

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 7730 of 2014(O&M)
Date of decision : December 7, 2015

Mahender Singh

..... Appellant

Versus

Puran Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. P. S. Jammu, Advocate and
Mr. Arun Biriwal, Advocate
for the petitioner.

Mr. Rajesh Sethi, Advocate
for respondent No.7.

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?

Amit Rawal, J (oral).

The petitioner-plaintiff is aggrieved of the order whereby he has been called upon to pay court fee on the basis of market value of the suit land.

Learned counsel for the petitioner submits that the suit has been filed seeking declaration to the effect that plaintiff still continues to be owner of land measuring 72 Kanals 03 Marlas detailed as land measuring 22 Kanals 13 Marlas comprising in Khewat no. 1120, Khatauni No. 1540, Sq. No. 154, Killa No. 17 (6-9), 24/2 (3-19), 25 (8-13), Sq. No. 153, Killa No. 21 (3-12) and land

measuring 49 Kanals 10 Marlas comprising in Khewat no. 1541, Khatauni No. 2076, Sq. No. 154, Killa no. 12 (9-2), 13/1 (1-7), 13/2 (2-13), 18/2 (1-16), 18/1 (6-4), 19 (8-0), 22 (7-11), 23/1 (1-14), 23/2 (5-17), 24/1 (3-12) and Sq. no. 182, Killa No. 2/2/1 (1-14), situated within the revenue estate of village Jiwan Nagar, Tehsil Rania, District Sirsa, as per Jamabandi for the year 2001-02 and the so called Rapat no. 461 dated 07.07.2004 showing first clubbing of above land owned by plaintiff with lands of defendants no. 1 to 5 as well as Rapat no. 462 dated 07.07.2004 showing transfer of the said land of plaintiff in the name of defendant no. 1 alone in alleged exchange and showing transfer of land measuring 07 Kanals only in the name of plaintiff and mutations no.2840 and 2843 entered and sanctioned on the basis of above said Rapats respectively are wrong, illegal, against law and facts, result of fraud, active collusion and misrepresentation and also being against the provisions of the Transfer of Property Act, are liable to be set-aside and so also is the fate of judgment and decree dated 20.09.2008 passed in civil suit no. 324-C of 2007 titled as "Mandeep Kaur Versus Puran Singh" by the Court of Sh.Gopal Krishan, the then Additional Civil Judge (Senior Division), Sirsa so far it relates to suit land as defendant no. 1 transferred land measuring 10 Kanals 07 Marlas out of the above said suit land comprising in Sq. No. 154, Killa No. 25 (8-13) and Sq. No. 182, Killa no. 2/2/1 (1-14) in favour of defendant no. 6 and mutation no. 3329 entered and sanctioned on the basis of above said decree are also liable to be set-aside to that extent and for further declaration to the effect that sale deed bearing no. 214 dated

26.04.2010 registered in the office of Sub-Registrar, Rania vide which defendants nos.1 to 6 transferred the entire suit land along with some other land in the name of defendant No.7 showing sale of the same are also wrong, illegal, result of active collusion between defendants no. 1, 6 and 7, without consideration, are liable to be set-aside so far it relates to suit land and so also is the fate of mutation no. 3494 entered and sanctioned in the name of defendant no. 7 on the basis of above said sale deed and as a consequential relief plaintiff is entitled to get vacant possession of the suit land and for further relief of permanent injunction restraining defendant no. 7 from transferring ownership and possessory right of the suit land in favour of any other person or creating charge thereon/ on the basis of evidence of every description oral as well as documentary.

He further submits that in para 9 of the plaint it has been specifically averred that he shall be paying court fee with regard to recovery of possession as per amendment caused by the Haryana Government in Indian Court Fee Act, 1870 whereby the court fee is to be paid ten times of the revenue so payable, therefore, in support of his contentions he has relied upon the judgment of learned Single Bench in **Smt. Beena and others Vs. Rajinder Kumar and others** **2006 (2)RCR (Civil) 449.** He thus, prays that the impugned order is not sustainable and is liable to be set aside.

He further submits that he is not a party to the sale deed much less rapats Nos. 461 and 462 dated 7.7.2004. He is a signatory but the rapats does not specify value of the land, therefore the court fee cannot be assessed.

On the other hand, Mr. Rajesh Sethi, learned counsel for the respondent submits that the judgment and decree of Hon'ble Single Bench was doubted by the other co-ordinate Bench in **Rajinder Parshad Vs. Shamsheer Singh 1967 PLR 445** and accordingly the matter was referred to a larger Bench and the Division Bench of this Court in a judgment rendered in **Tarsem Singh and others Vs. Vinod Kumar and others 2014 (1) ICC 1054** and before the Court would rely upon the applicability of the amendment act the judgment in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh & others 2010 AIR (SC) 2807** of the Hon'ble Supreme Court came into being during the interregnum.

He further argued that as per the ratio decidendi culled out in the judgments, the court fee is liable to be paid in respect of transfers made by the Company to the subsidiary company and the matter was referred to the Division Bench. It has been held in **Minder and others Vs. State of Haryana and others 2014 (3) RCR (Civil) 563** that a party would be liable to pay court fee even if the transfer is on the basis of a consent decree.

I have heard learned counsel for the parties and appraised the paper book.

No doubt that the amendment of 1974 provided the payment of court fee ten times of the revenue where the plaintiff seeks possession of land and this fact is irresistibly pondered upon by this Court in **Smt. Beena and others's case (supra)**. However, thereafter the matter was referred to the Division Bench and Hon'ble Division Bench did not go into detail viz-a-viz applicability of the

amendment for the reason that the Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh's case (supra)** laid down that viz-a-viz payment of court fee, in case, the plaintiff seeks cancellation of the deed he has to pay ad valorem court fee. For the sake of brevity the principles enumerated in the judgment rendered by the Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh's case (supra)** are reproduced hereinbelow:-

“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."

Thus, in my view the judgment of learned Single Judge in **Smt. Beena and others's case (supra)** would not be applicable to the facts of present case. Since the petitioner-plaintiff is not signatory to the sale deed as well as to decree but the fact remains that he has claimed the possession, therefore, in my view and as well as per the ratio decidendi culled out in the judgments noticed above, the plaintiff is required to pay ad valorem court fee on the market value of the property i.e. value of immovable property as per clause (v) of Section 7 of Indian Court Fee Act, 1870.

Accordingly, I do not intend to differ with the finding rendered by the trial court calling upon the petitioner-plaintiff to pay court fee on the market value of immovable property whereby the possession of the same has been sought.

In view of what has been observed above, the revision petition is devoid of merits, accordingly, the same is dismissed.

(AMIT RAWAL)
JUDGE

December 7, 2015
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