

**'IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****280****CR-6134-2022****Date of Decision: 22.04.2025****KULWANT SINGH****. . . . APPELLANT****Vs.****NIRMAL KAUR AND OTHERS****. . . . RESPONDENTS****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present: Mr. Vipin Mahajan, Advocate and
Ms. Chandanpreet Kaur Ahluwalia, Advocate
for the petitioner.

Mr. R.K Arya, Advocate
for respondent Nos. 1 to 3.

DEEPAK GUPTA, J.

Petitioner herein is the plaintiff before the trial Court in Civil Suit titled '*Kulwant Singh Vs. Nirmal Kaur and Others*'. He is aggrieved by the order dated 05.08.2022 (Annexure P-4), whereby he has been directed to pay the ad-valorem Court fee on the consideration amount as mentioned in the impugned sale deed, while allowing an application moved by respondent-defendant under Order 7 Rule 11 CPC.

2. It is contended by learned counsel that petitioner-plaintiff is not executant of the impugned sale deed dated 03.01.2013, which was allegedly executed by Shingara Singh, the father of the plaintiff, in favour of defendant No.1 Nirmal Kaur. Learned counsel further contends that petitioner did not seek exclusive possession of the suit property and rather, the relief claimed by him is that after setting aside the impugned sale deed, a decree for joint possession in equal share be passed, as plaintiff as well as defendant Nos. 2 to 7 are the legal heirs of Shingara Singh.

3. On the other hand, the contention of Id. counsel for the respondent is that since decree for possession is also sought, so plaintiff is liable to pay the *ad valorem* Court fee.



4. Heard.

5. It is not in dispute that petitioner-plaintiff is not executant of the impugned sale deed dated 03.01.2013. Apart from seeking the relief of setting aside the said sale deed, to which he is not the executant, petitioner prayed for joint possession of the suit property in equal share along with defendant Nos. 2 to 7 out of share of deceased Shingara Singh.

6. In ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others, 2010(2) RCR (Civil) 564***, while considering the import of Section 7(iv)(c) of the Court Fees Act, 1870 [for short 'the Act'], it has been observed by Hon'ble Supreme Court

"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 nonest, 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 nonest/ 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 invalid, but also the consequential relief of possession, he has to pay an ad-valorem 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.

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "co-parcenary" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv) (c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds."

7. It is evident from the Para No.7 of the judgment of Hon'ble Supreme Court as reproduced above that if prayer is for declaration that deed does not bind the co-parcenary and for joint possession and the plaintiff is not executant of the sale deed, then Court fee is to be computed under Section 7(iv)(c) of the Act.

8. In the light of the aforesaid legal position, the present petition is hereby disposed of by modifying the impugned order and by holding that the petitioner-plaintiff is required to pay the Court fee as per Section 7(iv) (c) of the Act.

22.04.2025

Pry

(DEEPAK GUPTA)

JUDGE

Whether speaking/reasoned? Yes
Whether reportable? Yes