

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 5311 of 2014
Date of Decision : February 20th, 2015

Sushil Garg

.... Petitioner

Versus

M/s Sita Ram Rice and General Mills and others.

.... Respondents

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

Present Mr. Kanwaljit Singh, Senior Advocate, with
Mr. Ajaivir Singh, Advocate,
for the petitioner.

Mr. Tarun Singla, Advocate
for Mr. Ashish Gupta, Advocate,
for respondent No.1.

Dr. BHARAT BHUSHAN PARSOON, J.

A suit regarding declaration and mandatory injunction is pending adjudication before Civil Judge [Junior Division], Kurukshetra. An application was moved by the contesting defendants under Order 7 Rule XI CPC calling upon the plaintiff to furnish ad-valorem court fee. Influenced by the fact that the plaintiff was neither a party to the sale deed under challenge nor is one of the executants of the sale deed, citing **Santosh Malhan & Anr. Vs. Naina Devi & Ors. 2014 [3] CCC 157 [P&H]**, the lower Court had held that the plaintiff-respondent herein, was not liable to pay ad-valorem court fee and had rejected the application of the defendant-petitioner herein.

2. Learned counsel for the petitioner has urged that neither the facts of the application of the petitioner-defendant were taken in its true perspective nor the law cited by the petitioner was taken into consideration. Citing **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & Ors 2010 AIR [SC] 2807**, a judgment of the co-ordinate Bench, it is urged that

even if the plaintiff was not a party to the sale deed challenged in the suit, he is liable to pay ad-valorem court fee. In the given circumstances, para No. 6 thereof has been referred to which, for ready reference, is appended as below :-

“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 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. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.”

3. Support has also been sought from **Smt. Parkasho @ Parkash Kaur Vs. Smt. Surinder Kaur & Ors. 2012 [4] Law Herald 2955**, a judgment of the co-ordinate Bench and **Bajjnath Singh and another Vs. Jagdish and others 2015 [1] RCR [Civil] 621**, a judgment of Hon`ble Madhya Pradesh High Court. It is urged that even if non-executant seeks declaration for cancellation of sale deed, then he is liable to pay the ad-valorem court fee.

4. It is abundantly clear that these authorities have not been considered by the Court below. Even the pleadings of the plaintiff-respondent herein, have not been taken into consideration for deciding the application moved under Order VII Rule 11 CPC of the petitioner-

defendant.

5. Since the impugned order dated 14.7.2014 [Annexure P/6] has omitted to take into account the relevant facts as also the authorities cited by the counsel for the defendant-petitioner herein, by the Court below, the impugned order goes remiss. Sequel, the impugned order is set-aside.

6. The matter consequently, is remitted to the Court below for deciding the application of the defendants under Order VII Rule 11 CPC afresh after taking into account the factual matrix as also the law applicable to the matter in issue, without being influenced by the impugned order as also by any observation made in this order.

7. The revision petition is allowed in the above terms.

(Dr. BHARAT BHUSHAN PARSOON)
JUDGE

February 20th, 2015
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1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?