

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

Civil Revision No.290 of 2014 (O&M)

Date of Decision: 28.04.2017

Krishna

....Petitioner

Versus

Satya and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. S.S. Dinarpur, Advocate
for the petitioner.

Mr. Naveen Jaglan, Advocate
for respondents No.1 and 2.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 06.12.2013 (Annexure P-3) passed by Civil Judge (Junior Division), Bilaspur, District Yamuna Nagar, whereby, the petitioner has been directed to pay the ad-valorem court fee and application moved under Order 7 Rule 11 CPC filed by the respondents has been dismissed.

Briefly, the facts of the case are that the petitioner filed a suit for separate possession by way of partition to the extent of 1/3rd share of the house, in dispute and also sought declaration that sale deed No.4221 dated 24.11.2011 is null and void and being the fraudulent document, has no effect upon her.

During pendency of the civil suit, respondents No.1 and 2 moved an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground of affixation of deficient court fee on the plaint by the petitioner. It has been mentioned in the application that the sale deed has

been challenged by the petitioner who is also claiming possession of the share of the house, in dispute, therefore, she is liable to pay court fee in terms of Section 7(iv)(c) of the Court Fee Act, 1870. Said application moved under Order 7 Rule 11 of the CPC filed by respondents No.1 and 2 was allowed vide order dated 06.12.2013, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that the petitioner has filed the civil suit challenging the sale deed to which she was not party. Learned counsel also submits that the petitioner never sought exclusive possession as a consequential relief and only the possession of 1/3rd share has been sought.

Learned counsel for respondents No.1 and 2 submits that the petitioner is seeking a decree for separate possession by way of partition to the extent of 1/3rd share of the property which is clear from head note of the plaint as well as the prayer. The case of the petitioner falls under Section 7 (iv)(c) of the Act and as such, the ad-valorem court fee is to be paid on the plaint and further submits that by considering the said provisions, the application has rightly been allowed.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents on the file.

Filing of suit by the plaintiff and thereafter filing of reply by defendants to the suit are not disputed. Filing of an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 for rejection of plaint for deficiency of court fee on the plaint is also not disputed.

Notice in the application was issued to the plaintiff to which the reply was filed by taking preliminary objections regarding

maintainability; *locus standi* etc. etc. It has also been mentioned that the plaintiff has a pre-existing right in the property to the extent of 1/3rd share of property and the plaintiff has challenged the sale deed as null and void to the extent of 1/3rd share. Hence, the basic controversy relates to liability of the plaintiff to pay the appropriate court fee in accordance with law.

In the present case, the petitioner-plaintiff has filed a suit for separate possession by way of partition to the extent of 1/3rd share of the house, which was left by late Shri Ram Singh son of Sh. Ganesh Dass. A prayer was also made for declaration to the effect that Sale Deed No.4221 dated 24.11.2011 by which the said property has been alleged to be sold by his father Surinder to his son Jatin which was an act of fraud and the same is null and void. It was done without considering the title and by fabricating false documents and the same was not binding upon the plaintiff to the extent of her 1/3rd share.

The suit is for declaration to the effect that the document is forged, fabricated and ineffective. The relief in law cannot be granted unless the court holds that the document is liable to be cancelled. Cancellation of the document in any event would be the basic and main relief which is to be granted by the Court in case the version stated by the plaintiff is established as pleaded. It is a settled principle of law that it is not the title or wording of the prayer which determines the court fee payable on the relief claimed but it is the substance and manner of the plaint read together which finally determines while deciding the issues involved in the suit. Sale deed dated 24.11.2011 is a registered document and only the cancellation thereof would divest him in law of the right accruing therefrom. At this stage, it cannot be said that the trial Court while deciding the controversy or issues

involved in the suit, would decide the plaint by considering the averments made in the suit. The Court while deciding the question of court-fee is to look into the allegations made in the plaint to find out the substantive relief, which is being sought. Each case is to be considered on the basis of evidence produced by both the parties. Where the main relief is that of the cancellation of the sale deed and the declaration if any, is only a surplusage and it would not be covered under Section 7(iv)(c) of the Act. The main relief is that of a declaration and the consequential relief is just ancillary. In case the main relief in the suit is held to be that of cancellation of the sale deed, then the case is not covered by Section 7(iv)(c). Only provision applicable is Article 1, Schedule I of the Act. In order to bring the case under Section 7(iv)(c) of the Act, the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. In case, no consequential relief is claimed or could be claimed in the suit, then Section 7(iv)(c) will not be attracted.

In the present case, the petitioner has not sought possession as a consequential relief while filing the suit claiming 1/3rd share in the house, in dispute. On perusal of plaint itself, it is clear that the claim sought by the petitioner is for possession of 1/3rd share by way of partition and the second relief is that the alleged sale deed No.4221 dated 24.11.2011 is null and void and the same has no effect on the right, title and interest of the petitioner. Accordingly, the petitioner is seeking the possession of 1/3rd share in the house in dispute, and as such, she is not liable to pay the *ad-valorem* court fee as she is not seeking the exclusive possession. While passing of impugned order, all these facts have not been taken into consideration.

The controversy, in the present case, is squarely covered by decision passed in **Civil Revision No.3280 of 2014** titled as **Rajiv Kumar and another vs Rakesh Kumar and others**, decided on **13.08.2015**. In said case, the property, wherein, the share was being claimed, was joint Hindu family property. The issue was as to whether in a suit filed by the plaintiff seeking possession of the property to the extent of his share, court fee was leviable or not. It was held that to enforce the right to share in joint family property, *ad valorem* court fee on the value of relief, as fixed by the plaintiff, is payable and in case of partition of joint property, where the plaintiff alleges that he is in actual or constructive possession thereof, fixed court fee is payable. It was held by relying upon the judgment of Full Bench of Lahore High Court in **Asa Ram and others vs Jagan Nath and others AIR 1934 Lah. 563** that fixed court fee is payable on a suit filed by a person seeking partition and possession in a joint property even if he is not in possession of any part of it.

In the present case also, the petitioner is claiming her 1/3rd share of the house, in dispute and an *ad-valorem* court fee is not required to be paid.

In view of the above, the present petition is allowed and impugned order dated 06.12.2013 (Annexure P-3) passed by Civil Judge (Junior Division), Bilaspur, District Yamuna Nagar is hereby set aside.

(DAYA CHAUDHARY)
JUDGE

28.04.2017
gurpreet

Whether speaking/reasoned

Yes

Whether Reportable

Yes