

(2016) 07 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : CR No. 5095 of 2015

Rakesh Kumar

APPELLANT

Vs

Kundan Lal

RESPONDENT

Date of Decision : 23-07-2016

Acts Referred:

Court Fees Act, 1870 — Section 7

Citation : (2017) 1 PLR 273

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. Sandeep Verma, Advocate, for the Petitioner; Mr. Sudhir Aggarwal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Amit Rawal, J.(Oral) - The petitioner-defendant is aggrieved of the impugned order (Annexure P-1), whereby application moved under Order 7, Rule 11 CPC seeking rejection of the plaint on following two grounds:-

- a) For want of payment of ad-valorem court fees.
- b) Suit ex facie being barred by law of limitation, has been declined.

2. Mr. Sandeep Verma, learned counsel appearing on behalf of the petitioner submits that vide sale deed bearing No.1885 of 12.02.2009, the plaintiff transferred the property in favour of the defendant and the mutation thereon was sanctioned on 20.03.2009. There is categoric averment in the sale deed that the possession was duly handed over. Since the petitioner was apprehending the threat of forcible interference in possession, suit for permanent injunction was filed and status-quo order was granted vide order dated 15.07.2015. The present suit is for seeking declaration that the sale deed is null and void on the basis of fraud and forgery. No ad-valorem court fees has been paid, much less, possession, therefore, application should have been entertained. Even suit is barred by law of limitation as the same has been filed after six years. In support

of his contention, he has relied upon ratio decidendi culled out in *Suhrid Singh @ Sardool Singh v. Randhir Singh*, 2010(2) RCR (Civil) 564.

3. Mr. Sudhir Aggarwal, learned counsel appearing on behalf of respondent submits that conceded position on record that the sale deed, aforementioned, is without consideration. This fact is evident from the written statement and, therefore, respondent-plaintiff being signatory of the documents cannot be called upon to pay the ad-valorem court fee in the absence of the value of the price of the property reflected in the sale deed. As regards the possession of the khasra girdawri from the date of sale deed till date are in favour of the respondent-plaintiff. Mutation does not confer title or possession, though it has presumption of truth but is rebuttal, from perusal of the khasra girdawri, though status-quo order does not confer the possession. There is categoric pleadings with regard to the possession, therefore, ad-valorem court fees is also not required to be paid. In support of his contention, he has relied upon following judgments:-

1. *Harbans Kaur v. Amrik Singh @ Beer Singh*, 2015(4) RCR (Civil) 770.

2. *Rambai v. Kapoori and another*, 2014(4) RCR (Civil) 376, and urges this Court for affirming of the findings under challenge.

4. I have heard learned counsel for the parties and appraised the paper book.

5. For the sake of brevity, the relevant portion of the written statement filed by the petitioner is required to be extracted, which reads thus:-

"The plaintiff never received any alleged amount of Rs.45 lacs from the defendant."

6. Khasra Girdawri would reveal that the respondent-plaintiff is in possession of the property, therefore, ad-valorem court fees qua possession is not required as there is categoric pleadings with regard to the possession though the same has been disputed by the petitioner. In case, the respondent-plaintiff is not able to prove the possession, the court can always calls upon the plaintiff to pay the ad-valorem court fees before the decision of the suit but not in the manner and mode as has been chosen by the petitioner-defendant. As regards the applicability of the Limitation Act, I am of the view that Article 56 of the Indian Limitation Act, envisages the period of limitation from the date of surfacing of the fraud. For the sake of brevity, Article 56 of the Indian Limitation Act, reads thus:-

" To declare the forgery of an When the issue or registration 3 yrs instrument issued or registered becomes known to the plaintiff"

7. The aforementioned view of mine has already been rendered in favour of such person who sought declaration of the transfer deed or sale deed executed by playing fraud without any consideration i.e. in *Harbans Kaur (Supra)* and *Ram Bai (Supra)*.

8. For the foregoing reasons, I do not find any illegality and perversity in the order under challenge.

9. With the aforementioned observations, impugned order is upheld.
Revision petition stands dismissed.