

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR No.5648 of 2017(O&M)
Date of Decision: 04.07.2018**

**Tarun Jain
Vs
Kartaro Devi**

**.....Petitioner

.....Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Ms. Poonam Verma, Advocate
for the petitioner.

Ms. Anupam Bhanot, Advocate
for respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 05.05.2017 passed by the Additional Civil Judge (Senior Division), Ambala, whereby application filed by the defendants No.2 and 3 under Order 7 Rule 11 CPC was rejected.

[2]. Plaintiff filed a suit for declaration to the effect that the plaintiff is owner in possession of the suit property. The sale deed dated 01.10.1992 executed by the plaintiff in favour of defendant No.1 and sale deed dated 13.09.2004 executed by defendant No.1 in favour of defendants No.2 and 3 are sought to be declared as null and void being fraudulent.

[3]. Perusal of the plaint would show that the plaintiff claimed herself to be in possession of the suit property. It is a

settled principle of law that at the time of consideration of application under Order 7 Rule 11 CPC, only averments made in the plaint are to be seen. Plaintiff has sought revocation of sale deed allegedly executed by herself in favour of defendant on 01.10.1992 as well as sale deed executed by defendant No.1 in favour of defendants No.2 and 3 on 13.09.2004.

[4]. Apparently, plaintiff has alleged fraud in execution of sale deed dated 01.10.1992 in which plaintiff is shown to be executant of the sale deed.

[5]. In view of law laid down in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010(2) RCR (Civil) 564**, if the executant of the sale deed seeks cancellation of the same, he has to affix Court fee on the consideration stated in the instrument.

[6]. The view expressed by the High Court in **CR No.4067 of 2012** titled **Dharam Singh and others Vs. M/s Omax Construction Ltd.** decided on 12.03.2015 in the context of not requiring payment of Court fee in such a situation was reversed by the Hon'ble Apex Court in **CA No.8880 of 2015** arising out of **SLP (C) No.16313 of 2015** titled **M/s Omax Construction Ltd. Vs. Dharam Singh and others** vide order dated 26.10.2015.

[7]. In view of aforesaid, qua first sale deed dated 01.10.1992, the plaintiff being executant of the sale deed has to

affix the Court fee as per first principle of **Suhrid Singh @ Sardool Singh's case (supra)** i.e. on the basis of sale consideration shown in the instrument/sale deed. As per para No.8 of the plaint, the plaintiff claimed herself to be in possession of the suit property, therefore, challenge laid to the sale deed dated 13.09.2004 has to be answered as per second principle of **Suhrid Singh @ Sardool Singh's case (supra)**, which requires the payment of Court fee of Rs.19.50 under Article 17(iii) of the second schedule of the Act.

[8]. For the reasons recorded hereinabove, this revision petition is allowed in the aforesaid manner. Normal consequences to follow.

July 04, 2018

Prince

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No