

transfer possession and to divert himself of all control over the subject of the gift.”

23. Possession has been defined in Section 394 of the Muslim Law by *Tyabji*. It is thus:-

“A person is said to be in possession of a thing, or of immovable property, when he is so placed with reference to it that he can exercise exclusive control over it, for the purpose of deriving from it such benefit as it is capable of rendering, or as is usually derived from it.”

24. From the aforesaid it is vivid that the possession can be shown not only by enjoyment of the land or premises in question but also by asserting who has the actual control over the property. Someone may be in apparent occupation of the premises, but the other would have control and gaining advantage of possession. In the case at hand plea of actual physical possession by Rasheeda Khatoon does not deserve acceptance. The existence of any overt act to show control requires to be scrutinised. A plea was advanced by the plaintiff that she had been collecting rent from the tenants inducted by the donor, but no rent receipts have been filed. On the contrary certain rent receipts issued by the donor after the execution of the deed of gift have been brought on record. There is no proof that the land was mutated in her favour by the revenue authorities. She was also not in possession of the title deeds. Thus, the evidence on record, on a studied scrutiny, clearly reveal that Rasheeda Khatoon was not in constructive possession. Therefore, one of the elements of the valid gift has not been satisfied. That being the position there is no necessity to advert to the aspect whether the instrument in question required registration or not because there can be certain circumstances a deed in writing may require registration. In the case at hand, we conclusively hold that as the plaintiff could not prove either actual or constructive possession, the gift was not complete and hence, the issue of registration does not arise.

25. In view of the aforesaid premises, we, though for different reasons, affirm the judgment and decree of the High Court and dismiss the appeal as a consequence of which the suit of the plaintiff stands dismissed. There shall be no order as to costs.

CIVIL APPEAL NO. 564 OF 2009

26. In view of the dismissal of Civil Appeal No. 603 of 2009 the present appeal stands dismissed. There shall be no order as to costs.

Appeals dismissed.

PUNJAB & HARYANA HIGH COURT

Before: Dr. Bharat Bhushan Parsoo, J.

CR No.2489 of 2012 (O&M)

Decided on: 04.08.2014

Rambai

Petitioner

Versus

Kapoori and another

Respondents

Argued by: Mr. Rajender Chhokar, Advocate for the petitioner.
Mr. Chanderhas Yadav, Advocate for the respondents.

Court Fees Act, 1870 (7 of 1870), Section 7 -- Ad-valorem court fees -- Suit for declaration that sale deed is null and void -- Possession of the land has not been disturbed -- One of the member of the family has prima-facie duped and defrauded the plaintiff for getting the sale deed executed in his and his wife's name -- Only relief sought is declaration by the plaintiff who is poor and helpless illiterate Parida Nashin old woman -- Ad-valorem court fee is not payable.

(Para 4, 17)

Cases referred:

1. Gobind Kaur v. Pritam Singh, 1975 PLR 06.
2. Jagat Singh v. Avtar Singh and others, 1970 Cr.Law Journal 80.
3. Om Parkash v. Smt. Bimla Devi and others, CR No.5932 of 2012 decided on 22.5.2014.
4. Niranjan Kaur v. Nirbigan Kaur, 1982 PLR 127.
5. Suhrid Singh @ Sardool Singh v. Randhir Singh and others, 2010 AIR (SC) 2807.
6. Surjit Singh v. Karamjit Kaur, 2012(3) Civil Court Cases 556 (P&H).
7. Khajan v. J.S.R. Land Developer Pvt. Ltd. & others, 2011(3) PLR 364 (P&H).
8. Boda Ram Versus Beermati Devi and others 2013(4) ICC 664 (P&H).

