2026 INSC 913

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2026
(Arising out of SLP (C) No.31540 of 2025)

NEELAM SHARMA AND OTHERS ...APPELLANTS

VERSUS

AMITA PASSAN AND OTHERS ...RESPONDENTS

J U D G M E N T

N.V. ANJARIA, J.

Leave granted.

1.1 Heard learned counsel Mr. Amit Aggarwal for the appellants and learned Senior Counsel Mr. Manoj Swarup for the respondents.

2. The appellants herein are the original plaintiffs. The present appeal is directed against order dated 19.05.2025 passed by the High Court of Punjab and Haryana at Chandigarh[1] in Civil Revision Petition No. 2778 of 2022 (O&M). Thereby, the High Court allowed the Revision

[1] **Hereinafter, "High Court"**

Petition and set aside the order dated 12.04.2022 passed by the Court of Additional Civil Judge (Senior Division), Panchkula[2].

2.1 The Trial Court dismissed the application under Order VII Rule 11, Code of Civil Procedure, 1908[3], filed by defendant No. 2 in Civil Suit No. 379 of 2017. In the said application, the ground raised seeking rejection of the plaint was that, having regard to the nature of the suit and the prayers, the plaintiffs were liable to pay *ad-valorem* court fee on the plaint. The Trial Court negatived the said contention, however, the High Court allowed the Revision Petition by recording a finding that the plaintiffs were required to affix *ad-valorem* court fee. The High Court granted time to the plaintiffs to pay the *ad-valorem* court fee, to further provide that failing the same, the plaint shall stand rejected.

3. Noticing the facts relating to the suit of the plaintiffs, what was asked for in the suit was a decree of declaration that plaintiffs, defendant No.1 as well as defendant No.2, were the co-owners of the suit property

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[2] **Hereinafter, "Trial Court"**
[3] **Hereinafter, "CPC"**

described as House No. 417, Ground Floor, Sector 11, Panchkula and had 1/4th share each therein. The further prayer was to declare that defendant No.1 got the house transferred by playing fraud on plaintiffs and that the transfer was null and void. The plaintiffs prayed for separate possession to the extent of 1/4th share each in the suit property. The plaintiffs also prayed for consequential relief of permanent injunction.

3.1 In the aforementioned suit, defendant No.2 moved an application under Order VII Rule 11, CPC, seeking rejection of the plaint, contending *inter-alia* that the plaintiffs had claimed separate possession by partition of the suit property, and since the plaintiffs were neither the owner nor were in possession, they were required to affix *ad-valorem* court fee on the market value of the suit house. It was contended that the plaintiffs having not paid the *ad-valorem* court fee, the plaint was liable to be rejected on that ground.

3.2 The said application for rejection of the plaint was resisted by the plaintiffs stating that the suit property was an inherited property and that the plaintiffs were co-owners. It was the case of the plaintiffs that they were not the party in the transfer deed which they had challenged. The *ad-valorem* court fee was not required to be paid but only fixed stamp duty was payable, it was contended. It was also contended that since defendant No.1 had transferred the property without paying any stamp duty on the same, and that the alleged transfer deed did not reflect any value of the property, the *ad-valorem* court fee was not required to be paid for that reason also.

3.3 The Trial Court, while rejecting the application of defendant No.2 under Order VII Rule 11, CPC, rested on the position of law that while deciding application under Order VII Rule 11, CPC, the court could look into the averments in the plaint only and that the plaint cannot be rejected on the basis of allegations made in the written statement of the defendant. The Trial Court, upon perusal of the averments in the plaint as well as having regard to the nature of relief prayed for, observed that the plaintiffs had been seeking relief of declaration and separate possession, claiming that they were in joint possession of the property.

3.4 It was observed that the plaintiffs had been claiming 1/4th share each in the entire suit house and had further challenged the letter of allotment stated to have been fraudulently received in respect of the suit property practicing fraud and misrepresentation upon the plaintiffs in which letter of allotment value of the property was not indicated nor any court fee was paid.

