

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 4072 of 2015 (O&M)

Date of decision: 17.03.2016

Parmajeet Singh

... Petitioner

versus

Surjeet Kaur and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.S. Chhokar, Advocate for the petitioner.

Mr. Vivek Goyal, Advocate for respondent Nos. 1 & 2.

Mr. Sanjay Jain, Advocate for respondent Nos. 3 & 4.

K.Kannan, J. (ORAL)

The plaintiff filed a suit for declaration that he is a joint owner with his brother and his widow in relation to property that belonged ancestrally. According to him, the Will propounded by the brother and his wife from the father is not valid since the father has no competency to execute a sale to bind his share. The defendants took an objection on the issue of Court fee and stated that ad valorem court fee has to be paid on the market value of the property. The court accepted the contention and directed the court fee to be paid.

I find the order to be wrong and untenable. The issue of Court fee will always be decided on the test of averments of the plaintiff itself and not necessarily by what is contended by the defendant. If the plaintiff's averment is that the property was ancestral, the father had no right to effect the sale, he is literally making an issue of the property as being in joint possession and the declaration must be taken as a declaration as permissible under Section 7 (iv)) of the Court fees Act. A prayer for joint possession ought not to be taken as recovery of possession from the defendants.

The counsel appearing on behalf of the respondents refers

me to a judgment in Boda Ram Vs. Beermati Devi and others, 2014 (2) PLR 31 that considered a challenge made by the plaintiff to the sale executed by his brother in favour of defendant Nos.1 to 4. The court found that when the plaintiff was making a claim to the property of his brother as on succession, he must be deemed to have stepped into the shoes of the executant of the sale deed. This judgment is clearly misapplied to the facts for a person claiming under the brother as a heir cannot be equated to a claim by the person stating the property to be ancestral. It cannot be stated that the plaintiff was claiming under the father but independently of the father. Yet another judgment in Smt. Beena and others Vs. Rajinder Kumar and others, 2006 (1) PLJ 96 was a case of a sale of land by defendant and the plaintiff suing for a declaration that the sale executed by the executant was null and void because the land was ancestral and what was sold by the defendant was without any legal necessity. Remedy of possession which was seen to be consequential relief flowing from out of a declaration the Court was holding that the Court fee was required to be paid not in terms of Section 4 (iv) (c) as null and void but by application of Section 7(v) of the Court Fees Act. I would take the pleadings of the plaintiff to be essentially guiding factor for how the Court fee shall be paid. It is one thing for a defendant to contend that a sale deed made by the defendant was null and void and seeking for possession and quite another for a person who addressed himself to be in the joint possession with the defendant and for claim for such declaratory relief, there is no need of payment of Court fee by invoking Section 7(v) .

The order already passed is set aside and the court fee paid is directed to be treated as correct. The civil revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

17.03.2016

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