JUDGMENT

DR. BHARAT BHUSHAN PARSOON, J. –

By way of this revision petition, order dated 10.4.2012 (Annexure P-1) whereby accepting application of the respondents-defendants (in the suit preferred by the petitioner-plaintiff challenging a sale deed) under Order VII Rule 11 CPC, the petitioner-plaintiff has been called upon by the lower court to make up deficiency in the court fee, is under challenge. It is claimed that since the impugned sale deed is result of fraud and misrepresentation at the hands of the respondents-defendants and no consideration had passed hands, no court fee is payable by the petitioner-plaintiff. It is also claimed that possession of the land is also undisturbed and no relief of possession has been claimed either.

2. Stand of the respondents-defendants, on the other hand, is that the petitioner-plaintiff being vendor is a party to the sale deed wherein consideration of Rs.13,50,000/- had been paid and thus ad-valorem court fee is payable.

3. Counsel for the parties have been heard while going through the grounds of revision, impugned order as also material and circumstances on the paper book.

4. The petitioner is executant of the sale deed impugned by her in the suit wherein she has sought declaration that it is null and void. Relief of permanent

injunction for restraining the defendants against alienation of the suit in any manner has been sought. It is claimed that the sale deed is result of fraud where nether sale was intended to be made nor any consideration had passed to her. It is, thus, urged that ad-valorem court fee is not payable.

5. Counsel for the respondents, on the other hand, has urged that irrespective of nature of the document i.e. as to whether it is a sale-deed or gift deed or a Court decree, once relief of declaration of the document alleging the same as illegal, null and void etc., some consequential relief has been sought, it attracts affixation of advalorem Court fee. Counsel for the contesting respondents has sought support from judgment of a coordinate Bench of this Court titled **Gobind Kaur Versus Pritam Singh 1975 PLR 06** wherein considering interplay of provisions of Section 7 (iv)(c) & 7(v) & Schedule I Article I of the Court Fees Act, 1870 (hereinafter referred to as *the Act*), it was held that where suit for declaration that the impugned gift deed executed by the plaintiff in favour of the defendant was not operative qua the rights of the plaintiff as owner of the suit property and further relief for possession of the suit property was sought, ad-valorem Court fee was held to be payable on the plaint. Support has further been sought from yet another authority of a coordinate Bench of this Court reported as **Jagat Singh Versus Avtar Singh and others, 1970 Crl.Law Journal, 80**, where possession was sought without getting the gift-deed cancelled but it was held that the plaintiff had to get the alleged gift deed (to which he himself was a party) cancelled before he could seek possession of the land. The plaintiff was ordered to pay ad-valorem Court fee on the value of the property involved.

6. In the present case, circumstances are different. There is nothing to show that payment, in fact, was made to the petitioner-vendor. Rather, suit of the petitioner-plaintiff that she was to transfer her property in favour of her five sons for which she was taken to the Sub-Registrar's office but was defrauded by the respondent-vendee, is pending adjudication.

7. Concededly, the petitioner is more than 100 years old Parda Nashin lady. She was earlier married with one Tarif after whose death, she did Karewa marriage with one Ramphal from which marriage, two daughters, who are now married, were born to her. She is now residing in her parental house whereas land measuring 7 Kanal 4 Marlas is located in village Sikanderpur, Tehsil and District Jhajjar. This land had come to her from her earlier husband Tarif but was being cultivated by her subsequent husband Ramphal who had 5 sons out of whom, one named Ram Narain has died and is survived by his three sons.

8. During the course of arguments, contention of counsel for the petitioner is that the petitioner is more than 100 years old and is moving from pillar to post seeking relief against fraud played upon her, when not even a penny has been paid to her. Though her claim has been contested, but age of the petitioner is not under question. It is also to be noticed that consideration shown in the sale deed is huge amount of Rs.13,50,000/-. Her allegation is that this payment was not made to her and fraud was played. The suit is merely for declaration; restraint against the defendants against creation of third party rights by further alienation is also sought. No relief of possession has been sought.

