

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

C.R. No.3627 of 2016

Date of Decision: 16.05.2017

Balwan SinghPetitioner

Versus

Premo Devi and anotherRespondents

(2) ***C.R. No.4068 of 2016***

SunitaPetitioner

Versus

Rajesh KumarRespondent

(3) ***C.R. No.4071 of 2016***

SunitaPetitioner

Versus

Premo Devi and anotherRespondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Dalel Singh, Advocate
for the petitioner.

Mr. Vivek Goyal, Advocate
for respondent No.1.

None for respondent in ***C.R. No.4068 of 2016.***

DAYA CHAUDHARY, J.

This order of mine shall dispose of three Civil Revision

Nos.3627 of 2016, 4068 of 2016 and 4071 of 2016 as common question of law and facts are involved. However, for the sake of convenience, the facts are being derived from ***Civil Revision No.3627 of 2016***.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 06.04.2016 passed by Civil Judge (Junior Division), Kurukshetra, whereby, the application of the petitioner filed under Order 7 Rule 11 CPC has been dismissed.

Briefly, the facts of the case, as made out in the petition, are that plaintiff-respondent No.1-Premo Devi filed a suit for mandatory injunction with consequential relief of permanent injunction. The prayer in the suit was for permanent injunction restraining the defendants from dispossessing the plaintiff from the suit property and using the alleged agreement, which was executed by the defendants under threat and in an illegal manner, with a decree for mandatory injunction directing the defendants to return the agreement to sell of property of the plaintiff. An application was moved by the defendant-Balwan Singh under Order 7 Rule 11 CPC for rejection of suit by mentioning that the plaint has been drafted in a very clever manner just to avoid the court fee. It was also mentioned in the application that the agreement to sell is legal and binding upon the plaintiff and in case, the plaintiff refuses to execute the sale deed in favour of defendant-Balwan Singh, then he is entitled to get the sale deed executed and registered through Court. Hence, the plaintiff is required to affix *ad-valorem* court fees. Said application was dismissed vide order dated 06.04.2016 by holding that plaintiff is not required to affix *ad-valorem* court fees as the relief sought is for cancellation of agreement to sell.

The order dated 06.04.2016 has been challenged by the defendant-petitioner by raising various grounds i.e the plaintiff has drafted the plaint with clever device and in stead of filing the suit for cancellation of contract, he has filed a suit for mandatory injunction asking the relief for returning the agreement to sell to the plaintiff/respondent No.1. It has been done just to avoid the affixation of *ad valorem* court fees. The intention of the plaintiff is to get the agreement to sell cancelled to avoid the execution of sale deed in favour of defendant No.1. It is also the argument of learned counsel for the petitioner that the observation of the learned trial Court that no *ad-valorem* court fee is payable by the plaintiff as the agreement to sell has been sought to be cancelled in the civil suit and it does not confer any right, is totally wrong, incorrect and the same is not in consonance with the settled position of law. In case of cancellation of a deal, the court fee is required to be paid on the consideration mentioned therein. Learned counsel also submits that the respondents cannot avoid the payment of *ad-valorem* court fee as they were party to the deed and they are bound to pay the *ad-valorem* court fees. The judgment relied upon by the learned trial Court, while dismissing the application, is not applicable to the facts and circumstances of the case.

Learned counsel for the respondents submits that the impugned order does not require any interference as the order has been passed with detailed reasoning. The suit relates to agreement to sell and the plaintiff is not required to affix any court fee as a relief sought is for cancellation of agreement to sell.

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

Learned trial Court, while dismissing the application filed by the petitioner under Order 7 Rule 11 CPC, has observed as under :-

“ Admittedly, an agreement to sell can not be said to be “Instrument securing property” or it does not assure vesting right of the title in the transferee and extinction of transferor's interest.

Thus, agreement to sell can not be treated at par with the sale deed. The reliance is placed by counsel for the defendant No.1, in the judgment Suhrid Singh @ Sardool Singh Versus Randhir Singh & others is distinguishable in the facts and circumstances of the present case because relief in those cases is for declaration for cancellation of sale deed, but in this present case, it is related to the agreement to sell. Thus, the plaintiff need not to affix Ad-valorem Court fees over seeking relief of cancellation of agreement to sell. Thus, this application u/o 7 rule 11 CPC is hereby dismissed.”

Hon'ble the Apex Court in a recent judgment in case of ***Suhrid Singh @ Sardool Singh v. Randhir Singh and others, 2010(2) RCR (Civil) 564: 2010(2) RAJ 436 : 2010(2) Civil Court Cases 510 (SC)*** has held that if the executant of a document wants a deed to be annulled, he has to seek cancellation of the deed. The relevant paragraph of the judgment reads as under :-

“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 nonest/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 advalorem 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 and 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 advalorem 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.”

