No. 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

A.N. Jindal, J.

This order of mine shall dispose of five Civil Revision Nos. 6612 of 2011, 6613 of 2011, 6614 of 2011, 6615 of 2011

and 6616 of 2011 filed against the order dated 3.10.2011 as all the petitions involve the same question of law. The order dated 03.10.2011

passed by the Additional Civil Judge (Senior Division), Guhla on an application filed under Order 7 Rule 11 directing the petitioners to pay ad-

valorem Court fee, is under challenge in these petitions.

2. Facts in brief as picked up from Civil Revision No. 6612 of 2011 are that plaintiffs have claimed joint possession in the suit property on the

ground that the same is the joint Hindu family coparcenary property wherein the plaintiffs have share by birth. The sale deed dated 11.6.2011

executed by defendant No. 2 in favour of defendant No. 1 being illegal, null and void and do not affect their rights in the property. The trial Court

ordered the plaintiffs to pay ad-valorem court fee on the value of the suit property.

3. Heard.

4. Admittedly, the plaintiffs have claimed in the suit that they are coparceners and the suit property is joint Hindu family coparcenary property and

they are entitled to joint possession over it by virtue of their birth in the family. It is also not in dispute that the petitioners are not the executants of

the sale deed and they want the sale deed to be ignored on the ground that the same is without legal necessity and benefit of the estate.

5. Having examined the impugned order, it transpired that the trial Court has not touched and discussed the issue u/s 7(iv)(b) of the Court Fees

Act, 1870 (for brevity "the Act"), which reads as under:-

Computation of fees payable in certain suits - The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed

as follows:-

(i) xxx xxxx xxxx

(ii) xxx xxxx xxxx

(iii) xxx xxxx xxxx

(iv) In suits--

(a) for moveable property of no market-value - for moveable property of no market-value - for moveable property where the subject matter has

no market value, as, for instance, in the case of documents relating to title,

(b) to enforce a right to share in joint family property - to enforce the right to share in any property on the ground that it is joint family property,

(c) for a declaratory decree and consequential relief - to obtain a declaratory decree or order, where consequential relief is prayed,

(d) & (e) xxxx xxx xxx

(f) for Accounts--

6. From the bare perusal of the aforesaid provision, it transpired that where the plaintiffs claim share in the joint property on the ground that it is

joint Hindu family coparcenary property then the ad-valorem court fee is required to be affixed. According to Section 7(iv)(c) of the Act, the ad-

valorem court fee could be claimed in the cases where the cancellation of deed is sought and consequential relief is claimed but in this case the

plaintiffs being not the party to the sale deed have not sought for cancellation of the sale deed but have sought for annulment of the same and they

have also not sought any consequential relief. Similar observations were made by the Apex Court in case *Suhrid Singh @ Sardool Singh Vs.*

Randhir Singh and Others, Recent Apex Judgments (R.A.J.) 436 :: 2010 (2) CCC 510 wherein it was observed as under:-

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 valid but also the consequential relief of

possession, he has to pay an ad-valorem court fee as provided u/s 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.

7. In the recent case, no prayer for cancellation of sale deed has been made. The plaintiffs have claimed declaration as well as joint possession in

the joint Hindu family coparcenary property. As such, the petitioners are not liable to pay ad-valorem court fee.

8. Counsel for the respondents has referred to a judgment delivered in Bagrawat Vs. Mehar Chand in order to contend that in case a son

challenges the sale deed suffered by his father then he is required to pay ad-valorem court fee. The relevant observations are reproduced as

under:-

The petitioner, herein, is in a way challenging the validity of sale deeds, which, according to him, are null and void being without legal necessity and

consideration. Thus, the trial Court has rightly come to the conclusion that the plaintiff is required to pay the requisite Court fee as per the sale

consideration in the sale deeds referred to in the suit.

9. Having examined the aforesaid judgement, the same does not refer to the provisions of Section 7(iv)(b) of the Act and the spirit behind the said

Section. To challenge the validity of the sale deed being null and void, it requires distinction, then ignoring the sale deed when one has preexisting

right in the property. When the sale deed is ignored then preexisting rights, which a person has in a property would stand established and as such,

the sale deed does not stand in the way of the petitioner when claiming his rights in the joint family property then in that situation, he was not bound

to pay the court fee, particularly when he is not the executant of the sale deed.

10. Resultantly, the trial Court appears to have not taken the matter into consideration and was moved by the fact that sale deed being challenged

by the son then the Court fee has to be paid, which view is not correct.

11. Resultantly, these petitions are accepted and the impugned order dated 3.10.2011 is set aside. The trial Court is directed to proceed, in

accordance with law. A copy of this order be placed on all the connected petitions.