

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 4620 of 2014 (O&M)

Date of decision : 18-08-2015

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Dharampal

.....Appellant

Versus

Smt. Gulabo

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. B.S Tewatia, Advocate for the appellant.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

The appellant-plaintiff (hereinafter referred to as 'the plaintiff') has come up in regular second appeal against the judgment dated 8.8.2012 passed by the Civil Judge (Junior Division), Faridabad, whereby the suit of the plaintiff was rejected under Order 7 Rule 11 CPC for not paying the required ad valorem court fees and judgment dated 3.10.2013 passed by the District Judge, Faridabad, whereby the appeal against the order of the trial Court was dismissed.

The plaintiff is the owner in possession of a plot measuring 60 Sq. yards as detailed in para 1 of the plaint, vide sale deed bearing no. 1676 dated 18.6.2001. On 15.2.2007, plaintiff sold

the said property to the respondent-defendant (hereinafter referred to as 'the defendant') for a sale consideration of Rs.90,000/- through his GPA Madan Singh vide sale deed no. 13449 dated 13.2.2007. Possession of the suit property was also handed over to the defendant. On 31.5.2007 defendant got a criminal case registered against Madan Singh on the ground that there was no plot existing at the spot which was allegedly sold to her on 19.2.2007. Madan Singh was arrested by the police and the amount of Rs.90,000/- was recovered from him. The grievance of the plaintiff is that he never received Rs.90,000/- and therefore the title of the suit property could not be said to have been transferred in favour of the defendant and the sale deed no. 13449 dated 13.2.2007 is required to be declared as null and void

The defendant appeared and filed her written statement taking the plea that the plaintiff in collusion with Madan Singh, who is his alleged GPA, had cheated him. The actual sale consideration was Rs.2,10,000/- which was shown in the sale deed as Rs.90,000/- only. The defendant sought rejection of the plaint due to deficient court fee. Vide interim order dated 9.4.2010 passed by the trial Court, it was pointed out that the suit was for cancellation of the sale deed date 13.2.2007 but the requisite ad-valorem court fees was not affixed. Vide order dated 24.7.2012, the plaintiff was directed to deposit the ad-valorem court fees on the total sale consideration of the impugned sale deed. The plaintiff was granted 15 days time to deposit the court fees and the case was posted for 8.8.2012. On

8.8.2012, due to non-payment of the Court fees, the plaint was rejected under Order 7 Rule 11 CPC.

The lower Appellate Court on appeal in paragraphs 10 & 11 observed that in para no. 3 of the plaint it has been categorically mentioned that plaintiff had duly handed over the possession of the plot to the defendant at the spot. In the sale deed it was mentioned that the possession of the plot had been handed over to the purchaser. The plaintiff in the suit had sought cancellation of the sale deed no. 13449 executed on 15.9.2007 and registered on 19.2.2007 and since he was not in possession, he was required to pay the ad valorem Court fee of the consideration stated in the sale deed. This aspect has been considered by a Division Bench of this Court in the case of Civil Revision No. 4753 of 2005 decided on 15.7.2011 titled as, 'Tarsem Singh and others vs. Vinod Kumar and others' where the legal position has been summed up as under:

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

Since in the present case, the suit has been filed by the plaintiff seeking cancellation of sale deed, he was required to fix the ad valorem court fee on the plaint as per the sale consideration mentioned in the impugned sale deed.

Proviso to Order 7 Rule 11 reads as under:

“Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper as the case may be within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

As per the above said proviso, the time fixed by the Court

for the supply of requisite stamp-paper shall not be extended unless the Court for reasons to be recorded is satisfied that the plaintiff was prevented by any cause of an exceptional nature for supplying the requisite stamp paper within the time fixed by the court and refusal to extend such time would cause grave injustice to him. The plaintiff sought extension of time on the ground that he was ill and he was suffering from loose motion and vomiting since 5.8.2012. The trial court had passed the order to deposit the court fees on 24.7.2012. The plaintiff had sufficient time from 24.7.2012 to 5.8.2012 to arrange for the Court fees. There was no medical evidence to establish that he was suffering from any illness which incapacitated him from arranging the court fee nor any medical certificate was placed along with the application. Since the Court was not satisfied, therefore the extension of time was declined.

While issuing notice of motion in this regular second appeal on 13.11.2014, the appellant made a statement that he be given one week's time to deposit the amount of Court fee that was applicable on the valuation of the suit. Despite being served, no one has put in appearance on behalf of the respondent. Even there is no information from the appellant that the Court fee has been deposited.

Since the appellant has not deposited the Court fee till the present date, the judgments passed by both the Courts below dismissing the suit on the ground of non-deposit of ad valorem court fee does not require any interference.

In view of the all that has been discussed above, present
regular second appeal is dismissed.

18-08-2015
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(**RITU BAHRI**)
JUDGE