In view of ratio of said judgment of Hon'ble the Apex Court, the plaintiff-respondent is seeking cancellation of agreement to sell. He has also sought relief of declaration that agreement to sell executed by him in favour of defendant-petitioner is illegal, null and void and not enforceable upon him. The issue for payment of court fee was before the Full Bench of

this Court in case ***Niranjan Kaur vs. Nirbigan Kaur PLR (1982) 127***, wherein, it has been observed that where the main relief is that of cancellation of the deed and the declaration, the case would not be covered under Section 7(iv)(c) of the Act as in a suit, the relief is that of a declaration and the consequential relief is just ancillary. The 'consequential relief' was considered by a Full Bench of the Allahabad High Court (consisting of five Judges) in ***Kalu Ram v. Babu Lal 54 All. 812*** and it was held that the expression 'consequential relief' means some relief, which would follow directly from the declaration given the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and the same cannot be claimed independently. In case, the relief claimed in any case is found in reality to be tantamount to a substantial relief and not a mere 'consequential relief', the plaintiff must pay Court-fee on the substantial relief.

In the present case, the suit is for cancellation of sale deed and as such, it is not covered by Section 7(iv)(c) of the Act and the only provision applicable is Article I, 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. Section 7(iv)(c) clearly contemplates suits to obtain the declaratory decree or order where consequential relief is prayed. A further proviso has also been added by Punjab Act No.33 of 1953, which is as under :-

“ Provided further that in suits coming under sub-clause (c), in cases where the relief sought 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 this section.

In a suit to obtain declaratory decree where no consequential relief is prayed, sub-clause (iii) of Article 17 of Schedule II of the Act, will be applicable, but the suit filed by the plaintiff-petitioner was virtually, to all intents and purposes, for the cancellation of the sale deed, executed by her, in favour of the defendant-respondent. She cannot claim possession unless the said deed is cancelled by a decree of the Court. To say in the plaint, that it be declared that the sale deed, got executed from her as a result of the fraud, was void and not binding on her, does not convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provisions of Section 7(iv)(c) of the Act. To such a suit, the only article applicable Article I, Schedule I of the Act, and for that proposition, further support can be had from a Full Bench decision of the Allahabad High Court in Kalu Ram's case (supra), also wherein as regards the valuation of the relief as to the cancellation of the alternation, it has been held that such a relief falls neither under Section 7(iv)(c) nor under Schedule II Article (iii), but under the residuary article 1 Schedule I of the Act.”

As per case of the plaintiff-respondent No.1, she is owner in possession of the suit property and she appointed defendant No.2 only to look after and manage the property and not to deal with the same in any manner. Said General Power of Attorney was cancelled much prior to execution of agreement to sell. The agreement to sell was made between defendant No.1 and defendant No.2. The agreement was drafted by defendant No.1 and was attested by taking undue advantage of said cancelled General Power of Attorney. Admittedly, no cash transaction has

ever been made to the plaintiff relating to the agreement to sell. Hence, the suit for mandatory injunction.

In a recent judgment of this Court decided on 22.05.2014 titled as ***Om Parkash v. Smt. Bimla Devi and others*** bearing ***C.R. No.5932 of 2012***, this issue was there and it was held that the document was without any consideration and in case, it needs cancellation then no *ad-valorem* court fee is leviable as no relief of possession was sought.

In Full Bench judgment of this Court in ***Niranjan Kaur's*** case (supra), Section 7(iv)(c) and Article 1 Schedule 1 of the Court-fees Act, 1870 was discussed at length and it was held that when suit is for cancellation of a sale deed executed by the plaintiff and declaration sought is that it was executed as a result of fraud and was not binding upon him, does not convert the suit with one for declaration with consequential relief of possession and as such, it falls under Section 7(iv)(c) of the Act. It was further mentioned that the Court should look into allegations made in the plaint to find out substantive relief asked for. The Court had also gone further and has held that when main relief sought in the suit is cancellation of deed and any other relief, if is surplusage, the case would not be covered by Section 7(iv)(c).

In the present case, the relief is for permanent injunction restraining the defendants from dispossessing the plaintiff from the suit property on the basis of alleged agreement which has been executed by the defendants under threat and in an illegal manner, with a decree for mandatory injunction directing the defendants to return the agreement to sell of property of plaintiff.

Same issue was there in judgment of this Court in case

Harbans Kaur vs Amrik Singh @ Beer Singh 2015(4) RCR (Civil) 770.

In said case also, it was held that the suit was for declaration and transfer deed was executed by way of fraud and no consideration was passed. Plaintiff filed a suit for declaration but has not sought the relief of possession. It was held that the plaintiff was not required to affix *ad valorem* Court fee.

Same observations were made in the judgments of this Court in cases *Zora Singh vs Kehar Singh 1981(1) RLR 491* and *Shakuntla vs Rohtas Singh 2008(4) RCR (Civil) 80*.

In view of facts and law position as discussed above, there is no force in the contentions raised by learned counsel for the petitioner and the revision petition, being devoid of any merit, is hereby dismissed and the order passed by the trial Court is upheld.

16.05.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes