
Sumer Singh and Others Vs Amar Singh and Others

Civil Revision No. 3814 of 2010

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 20, 2012

Acts Referred:

Constitution of India, 1950 – Article 227

Citation: (2013) 1 RCR(Civil) 580

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Advocate: P. Yadav, for the Appellant; Anupam Gupta with Mr. Karan Singh Sandhu, Advocate for Respondents No. 3 to 36, for the Respondent

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

By filing this revision petition under Article 227 of the Constitution of India, some of the plaintiffs have assailed order dated

24.04.2010 (Annexure P-4) passed by learned Civil Judge (Junior Division) Rewari, thereby, directing the plaintiffs to pay ad valorem court fee on

consideration mentioned in the sale deeds which are under challenge in the suit. Plaintiffs have sought declaration in the suit that they are owners in

possession of the suit land by way of adverse possession and defendants No. 1 to 41 have no right, title or interest in the suit land and various sale

deeds mentioned in the plaint executed in favour of defendants No. 3 to 41 and consequent mutations are null and void and relief of injunction has

also been prayed.

2. Application (Annexure P-2) was moved by contesting defendants for rejecting the plaint for non payment of ad valorem court fee on sale

consideration of the impugned sale deeds.

3. Plaintiffs by filing reply (Annexure P-3) contested the application.

4. Learned trial court vide impugned order (Annexure P-4) allowed the application (Annexure P-2) and directed the plaintiffs to pay ad valorem

court fee on consideration of the impugned sale deeds failing which the plaint would be rejected. Feeling aggrieved, some of the plaintiffs have filed

this revision petition.

5. I have heard learned counsel for the parties and perused the case file.

6. Learned counsel for the petitioners relying on judgment of Hon"ble Supreme Court in *Suhrid Singh @ Sardool Singh Vs. Randhir Singh* and

Others, titled as *Suhrid Singh @ Sardool Singh v. Randhir Singh* and others contended that since plaintiffs are not party to the sale deeds under

challenge and are in possession of the suit land and have not claimed the relief of possession, they are not liable to pay ad valorem court fee on sale

consideration of the impugned sale deeds.

7. On the other hand, learned Senior counsel for contesting respondents relying on judgment of Hon"ble Supreme Court in *Shamsher Singh Vs.*

Rajinder Prashad and Others, titled as *Shamsher Singh v. Rajinder Prashad* and others contended that plaintiffs are liable to pay ad valorem court

fee on sale consideration of the impugned sale deeds, notwithstanding that plaintiffs are not party to the sale deeds.

8. I have carefully considered the rival contentions. Judgment of Hon"ble Supreme Court in the case of *Suhrid Singh @ Sardool Singh* (supra) is a

direct judgment on the issue to be determined in the instant revision petition. It has been categorically and unequivocally laid down by Hon"ble

Supreme Court in the said judgment that if the plaintiff is not executant of the sale deed and is in possession of the suit property and sues for

declaration that the sale deed is null and void and does not bind him or his share, he has to pay fixed court fee and is not required to pay ad

valorem court fee on sale consideration of the impugned sale deed. The said judgment is thus directly and fully applicable to the facts of the case.

9. On the contrary, judgment in the case of *Shamsher Singh* (supra) is not directly applicable to the facts of the case in hand because in that case,

there was mortgage by father and decree was passed against father. Suit was filed by son alleging it to be Hindu Joint Family property. In these

circumstances, ad valorem court fee was held payable. So, facts in that case were different from the facts of the case in hand. Here, plaintiffs are

completely strangers to the sale deeds in question whereas in the case of *Shamsher Singh* (supra), plaintiff was not completely stranger to the

mortgage deed which had been executed by his own father and the plaintiff claimed on the basis of the property being joint hindu family property.

For the reasons aforesaid, I find that in the instant case, the plaintiffs being not party to the impugned sale deeds are not liable to pay ad valorem

court fee on sale consideration mentioned in the sale deeds. Impugned order (Annexure P-4) of the trial court is, therefore, illegal and suffers from

jurisdictional error. Resultantly, the instant revision petition is allowed. Impugned order (Annexure P-4) passed by the trial court is set aside.

Application (Annexure P-2) moved by contesting respondents stands dismissed.