

Civil Revision No. 3891 of 2017 (O&M)

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

**Civil Revision No. 3891 of 2017 (O&M)
Date of decision: 17.7.2017**

Rajesh and another

... Petitioners

Vs.

Suresh and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Vinod S. Bhardwaj, Advocate
for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

CM No. 13736-CII-2017

Applicant seeks permission to place on record Annexure A-1
and also seeks exemption from filing certified copy thereof.

Application is allowed, as prayed for.

CM stands disposed of.

CR No. 3891 of 2017

Feeling aggrieved against the impugned order dated 2.5.2017
passed by the learned trial court, whereby application under Order VII Rule
11 of the Code of Civil Procedure ('CPC' for short), moved by the
defendants for rejection of plaint for non-payment of ad valorem court fee,
was dismissed, they have approached this Court by way of present revision
petition under Article 227 of the Constitution of India, for setting aside the

Civil Revision No. 3891 of 2017 (O&M)

impugned order.

Heard learned counsel for the petitioners.

A bare perusal of the impugned order passed by the learned trial court would make it crystal clear that it is factually correct and legally justified, as it does not suffer from any patent illegality or perversity, so as to warrant interference at the hands of this Court, while exercising its revisional jurisdiction under Article 227 of the Constitution of India. It is so said, because plaintiffs-respondents filed a suit for declaration with consequential relief of permanent injunction. Since the plaintiffs-respondents were claiming themselves to be owners in possession of joint property, they were not seeking any consequential relief of possession. Having said that, this Court feels no hesitation to conclude that the learned court below was well within its jurisdiction to pass the impugned order and the same deserves to be upheld.

So far as the judgment of Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 AIR (SC) 2807**, relied upon by learned counsel for the petitioners, is concerned, there is no dispute about the observations made therein. However, on a close perusal of the cited judgment, the same has not been found to be of any help to the petitioners, being distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533, Union of India Vs. Amrit**

Civil Revision No. 3891 of 2017 (O&M)

3

Lal Manchanda and others, 2004 (3) SCC 75, State of Orissa Vs. Md. Illiyas, 2006 (1) SCC 275 and State of Rajasthan VS. Ganeshi Lal, 2008 (2) SCC 533.

With a view to avoid repetition and also for the sake of brevity, observations made by the Hon'ble Supreme Court in para 11 and 12 of its later judgment in Ganeshi Lal's case (supra), reiterating its view taken in Amrit Lal Manchanda's case (supra) and Mohd. Illiyas's case (supra), which can be gainfully followed in the present case, read as under:-

11. "12....*Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates; (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and*

Civil Revision No. 3891 of 2017 (O&M)

Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides. Coming to the peculiar fact situation obtaining on record of the present case, it is unhesitatingly held that learned Permanent Lok Adalat discussed, considered and appreciated each and every relevant aspect of the matter, before passing the impugned award. The only endeavour made by the learned Permanent Lok Adalat was to do complete and substantial justice between the parties and this approach adopted by learned Permanent Lok Adalat has been found well justified on facts as well as in law. Ed. See State of Orissa Vs. Mohd. Illiyas, (2006) 1 SCC 275 at p.282, para 12.

12. 15....Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become

necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. V. Horton (1951 AC 737 at p.761), Lord Mac Dermot observed: (All ER p. 14 C-D)

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge."

16. In Home Office v. Dorset Yacht Co. (1970 (2) All ER 294) Lord Reid said (at All ER p.297g-h), "Lord Atkin's speech.....is not to be treated as if it was a statute definition. It will require qualification in new circumstances." Megarry, J in Shepherd Homes Ltd. V. Sandham (No.2) (1971) 1 WLR 1062 observed: (All ER p. 1274d-e) "One must not, of course, construe even a reserved judgment of Russell L.J. as if it were an Act of Parliament." And, in Herrington v. British Railways Board (1972 (2) WLR 537) Lord Morris said: (All ER p. 761c)

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

17. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing

reliance on a decision is not proper.

15. The following words of Lord Denning in the matter of applying precedents have become locus classicus: (Abdul Kayoom v. CIT, AIR 1962 SC 680

"Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

"Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it

***Ed.** See Union of India VS. Amrit Lal Manchanda, (2004) 3 SCC 75, pp. 83-84, paras 15-18."*

It is pertinent to note here that plaintiffs-respondents were not party to the consent decree dated 9.9.1991, which is under challenge in the suit pending before the learned trial court. In this view of the matter, instant case is squarely covered against the petitioners by the judgment of this Court in **Ravinder Kumar Vs. Narinder Kumar and others, 2007 (2) RCR (civil) 1**. Relevant observations made by this Court in para 5 of its judgment in **Ravinder Kumar's case** (supra), which can be gainfully followed in the present case, read as under:-

"The learned trial Court came to the conclusion that in the suit framed the petitioner has primarily

Civil Revision No. 3891 of 2017 (O&M)

claimed the relief of cancellation of registered sale deeds in the suit for declaration and, therefore, the case was not covered under Section 7(iv)(b)(c) and, therefore, he was required to pay the Court fee on the sale consideration as well as on the will dated 29.7.1990 as per the prevalent rate of suit property. This finding of the learned Trial Court cannot be sustained. The Court fee has to be assessed keeping in view the suit as framed. The reading of the plaint and the relief claimed would show that the plaintiff-petitioner has filed a suit for declaration with a consequential relief of cancellation of decrees passed by the Court in which he is not a party. Once the petitioner plaintiff was not party to the sale deeds and was claiming ownership and consequential relief on the basis of declaration prayed for, therefore advoleram Court fee was not payable as he cannot be held to be bound by the act of third party. Thus, the impugned order cannot be sustained.”

Similar view was taken by this Court in **Rajinder Kaur and another and Daljit Kaur and others, 2007 (5) RCR (civil) 273**. Further, during the course of hearing, when the abovesaid factual as well as legal aspect of the matter was put to the learned counsel for the petitioners, he had no answer and rightly so, it being a matter of record. In this view of the undisputed fact situation, it can be safely concluded that the learned trial was well justified in passing the impugned order and the same deserves to be upheld.

Reverting to the peculiar fact situation of the present case and respectfully following the law laid down by this Court in the cases referred to hereinabove, it is unhesitatingly held that learned trial court neither exceeded its jurisdiction, nor committed any error of law, while passing the

Civil Revision No. 3891 of 2017 (O&M)

8

impugned order and the same deserves to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present revision petition is misconceived, bereft of merit and without any substance. Thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant revision petition stands dismissed, however, with no order as to costs.

17.7.2017
AK Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No