

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.4338 of 2015 (O&M)

Date of Decision.21.07.2015

ATS Infrastructure Ltd.

.....Petitioner

Versus

Amardeep Singh and another

.....Respondents

Present: Mr. S.C. Nagpal, Advocate
for the petitioner.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J. (ORAL)

1. The petition is against the rejection of the plaint on the ground that the plaint has not properly valued for the purpose of court fee and jurisdiction. The suit is for declaration that the plaintiff is in joint possession of the suit property along with defendant and for a declaration of the sale deed executed by his mother and brother as null and void. The defendant who claims that he is in possession of the property over which a construction is reported to have been made at a huge cost has applied to the Court for rejection of the plaint on the ground that the court fee is not properly paid and since the plaintiff is asking for cancellation of a sale deed, he is bound to value the property and pay ad valorem court fee. His contention is that he is in possession of property and the plaintiff cannot treat himself as in joint possession and pay a fixed court fee. The trial Court rejected the petition observing that it is not the occasion for the Court to determine the issue

of possession and would decline to reject the application in the manner sought for.

2. The learned counsel argues that the decision is squarely against the judgment of the Supreme Court in Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010(12) SCC 112. The counsel would also say that the property is adjacent to the Court premises and the Court could have even appointed an advocate commissioner to determine who is in possession of property and found the nature of possession and pass appropriate orders as regards court fee. The counsel would also argue that there is an application for injunction under Order 39 Rule 1 and 2 CPC and it is inconsumable as to how the Court can decide such an application without actually deciding the issue of possession.

3. I do not think that the reliance on the judgment of Suhrid Singh @ Sardool Singh's case (supra) has any relevance in this case, for, the Supreme Court was explaining a case where a plaintiff who is party to the proceeding and who is party to a transaction and who is an executant suing for setting aside a transaction would be compelled to pay ad valorem court fee. In this case, the plaintiff has not executed the sale deed and he is only contending that a sale executed by his mother and brother is not valid and cannot effect his interest. The judgment in Suhrid Singh @ Sardool Singh itself makes a reference to the fact that there could be a prayer for cancellation of sale deed where a person is not executant and in such a case cancellation must be taken as still not requiring an ad valorem court fee. It will be for the defendant to admit that the suit involves a relief of cancellation and

therefore, ad valorem court fee is required to be paid. The judgment in Suhrid Singh @ Sardool Singh is an authority for a case where if the plaintiff sues for recovery of possession, ad valorem court fee would require to be paid. In this case, there is no prayer for recovery of possession. The plaintiff as a non-alienating co-owner of a property in which he has an interest claims himself to be in joint possession. It may turn out that the plaintiff is unable to prove his possession or joint possession. It is axiomatic that the issue of court fee is invariably decided on plaint averment. The Court that considers the declaration of court fee is never called upon to decide whether the plaintiff's prayer in the suit is tenable or not. It may be that the plaintiff has no right to the property that he is deeming the property in joint possession which is not correct. That will be matter adjudicated at the trial and cannot be pre-judged. If there is no prayer for recovery of possession and if the plaintiff is not a party to the transaction and if there is a reference to the property as being in possession of the plaintiff with the defendant, he is entitled to make the valuation of the suit in the manner that he has done. There is no error for interference.

4. The argument of the counsel that the possession of property in the hands of the defendant could be examined by appointment of commissioner is fallacious, for, ascertainment of possession of immovable property is never done through a commissioner. The Court cannot abdicate its power leaving it to the commissioner to determine who is in possession. It is a judicial function and therefore, there is no merit in argument that the commissioner must be appointed to determine who is in possession of the property.

5. The other argument of how an application under Order 39 Rule 1 & 2 CPC will come to be decided in a situation where the Court has allowed the plaintiff to carry on with the suit including the prayer for treating the property to be in joint possession. That application is not before me and I refrain myself from making any comment about course of proceedings or the order that could be passed by the Court below.

6. There is no merit for intervention. The order is sustained and the civil revision is dismissed. Needless to state that any observation that I have made while disposing of this petition will have no bearing for disposal of the case and this is only for the purpose of disposal of the application under Order 7 Rule 11 CPC.

(K. KANNAN)
JUDGE

July 21, 2015
Pankaj*