3.5 The Trial Court relied on the decision of this Court in **Suhrid Singh *alias* Sardool Singh vs. Randhir Singh and Others**[4] and on the basis of proposition of law laid down therein, the Trial Court stated that the plaintiffs were not executant of the document namely transfer deed/letter of allotment nor were party to the same, and for all those reasons they were not liable to pay *ad-valorem* court fee.

3.6 The High Court, while allowing the civil revision petition at the instance of defendant No.2, took the contrary view to proceed to hold as under,

> "A perusal of the heading of the plaint, the prayer made therein and the averments made in the plaint show that it was the pleaded case of the respondents-plaintiffs that they were not in possession of the suit property and, therefore, they

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[4] (2010) 12 SCC 112

> had prayed for separate possession as per their share. The Trial Court, in the considered opinion of this Court, erred in coming to the conclusion that no prayer for possession had been made.
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> Once the possession had been prayed for, the respondents-plaintiffs were liable to affix *ad valorem* Court fee as per their share, in accordance with the provisions of the Court Fees Act, 1870.
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> In view of the above, the revision petition is allowed. The impugned order dated 12.04.2022 is set aside. The application under Order 7 Rule 11 CPC is allowed and is directed that the requisite Court Fees be deposited within a period of two weeks failing which, the plaint shall stand rejected."

3.7 According to the High Court, the averments in the plaint showed that the plaintiffs were not in possession of the suit property, therefore, they had prayed for separate possession and in that view, once the possession had been prayed for, the plaintiffs were liable to affix the *ad-valorem* court fee, as per their share in accordance with the provision of the Court Fees Act, 1870[5].

4. While appreciating the correctness or otherwise of the observations and findings of the High Court, it would be worthwhile to look into the case of the plaintiffs in the suit. The case of the plaintiffs was *inter-alia* that one late Pushpa

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[5] **Hereinafter, "Act"**

Sharma, wife of late Ved Parkash Sharma and grandmother of plaintiffs Nos. 2 to 4 and 6 to 8, purchased the suit property out of the joint funds of the family and from her *Stridhan*. It was averred that after some years, Nishikant Sharma, husband of plaintiff No.1 and father of plaintiff Nos.2 to 4 shifted to Chandigarh and started tuition work and that plaintiff Nos.5 to 8 were also shifted to Ludhiana after some years. It was stated that defendant No.1 along with his family remained in the same house with late Pushpa Sharma who died on 01.09.2007. Pushpa Sharma never executed any Will nor transferred the house to anybody during her lifetime, it was stated.

4.1 It was the further case of the plaintiffs that they came to know that one of the family members Rajeev Sharma used to take signatures of his mother Pushpa Sharma on blank papers under one or another pretext. It was averred that somewhere in August 2016, Rajeev Sharma had got the suit property transferred in his name in collusion with defendant No.2 and other persons, by forging false documents and producing the same at the Haryana Housing Board office. The fraud was perpetuated against the plaintiffs by taking a loan of Rs.1,50,00,000/- from Yes Bank by mortgaging the suit property and subsequently not making the re-payment. The plaintiffs' case was that they were the co-owners in joint possession of the suit property in capacity of heirs of late Pushpa Sharma.

4.2 The following averments were made in paragraph 4 of the plaint asserting residence in and possession of the suit property along with the defendants, quoted hereinbelow to be precise,

> "4. That after the purchase of the said house, the plaintiffs and defendants started residing in the MIG-A, House No. 417, Sector 11, Panchkula (i.e. suit property) as the said property was the joint properties of the plaintiffs and defendants. That it is pertinent to mention here that the plaintiffs and defendants invested the amount in the said house in the repair and extension of the house from time to time"

4.3 Both the Trial Court and the High Court referred to the decision of this Court in **Suhrid Singh** (supra) on the question of payment of court-fee, the Trial Court taking the view that the *ad-valorem* court fee was not payable, whereas the High Court held otherwise and conditionally rejected the plaint if the *ad-valorem* court fee is not paid within the stipulated time.

