

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No. 6435 of 2013 (O&M)

Date of decision : 20.3.2015

Paramjit Singh and another

.. Petitioners

versus

Inderjit Singh and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. Parminder Singh, Advocate, for the petitioners.
Mr. Rohan Sharma, Advocate for
Mr. Vikram Singh, Advocate, for respondent nos. 2 and 3.

Rajesh Bindal, J.

The present petition has been filed by the plaintiffs impugning the order dated 4.10.2013 passed by the Civil Judge (Junior Division), Assandh, whereby in an application filed by respondent nos. 2 and 3 under Order VII Rule 11 CPC direction was given for affixing ad-valorem court fee on the market value of the property in dispute.

Briefly the facts as are evident from the material on record are that the petitioners filed a suit for declaration and possession with consequential relief of permanent injunction challenging the sale deed bearing no. 475/1 dated 24.5.2004 and sale deed Vasika No. 339/1 (340) dated 9.5.2006 allegedly executed and registered by respondent no. 1/defendant no. 1 with respect to the suit property for a fictitious sale consideration of ₹ 90,000/- and ₹ 1,27,000/-, respectively. After notice, the defendants appeared. Defendant nos. 2 and 3 filed application under Order VII Rule 11 CPC for dismissing the suit on account of deficient court fee. ₹ 50/- was fixed as Court fee by valuing the suit at ₹ 400/-. On that application, the learned court below directed the petitioners to pay ad-valorem court fee on the market value of the suit property which they themselves claimed to be more than ₹ 20,00,000/-.

Assailing the order passed by the learned court below, the learned counsel for the petitioners while placing reliance upon judgment of this Court in Ami Chand vs Raj Pal and others 2011 (2) PLR 23 submitted that in case the relief claimed is for cancellation of sale-deed by a party to the sale-deed, the case would not be covered under Section 7 (iv)(c) of the Court Fee Act, 1870. The same would be covered under Article 1 Schedule I of the Act, under which ad-valorem Court fee is required to be affixed as per consideration mentioned in the sale deed. He submitted that in view of the aforesaid judgment, direction by the learned Court below for payment of Court fee on the basis of market value of the property in dispute deserves to be set aside as the petitioners were party to the sale-deed.

Learned counsel for respondent nos. 2 and 3 contested the claim while referring to judgment of Hon'ble the Supreme Court in Suhrid Singh @ Sardool Singh vs Randhir Singh and others AIR 2010 SC 2807. He submitted that the directions of the learned court below are strictly in accordance with law, hence, do not deserve to be set aside as the same are in consonance with the relief claimed by the petitioners in the suit and the valuation of the property claimed by them.

Heard learned counsel for the parties and perused the paper book.

As is evident from the material on record, the petitioners filed a suit challenging two sale deeds dated 24.5.2004 and 9.5.2006 allegedly executed and registered by respondent no. 1 with respect to the suit property for fictitious sale consideration of ₹ 90,000/- and ₹ 1,27,000/- respectively in favour of respondent nos. 2 and 3 (being their power of attorney). For the purpose of Court fee, the suit was valued at ₹ 400/- and Court fee of ₹ 50/- was paid. The application was filed by defendant nos. 2 and 3- vendees under Order VII Rule 11 CPC for rejection of the plaint on the ground of deficiency in Court fee.

The issue, which is required to be considered in the present petition is as to the valuation of the suit for the purpose of payment of court fee by the petitioners, who are admittedly parties to the sale deed, challenged in the suit. Same was considered by Hon'ble the Supreme Court in Suhrid Singh's case (supra), wherein it was opined that if an executant of

the sale-deed seeks cancellation thereof, he has to pay ad-valorem court fee on the consideration stated in the sale deed. Para 6 thereof is extracted 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.” (emphasis supplied).

Thereafter, the matter came up for consideration before a Division Bench of this Court in Tarsem Singh and others v. Vinod Kumar and others, 2014 (1) Indian Civil Cases 1054, wherein the aforesaid legal proposition was reiterated. Para 5 thereof is extracted below.:-

“In view of the said example given an example in para No. 6 of the judgment and the finding recorded in para No. 7, we hold as follows:-

i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and 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.” (emphasis supplied).

In view of the aforesaid authoritative enunciation of law wherein, it has been opined that in case of challenge to a sale deed by a party thereto, the suit is to be valued on the basis of consideration shown in the sale deed and the court fee paid accordingly. In my opinion, the impugned order passed by the learned court below directing deposit of advalorem court fee on the market value of the suit property in question

deserves to be set aside. The revision petition is partially allowed directing the petitioners to pay the court fee on the value of the property shown in the sale deed challenged by them, to which they are party. The needful be done within a period of three months.

The petition stands disposed of.

20.3.2015

vs

(Rajesh Bindal)
Judge

(Refer to Reporter)