

(2014) 07 P&H CK 0812

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 611 of 2011(O&M)

Manish Kumar

APPELLANT

Vs

Ravinder Kumar

RESPONDENT

Date of Decision: July 25, 2014

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Advocate: V.b. Aggarwal, Advocate for the Appellant; Vivek Goyal, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Mahesh Grover, J.

The short dispute raised in the instant petition is as to whether the petitioner is required to pay ad valorem court fee as directed vide impugned order dated 18.1.2011 or not.

2. The foremost consideration in matters such as these is the prayer that has been made in the plaint. It may be noticed that suit is for declaration seeking annulment of the sale deed executed by the father of the petitioner in favour of the respondents. The relevant portion of the prayer made by the petitioner in his plaint is extracted herebelow:-

It is, therefore, most respectfully prayed that a decree for declaration to the effect that the impugned sale deed No. 6783/1 dated 31.12.2008 and mutation No. 1590 sanctioned on 15.6.2009 and other revenue record based on the impugned sale deed in favour of the defendants no. 1 to 4 allegedly executed by defendant no. 5 are null and void and not binding on the rights of the plaintiffs with a decree of permanent injunction restraining the defendants No. 1 to 4 from alienating, selling, transferring, leasing, mortgaging any part of the suit land mentioned in Para no. 1 of this plaint to any stranger(s) in any manner or forcibly and illegally may kindly be passed in favour of the plaintiffs and against the defendants No. 1 to 4 with costs.

Any other relief may also be granted to the plaintiffs in the interest of justice.

3. This matter is no longer res integra as the Division Bench of this Court in CR no. 4753 of 2005 titled as Tarsem Singh and others vs. Vinod Kumar and others decided on 15.7.2011 after resolving the dispute between various single bench judgments in this regard has decided the matter exclusively on the basis of the judgment rendered by the Hon"ble Supreme Court. The relevant portion of the conclusion is extracted herebelow:-

i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.

ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the ad valorem Court fee as provided u/s 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.

4. Applying the aforesaid principles it is evident that it is a suit for declaration to the effect that the sale deed by the father of the petitioner is null and void and not binding upon the rights of the petitioners nor prayer for possession has been made therefore, the case of the petitioners squarely comes within clause (ii) of the judgment extracted above.

5. In view of above, instant petition is disposed of with a direction that the petitioner would be required to pay court fee as indicated above.