9. It is claimed that she wanted to distribute this land to 5 sons of Ramphal her husband and was brought to the office of Sub-Registrar for the

said purpose by respondent Jai Bhagwan son of Ram Kishan. Thus, Ram Kishan is son of Ramphal from his earlier wife Smt. Malli. In short, respondent Jai Bhagwan being son of Ram Kishan son of Ramphal (husband of the petitioner) to the exclusion of his father, three uncles and sons of his 5th uncle Ram Narain appropriated the land to him and his wife without payment of any money by defrauding the petitioner.

10. It is claimed that when she was moving from pillar to post for cancellation of the sale deed and did not find any support, an FIR was registered against respondent Jai Bhagwan etc. under Sections 420, 467, 468, 471 and 120-B IPC vide FIR No.455 dated 4.8.2011. It is a conceded fact that pre-arrest bail of respondent Jai Bhagwan was declined by this Court observing that sale consideration of the impugned sale deed had not been paid before the Sub-Registrar and regarding allegations that the sale consideration had been paid at home. Said Jai Bhagwan (respondent No.2 in the petition herein) had not been able to satisfy the court. Copy of order in the bail application was read over and was produced by the counsel for the petitioner during the course of arguments and when no objection from the other side was taken, it was taken on record. It is evident that no sale consideration had been paid. Relevant portion of the bail order of 4.10.2011 passed in CRM-M-26979-2011 (O&M) is as under:

“According to the sale deed, the sale consideration was not paid before the Sub Registrar, rather it was allegedly paid at home but on a pointed question put by this Court about the source of money which has been allegedly paid by the vendee/petitioner to the complainant, no plausible answer is given rather it is argued that the petitioner has been looking after the complainant from the last 30 years and has been regularly paying money to her which constitutes the sale consideration recited in the sale deed. However, there is no prima-facie proof that the sale consideration is paid to the complainant.”

11. When neither the petitioner owns execution of the sale deed nor any consideration had been paid to her for execution of the sale deed nor the possession has been disturbed, the only change which has come is the execution of a document which is disputed in its authorship as also in consideration backing the document. Only relief sought in the suit is for declaration that the sale deed is illegal, null and void. Though relief of permanent injunction has also been claimed but it emanates from the cancellation itself and does not become any substantive relief by its own nature.

12. In a recent judgment of this Court **decided on 22.5.2014 titled Om Parkash Vs. Smt. Bimla Devi and others** bearing **CR No.5932 of 2012**, this matter has been discussed threadbare. In Full Bench decision of this Court in **Niranjan Kaur Versus Nirbigan Kaur 1982 PLR 127**, interplay of Section 7(iv)(c) and Article 1 Schedule 1 of the Court-fees Act, 1870 was discussed at length. It was held that when suit is for cancellation of a sale deed executed by the plaintiff and declaration sought is that it was executed as a result of fraud and thus, was not binding on him, does not convert the suit with one for declaration with consequential relief of possession so as to fall with Section 7(iv)(c). It was further explained that the court should look into allegations made in the plaint to find out substantive relief asked for. The court had gone

even further and held that when main relief sought in the suit is cancellation of deed and any other relief, if is surplusage, the case would not be covered by Section 7(iv)(c).

13. Counsel for the petitioner seeking support from **Niranjan Kaur's case (supra)** has further urged that when the document is without any consideration and needs cancellation then no ad-valorem court fee is leviable as no relief of possession is sought. Support has also been sought from **Suhrid Singh @ Sardool Singh Versus Randhir Singh and others 2010 AIR (SC) 2807** and **Surjit Singh Versus Karamjit Kaur 2012(3) Civil Court Cases 556 (P&H)**.

14. Counsel for the respondents, on the other hand, has urged that if sale deed is sought to be cancelled on the ground of fraud, ad-valorem court fee is payable. Counsel for the respondent has sought support from **Khajan Versus J.S.R. Land Developer Pvt. Ltd. & others 2011(3) PLR 364 (P&H)** and **Boda Ram Versus Beermati Devi and others 2013(4) ICC 664 (P&H)**.