5. It is well-settled principle that while considering the prayer in the application under Order VII Rule 11, CPC, the court has to consider the averments in the plaint only. Given this trite position of law, when in the instant case, the averments in the plaint are looked at in their entirety, more particularly, in paragraph 4 of the plaint quoted hereinabove, there is no gainsaying that it is stated by plaintiffs that after purchase of the suit property, along with defendants they resided therein, thereby pleading unequivocally that they were in joint possession. The whole suit and the prayers were based on the possession of the plaintiffs of the suit property. *Prima facie*, therefore, no aspect existed which would have persuaded the court to reject the plaint at the threshold by accepting the case of defendant No.2 in his application under Order VII Rule 11, CPC, that the *ad-valorem* court fee was payable.

5.1 Now, the payability of court fee in the States of Punjab and Haryana is admittedly governed under the provisions of the Act. **Suhrid Singh** (supra) was the case which dealt with the provisions of the very Act. The facts before the court *inter-alia* were that the plaintiff in suit had sought for declaration that the sale deeds were void and not binding on the co-parcenery. A consequential relief of joint possession was sought for. This Court noticed that there was no prayer for cancellation of the sale deeds and the prayer was for declaration that the deeds did not bind the co-parcenery and that there was a joint possession. Furthermore, it was highlighted that the plaintiff in the suit was not the executant of the sale deeds.

5.2 It was accordingly held that the court fee was computable under Section 7(iv)(c) of the Act, and the plaintiff was required to pay the merely fixed court fee under Article 17(iii) of the Second Schedule of the Act. If the plaintiff was seeking possession and not merely a declaration, he would be required to pay the court fee on *ad-valorem* basis.

5.3 The position was explained in paragraph 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 the 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."
>
> (Para 6)

6. Now, considering the suit averments and the suit prayers in the instant case, as also the proposition of law emanating from the decision in **Suhrid Singh** (supra), the Court is of the view that looking to the suit averments, the plaint is not liable to be rejected on the ground pleaded under Order VII Rule 11, CPC. The Trial Court was justified in law in refusing to reject the plaint. The High Court, however, fell in error in issuing the impugned directions.

6.1 While the case of the plaintiffs in the plaint about they being in joint possession and the assertive statements on that score would not justify the rejection of the plaint even on the ground stated in the application under Order VII Rule 11, CPC. The question of payment of court fee will have to be looked into in segregation, for, the same would depend upon not only the possession aspect or the prayer in that regard, but also the aspects relating to the sale deed claimed to have been executed and the other facts relevant thereto. They are the issues to be threshed out on evidence. Therefore, the question of payment of court fee, whether *ad valorem* or fixed court fee, could be addressed and considered only upon establishment of such germane facts upon leading of evidence in the suit.

6.2 In the light as aforesaid, the Court is of the view that the question of payability of the court fee is required to be deferred to be considered and shall depend upon the evidence which may finally be led establishing the determinative facts in that regard.

6.3 For the foregoing discussion and reasons, the impugned order of the High Court dated 19.05.2025 passed in Civil Revision Petition No. 2778 of 2022 (O&M) is hereby set aside. The order of the Trial Court refusing the prayer to reject the plaint under Order VII Rule 11, CPC, is upheld, however, subject to the modification that the question of payment of court fee would be considered and decided, after and on the basis of the evidence that may be led in the suit.

7. The present appeal is allowed in the aforesaid terms and directions.

Any interlocutory application, as may be pending, shall not survive in view of disposal of the main appeal.

..............................J.
[S.V.N. BHATTI]

..............................J.
[N.V. ANJARIA]

NEW DELHI;
AUGUST 21, 2026.