



137 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-824-2025 (O&M)

Date of decision : 06.08.2025

Surender

..... Petitioner

Versus

Inderjeet Singh & ors.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. Nipun Vashist, Advocate
for the petitioner.

Mr. R.D.Yadav, Advocate
for respondents No.1 to 3.

PANKAJ JAIN, J. (ORAL)

1 Challenge is to order dated 03.12.2024 passed by Civil Judge (Senior Division), Rewari whereby application filed by the petitioner under Order VII Rule 11 CPC claiming that the suit is undervalued and the plaintiff was required to affix *ad valorem Court fee* stands rejected.

2 Counsel for the petitioner while assailing the impugned order submits that the same would be covered by ratio of law laid down by Supreme Court in *Suhrid Singh @ Sardool Singh vs. Randhir Singh, 2010(2) RCR (Civil) 564* as the plaintiff who is not in possession is not merely seeking declaration that the sale deed is invalid, but is also claiming relief of possession and thus he is required to pay *ad valorem Court fee*.



3 *Per contra* learned counsel for respondents No.1 to 3 submits that possession has been sought not consequence to the annulment of the sale deed but in a suit for partition by way of separate possession. He submits that present suit is a suit for separate possession by a co-owner and the challenge to the sale deed is to the effect that the same does not bind or affect the right of the plaintiff.

4 I have heard learned counsel for the parties and have gone through the records of the case.

5 In order to resolve the controversy and the issue involved in the present revision petition, it will be apt to peruse the prayer made in the plaint which reads as under :-

“a. That a preliminary decree for partition of properties shown with red colour in site plan annexure A and annexure B and annexure C (Old Haveli) attached with the plaint and Khadha Khad bearing Khasra No. 111, 178 fully mentioned in para No. 1 of the plaint as per respective shares be passed in favour plaintiffs and against the defendants.

b. That a decree for permanent injunction to the effect that defendant may be restrained from alienating and creating charge or raising construction over the suit property be passed in favour of plaintiffs and against the defendants.

c. That a decree for declaration to the effect that the sale deed No. 3683 registered on 13-08-2013 and sale deeds No. 4796 & 4797 registered on 10-10-2013 are illegal, void, nonest and unauthorized and not binding on the rights of plaintiff and be set aside be passed favour of plaintiffs and against the in defendants.

d. That a decree for separate possession as per respective share of parties to the suit be passed in favour of plaintiffs and against the defendants and possession of plaintiffs be ordered to be delivered through the process of civil court.



d. Cost of the suit.

e. Any other relief which the Hon'ble court may deems fit be passed in favour of plaintiffs and against the defendants.”

6 Section 7 of the Court Fee Act, 1870 deals with valuation of the suit. Section 7 (iv) (c) of the 1870 Act reads as under :-

"7. 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 :

(iv) in suits - x x x x (c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed, x x x x x according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.”

7 The aforesaid provision came for interpretation before the Supreme Court in ***Suhrid's case (supra)***. The Supreme Court while considering the import of Section 7(v) & (iv) of the 1870 Act and explaining the same with an illustration observed 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."

8 The prayer clause raised in the present plaint when sieved from the ratio of law laid down by Supreme Court in the case of ***Suhrid's case supra***, it is evident that the possession is not being sought as a consequence of the declaration that the sale deed is invalid. Rather suit is for partition filed by a co-owner asserting that sale deed by a co-owner does not effect his right. Admittedly the plaintiff is not the executant of the sale deed. The possession of defendant No.4-petitioner on strength of sale deed is merely that of a co-owner. In the absence of there being any partition, possession by a co-owner is deemed to be possession on behalf of all the co-owners. Reference can be made to following observations made by Full Bench of this Court in ***Bhartu vs. Ram Swarup, reported as 1981 PLJ 204'*** wherein the Full Bench of this Court approved the following propositions *qua* rights and liabilities of co-sharers :-



1) A co-owner has an interest in the whole property and also in every parcel of it.

(2) Possession of the joint property by one co-owner is in the eye of law, possession of all even if all but one are actually out of possession.

(3) A mere occupation of a larger portion or even of an entire joint property does not necessarily amount to ouster as the possession of one is deemed to be on behalf of all.

(4) The above rule admits of an exception when there is ouster of a co-owner by another. But in order to negative the presumption of joint possession on behalf of all, on the ground of ouster, the possession, of a co-owner must not only be exclusive but also hostile to the knowledge of the other, as, when a co-owner openly asserts his own title and denies that of the other.

(5) Passage of time does not extinguish the right of the co-owner who has been out of possession of the joint property except in the event of ouster or abandonment.

(6) Every co-owner has a right to use the joint property in a husband like manner not inconsistent with similar rights of other co-owners.

(7) Where a co-owner is in possession of separate parcels under an arrangement consented to by the other co-owners, it is not open to any one to disturb the arrangement without the consent of others except by filing a suit for partition.”

9 In view thereof, this Court finds that no fault can be found with the impugned order passed by Civil Judge (Senior Division), Rewari rejecting the application filed under Order VII Rule 11 CPC. More so when the issue with respect to fixation of *ad valorem Court fee* by the plaintiff has been kept open to be decided at the ultimate stage.

10 Needless to say that anything observed herein shall not be construed to be an opinion on the merits of the case.

11 Revision petition stands dismissed.

06.08.2025
Pooja Sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No