

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR No. 4879 of 2013 (O&M)

Date of Decision: November 13, 2017

Janender Kumar

...Petitioners

Versus

Nirmal Singh and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Amit Kumar Walia, Advocate
for the petitioners.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 03.01.2013, passed by the Civil Judge (Jr. Division), Khanna on the application filed by the defendant seeking rejection of the plaint.

It would be necessary to refer to the facts. The plaintiff had filed a suit seeking possession of his land. It was pleaded that the defendant had agreed to purchase the suit land vide agreement dated 24.09.2010 and had paid a sum of Rs.1,00,000,00/- as earnest money and the sum of Rs.1,50,000,00/- was to be paid on 30.09.2010. It was pleaded that the defendant paid Rs.1,50,000,00/- as per agreement and possession was handed over to the defendant and the remaining amount of Rs.11,90,60,000/- had to be paid. The plaintiff kept on requesting the defendant to pay the amount but he was not ready nor executed the sale

deed on the appointed day. It was pleaded that since the defendant was in possession of the property, he was delaying the execution. The plaintiff served a notice and appeared before the Sub-Registrar but the defendant failed to appear. The case of the plaintiff was that the defendant had violated the terms of the agreement and the agreement stood cancelled and the entire earnest amount stood forfeited and the defendant was not entitled to specific performance of agreement and he was entitled to the earnest money. The plaintiff prayed for a decree for possession and a prayer for permanent injunction restraining the defendant from changing the nature of the property was also made. The plaintiff affixed the Court fee as per Section 7(v) of the Court Fee Act.

The defendant filed an application under Order 7 Rule 11 of CPC seeking rejection of the plaint pleading that the plaintiff had received Rs.2,50,00,000/- and had handed over possession and had allowed them to develop the property and construct roads. It was pleaded that they had got their presence marked in the office of the Sub-Registrar and the plaintiff had failed to affix the requisite Court fee and they were liable to pay the Court fee on the total sum of Rs.14,40,60,000/-.

In the reply, the plaintiff had submitted that the agreement to sell stood cancelled and he was asking for possession of his property and he had affixed proper Court fee.

The lower Court passed the following order:-

“4. Perusal of the file shows that plaintiff has filed the present suit for possession and permanent

injunction. The plaintiff has executed agreement to sell in favour of defendant. Defendant paid Rs. 2 crore 50 lacs but he is yet to pay Rs. 11,90,60,000/-. The defendant did not pay the remaining amount & therefore, plaintiff is claiming the relief of possession and permanent injunction. The advalorem court fee is payable only where plaintiff is challenging the sale deed & is claiming the possession of that property. In the present case, the suit property is of the plaintiff himself as agreement to sell does not confer any title upon the purchaser. When the suit property is of plaintiff and he is claiming the possession of the same then he is not required to pay the advalorem court fee. It is settled law that when a person claims the possession of property then he is required to pay advalorem court fee but when he is admittedly the owner of said property. Then the advalorem court fee shall only be payable if the sale deed has been executed and the same is to be rescinded. In the present case the plaintiff is the owner of the said property but he is not challenging the sale deed. Therefore, he is not required to pay advalorem court fee.”

The petitioner has relied on ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh, 2010(2) RCR (Civil) 564*** and urged that since the plaintiff was seeking cancellation of the deed, therefore, he was liable to pay advalorem Court fee as he was also seeking possession of the property. The counsel had extensively referred to para 6 of the judgment, which 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 non- est/ 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 ad-valorem 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 or 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 ad-valorem 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](#)."*

On the other hand, it was urged that the plaintiff was only asking for possession of his own property since the agreement to sell had been cancelled and there was no sale deed and the authority referred to by the plaintiff was not applicable. It was urged that after the cancellation of the agreement to sell, the defendants were in illegal possession and no advalorem Court fee was payable and the case would be covered under Section 7(v) of the Court Fee Act.

The submission on behalf of the petitioner is that in essence it is a suit for recovery of the amount and the plaintiff is not in possession of the property and he is seeking cancellation of the agreement to sell, therefore, advalorem Court fee was payable. Admittedly, the trial Court has framed the issue regarding Court fee and the trial Court has to examine whether the agreement to sell stood cancelled. The plaintiff is only seeking possession of his property and if ultimately the Court finds that there is deficiency of Court fee then it has ample powers under Section 149 of the Code to direct the plaintiff to first pay the fee, if it is payable. The plaint cannot be rejected at the threshold in the given facts and circumstances.

I find no infirmity in the order. The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

November 13, 2017

sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No