15. In the present case as well, notwithstanding the fact that relief of permanent injunction has also been claimed but this is only a surplusage and emerges from the main relief of declaration and she has not sought relief of possession.

16. Limited question posing for answer is as to what court fee is to be affixed? The petitioner has claimed that when she has neither executed the sale deed nor has received the consideration nor had even been dispossessed nor she is claiming possession, she is not entitled to pay advalorem court fee.

17. In the peculiar facts and circumstances of this case, when possession of the land has not been disturbed and one of the member of the family has prima-facie duped and defrauded the petitioner for getting the sale deed executed in his and his wife's name and the only relief sought is declaration by the petitioner who is poor and helpless illiterate Parda Nashin old woman, considering substance of the pleadings of the plaintiff as also the attending circumstances for affixation of court fee, it is held that no ad-valorem court fee is payable.

18. Keeping in view the totality of facts and circumstances, the impugned order calling upon the petitioner to pay ad-valorem court fee is not only wrong on facts but also in law. Consequently, setting aside the same, this petition is allowed. The parties are directed to appear before the lower court on 1.9.2014.

19. Nothing observed above shall have any bearing on merits of the suit pending adjudication before the lower court.

20. Keeping in view the peculiar circumstances of this case, before parting with the judgment, following directions are necessary:

- (i) This suit would be decided within 3 months by taking day to day proceedings, if necessary;
- (ii) Trial of FIR No.455 dated 4.8.2011 under Sections 420, 467, 468, 471 and 120-B IPC of Police Station, Jhajjar, District Jhajjar, if it is already not completed, would be completed within 3 months even by taking day to day proceedings, if found necessary; and,
- (iii) District Legal Services Authority, Jhajjar would be in touch with the petitioner herein and would ensure that legal services, if she

needs any, are provided to her expeditiously.

21. Copy of this order be sent for compliance to all concerned through the District & Sessions Judge, Jhajjar and Member Secretary, Haryana Service Legal Services, Authority, Chandigarh.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Hemant Gupta & Jaishree Thakur, JJ.

CWP No.6349 of 2013 (O&M)

Decided on: 13.10.2014

Gurinder Singh & another

Petitioners

Versus

Estate Officer, Chandigarh Administration & others

Respondents

Present: Mr. A.S. Grewal, Advocate for the petitioners.

Mr. Sanjeev Sharma, Senior Advocate with Ms. Smriti Dhir,
Advocate for the respondents.

Capital of Punjab (Development and Regulation) Act, 1952 (27 of 1952), Section 8-A -- Allotment of plot -- Misuse by tenants -- Resumption of plot -- Opportunity of hearing -- Record shows that the resumption order has been served upon the tenants and the present petitioners/allottees at Chandigarh whereas at that time, the petitioners/allottees were residents of Canada, so, there was no effective service -- Petitioners/allottees made every effort possible to ensure that the misuse is stopped by filing eviction petitions against the said tenants -- Held, resumption order has been passed at the back of the petitioners without affording the petitioners adequate and proper opportunity of being heard in person -- Moreover, the misuse was on account of the tenants and not on account of the petitioners themselves -- As on date, there is no misuse of the property -- Resumption of a property in such cases is much too harsh -- But the fact remains that there was misuse of the residential building -- For the forced litigation, the petitioners must pay cost of litigation assessed at Rs.1,00,000/- to the Administration -- Resumption order and the subsequent orders set aside.

(Para 6-9)

Cases referred:

1. Teri Oat Estates (P) Ltd. v. U.T. Chandigarh & others, 2004 L.A.R. 31 (SC) = (2004) 2 SCC 130.
2. Dheera Singh v. U.T. Chandigarh Administration, 2013(1) L.A.R. 1 (P&H Full Bench) = ILR (2013) 1 P&H 217.

JUDGMENT

JAISHREE THAKUR, J. –

1. Petitioners herein have challenged the order of resumption dated