

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 5769 of 2009 [O&M]
Date of Decision : May 18th, 2015

Sanjay Rana

.... Petitioner

Versus

Sampat Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON

Present Mr. R.S.Manhas, Advocate,
for the petitioner.

Mr. Rahuldev Singh, Advocate
for Mr. Rohitshwar Singh, Advocates,
for respondents No. 2 and 3.

Mr. K.S.Dadwal, Advocate,
for respondents No. 4 to 15

Dr. BHARAT BHUSHAN PARSOON, J.

Order dated 3.9.2009 [Annexure P/4] vide which application under Order VII Rule 11 CPC of the defendant-respondents herein was allowed and the plaintiff-petitioner was called upon to pay advalorem court fee is under challenge in this revision petition brought by one of the plaintiffs. The plaintiffs seeking avoidance of 9 sale deeds as also mutations sanctioned pursuant thereto, have sought permanent injunction against the respondents from alienating the land any further as also against changing nature of the same.

2. An application was moved by the respondents-defendants calling upon the plaintiffs to affix the ad-valorem court fee. Plea of the petitioner-plaintiffs in addition, was that neither they were parties to the sale deeds nor relief of possession is being claimed and the plea of joint possession/partition was only a consequential relief. Otherwise, they are in possession of share of their land.

3. Despite resistance from the plaintiffs, petitioners herein, that the suit property was coparcenary property and had been inherited from their lineal ascendants and had been alienated wrongly and illegally and thus, they were not liable to affix the court fee, the matter of payment of Court fee was held against the plaintiff and consequently alleged deficiency in the court fee was ordered to be made good.

4. In this revision petition, the petitioner has claimed that since the property was ancestral and they were neither parties to the sale deeds nor were claiming possession as a substantive relief, ad-valorem court fee was not payable.

5. Counsel for the respondents, on the other hand, have alleged that once the sale deeds have been challenged and property is not proved to be coparcenary property, ad-valorem court fee is payable, particularly when the relief of possession is also involved.

6. Before the rival claims of the parties are adjudicated on the factual matrix and attending circumstances, it would be appropriate to take stock of the facts about which there is no dispute. So far as the pleadings of the plaintiffs are concerned, they have claimed that the land sold vide impugned nine sale deeds is ancestral coparcenary property having come to them from three lineal male ascendants. It is also claimed that the sale deeds could not have been executed by the vendor-defendants without following the rigors of sale of ancestral property.

7. The plaintiffs are neither parties to the sale deeds nor have claimed possession as a substantive relief. Rather, they are in possession of their share in the property and main relief is of declaration impugning the sale deeds. Relief of permanent injunction for restraining the defendants from alienating the land any further has also been sought. Only as a consequential relief, joint possession/partition has also been sought. It is not the main relief.

8. At this stage, reference may be made to a Division Bench Judgment of this Court in **Tarsem Singh and others Vs. Vinod Kumar and others, 2014(1) ICC 1054**, wherein, the matter had been referred to

the Division Bench by a Single Judge of this Court due to some contradiction in the judgments of this Court in **Smt. Beena and others Vs. Rajinder Kumar and others, 2006(2) RCR [Civil] 449** and **Bijender Singh Vs. Chand Singh, 2009(1) RCR [Civil] 270**. In both these judgments different views had been expressed on the question of payment of ad-valorem Court fee on the suit for declaration in terms of Section 7 (iv) (c) of the Court Fee Act, 1870 [for short, "the Act"]. Discussing the matter in detail, in paragraph No. 5 of this judgment, the entire law in this respect while referring to decision of the Hon`ble Apex Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Others, AIR 2010 SC 2807**, has been discussed, it was held as under:-

"i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and is to pay advalorem Court fee on the consideration stated in the said sale deed.

ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act."

9. After this Division Bench judgment in **Tarsem Singh's case [supra]**, the matter had gone back to learned Single Bench for adjudication. Thereafter, the said CR No. 4753 of 2005 was decided by learned Single Judge of this Court on 04.01.2011 wherein while making reference to the Apex Court decision in **Suhrid Singh @ Sardool Singh's case [supra]** and Division Bench judgment of this Court in **Tarsem Singh's case [supra]**, it was held that when plaintiffs were not the executants of the documents which they had sought to be annulled nor they were seeking possession of the suit land, their case fell under clause (ii) quoted above.

10. So far as the court fee is concerned, pleadings of the plaintiffs as these stand are to be taken into consideration without referring to the disputed questions raised by the defendants which are to be gone into only

at the stage of leading of evidence by the parties.

11. In view of the adjudication made in Civil Revision No. 4753 of 2005 decided on 4.1.2011, similar being the position in this case, the plaintiff-petitioners are not required to pay ad-valorem court fee, but are to affix court fee as per Article 17(iii) of the Second Schedule of the Act.

12. Sequelly, the revision petition is allowed and the impugned order, dated 3.9.2009, Annexure P/4 is set-aside directing the plaintiffs to affix Court fee as per Article 17(iii) of the Second Schedule of the Act within a period of 30 days, if not done already.

13. Parties are directed to appear before the Court below on 29.05.2015.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

May 18th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment? yes
2. Whether to be referred to the Reporters or not? yes
3. Whether the judgment should be reported in the Digest? yes