

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Raj Mohan Singh, J.

CR No.3824 of 2014

Decided on: 03.12.2015

Tarun Kumar and ors.

Petitioners

Versus

Pankaj Kapoor and ors.

Respondents

Present: Mr. Munish Bhardwaj, Advocate for the petitioners.

Mr. Ashok Kumar, Advocate for respondent No.2.

Court Fees Act, 1870 (7 of 1870), Section 7(iv) -- Code of Civil Procedure, 1908 (V of 1908), Order 7 Rule 11 CPC -- Ad valorem court fee -- Rejection of plaint -- Suit for declaration for declaring sale deed null and void on account of non passing of consideration, the possession of the land remained with them and cheques for consideration were not honoured -- Held, at this stage of litigation, only averments in the plaint are to be seen -- Trial Court is directed to proceed with the suit without insisting upon payment of ad valorem court fee.

(Para 4-7)

Cases referred:

1. Rambai Vs. Kapoori 2014 Volume 4 R.C.R (Civil) 376.

JUDGMENT

RAJ MOHAN SINGH, J. (ORAL) –

1. Plaintiffs have challenged the order dated 25.04.2014 vide which application filed by defendant No.1 under Order 7 Rule 11 CPC has been accepted and the plaintiffs have been directed to make good deficiency of court fee on or before 28.05.2014 failing which the Court shall proceed in accordance with law. Plaintiff filed a suit for declaration & permanent injunction pleading that they are husband and wife. Property measuring 12 marla 156 square feet is jointly owned and possessed by them. A sale deed dated 26.06.2012 was executed in favour of defendant no.1 for a total sale consideration of Rs. 19 lacs. The sale consideration was allegedly paid by issuing two cheques i.e. Cheque Nos.528901 and 528902. Both the cheques were ultimately dishonoured and the plaintiffs had to initiate proceedings in terms of Section 138 of the Negotiable Instruments Act.

2. Plaintiffs filed suit for declaration seeking the sale deed in question to be null and void being executed without payment of consideration. They also sought permanent injunction restraining the defendant No.2 from alienating the suit land or creating any incumbrances or charge over the suit land. In the suit, defendant No.1 moved an application under Order 7 Rule 11 CPC, requiring the plaintiffs to affix ad valorem court fee as they have assailed the sale deed and therefore, declaration to seek cancellation of deed attracts payment of ad

valorem court fee.

3. Plaintiffs alleged that since no consideration was passed over to them, therefore, possession of the property always remained with them and only delivery of symbolic possession was recorded in favour of the defendant No.1. Defendant in a very clandestine manner mortgaged the property of defendant No.2 on the next date of execution of sale deed. That is how the sale deed came to be pledged in favour of defendant No.2. At this stage only averments/allegations made in the plaint are to be seen.

4. Apparently the plaintiffs have alleged that on account of non passing of consideration, the possession of the land remained with them and defendant No.1 acted in a very fraudulent manner to pledge the sale deed in favour of defendant No.2 without honouring the cheques issued towards consideration.

5. Learned counsel cites **Rambai Vs. Kapoori 2014 Volume 4 R.C.R (Civil) 376**, to contend that if a person commits fraud and gets the sale deed executed without payment of consideration and the possession remained with the vendor, then in a suit for declaration filed by vendor, ad valorem court fee is not required to be paid. Learned counsel for respondent No.1 did not appear despite service. Learned counsel for the respondent No.2 vehemently contested the claim of the petitioners on the ground that the property has been duly mortgaged with defendant No.2 and it is on account of unholy alliance between the plaintiffs and defendant No.1, the claim of the defendant No.2 is being put to stake.

6. I have considered the submissions made by both the parties. At this stage of litigation, only averments in the plaint are to be seen. The allegations of plaint are categoric in nature that the consideration was never passed over to the plaintiffs. Sale deed has been executed without passing of consideration. Possession always remained with the vendor/plaintiffs.

7. In view of aforesaid, I am fully in agreement with the proposition held in Rambai Vs. Kapoori (supra). Accordingly, this revision petition is accepted. Impugned order is set aside. Trial Court is directed to proceed with the suit without insisting upon payment of ad valorem court fee under the impugned order.

Petition allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Ritu Bahri, J.

FAO No. 2089 of 2014 (O&M)

Decided on: 04.11.2015

Shri Ram General Insurance Company Ltd.

Appellant

Versus

Harvinder Kaur and others

Respondents

Alongwith

FAO No. 2086 of 2014 (O&M), Shri Ram General Insurance Company Ltd. v. Kanwaljit Singh and others

Present: Mr. Kaavya Jariyal, Advocate for Mr. T.K Joshi, Advocate