

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CR-3282-2025 (O&M)****Date of Decision : 19.08.2025**

Davinder Kumar ... Petitioner

Versus

Kuldeep Singh and Others ... Respondents

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Aditya Anand, Advocate for the petitioner.

ALKA SARIN, J. (Oral)

1. Present revision petition has been filed under Article 227 of the Constitution challenging the order dated 10.03.2025 whereby the application filed by defendant No.6 i.e. petitioner herein under Order VII Rule 11 of the Code of Civil Procedure, 1908 has been dismissed.

2. The brief facts relevant to the present *lis* are that the plaintiff-respondent Nos.1 and 2 herein filed a suit *inter alia* for declaration to the effect that they are the Class-I legal heirs of the deceased Gurbachan Singh and deceased Gurdev Kaur, who died in the year 2019 and that they are owners in possession of 50% share in Booth No.15, Sector 23-C, Chandigarh by virtue of a registered Will dated 25.06.1997 executed by deceased Gurdev Kaur and further to the effect that the transfer of ownership of Booth No.15, Sector 23-C, Chandigarh vide a transfer letter No.92184 dated 12.12.2014 to the extent of 50% share on the basis of registered Will of late Gurbachan Singh was bogus, manufactured, null and void document

and further challenge is also laid to the sale deed dated 23.10.2015 executed by Supinder Singh and Bhinder Kaur in favour of defendant No.6 i.e. petitioner herein. An application was filed by the defendant No.6-petitioner herein for rejection of the plaint on the ground that *ad valorem* court fees has not been affixed. Reply was filed to the said application. Vide the impugned order dated 10.03.2025 the application has been dismissed. Aggrieved by the same, present revision petition has been filed.

3. Learned counsel for the defendant No.6-petitioner would contend that by way of clever drafting the plaintiff-respondent Nos.1 and 2 have not sought the relief of possession though they are stated to be in possession of only 50% share of the property. Learned counsel for the defendant No.6-petitioner has relied upon judgments of this Court in the cases of **Om Parkash vs. Indrawati [2002(4) RCR (Civil) 186]**, **Dara Singh vs. Gurbachan Singh & Ors. [2010 (22) RCR (Civil) 389]**, **Sucha Singh & Anr. vs. Gurjant Singh & Anr. [2020 (2) RCR (Civil) 139]**, **Mohinder Singh & Anr. vs. Swaran Singh Grewal & Ors. [2009 (32) RCR (Civil) 642]**, **Jaswinder Singh vs. Om Parkash [2011 (53) RCR (Civil) 851]** and **Mohinder Singh vs. Shamsher Singh [2010 (2) RCR (Civil) 505]** and that of the Hon'ble Supreme Court in the cases of **Executive Officer, Arulmigu Chokkanatha Swamy Koil Trust Virudhunagar vs. Chandran & Ors. [2017 (2) RCR (Civil) 1]**, **Vasantha (Dead) Thr. LR vs. Rajalakshmi @ Rajam (Dead) Thr. LRs [2024 (5) SCC 282]** to buttress his argument that *ad valorem* would have to be affixed in the present case.

4. Heard.

5. In the present case, admittedly, the plaintiff-respondent Nos.1 and 2 are owners in possession of 50% share of the property. The challenge is to the sale deed and transfer letter executed by defendant Nos.2 and 3 (respondent Nos.4 and 5 herein) in favour of defendant No.6-petitioner herein. Admittedly, the plaintiff-respondent Nos.1 and 2 are neither the executant of the said documents nor they are seeking possession of the suit property as they are already in joint possession. In the case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh & Ors. [2010(12) SCC 112]** has held as under :

“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 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."

6. The question as to whether *ad valorem* court fee has to be affixed is required to be governed by the principles laid down in **Suhrid Singh's** case (supra). In the case of a non-executant who is already in possession of the property and seeks to get the document annulled then the case would be governed by the second principle of **Suhrid Singh's** case (supra) and he would be required to pay court fees as applicable under

Article 17(iii) of Schedule II of the Court Fees Act, 1870. The plaintiff-respondent Nos.1 and 2 are already stated to be in possession of 50% of the property. It is not a case where the plaintiff-respondent Nos.1 and 2 are executant of the sale deed or out of possession, rather their specific case is that they are in possession. Therefore, there would be no requirement to affix *ad valorem* court fees. Even otherwise, a co-sharer is stated to be owner in every inch of the land. The plaintiff-respondent Nos.1 and 2 are stated to being the co-owners in the suit property. The judgments relied upon by the learned counsel for the defendant No.6-petitioner are not applicable to the present case as in none of the cases the plaintiff was in possession of the suit property.

7. In view of the above, no fault can be found with the impugned order and accordingly the present petition being devoid of any merits is dismissed. Pending applications, if any, also stand disposed off.

8. Needless to say, any observations made herein shall not be treated as an expression of opinion on the merits of the case.

19.08.2025
jk

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO