

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CR No.6709 of 2013

Manpreet Singh ... Petitioner

Versus

Pal Kaur and another ... Respondents

2. CR No.6794 of 2014

Sukhraj Singh ... Petitioner

Versus

Pal Kaur and another ... Respondents

Date of Decision: 11.08.2017

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Satbir Rathore, Advocate,
for the petitioner.

Mr. K.S. Cheema, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J.

1. This order will dispose of CR No.6709 of 2013 titled *Manpreet Singh v. Pal Kaur and another* & CR No.6794 of 2014 titled *Sukhraj Singh v. Pal Kaur and another*. The facts are taken from CR No.6709 of 2013.

2. Since there are two registered sale deeds, two identical suits were filed and, therefore, the accompanying revision where the impugned order is in the same terms but passed by a different Courts at Dasuya being the Additional Civil Judge (Senior Division), Dasuya pronounced on August 30, 2014. Both the revisions can be decided by a common order and

be heard together.

3. Defendant's application under Order 7 Rule 11 CPC for rejection of the plaint for want of affixation of ad valorem court fees on the plaint in terms of Section 7 (1) (iv) (c) of the Court Fees Act, 1870 ("1870 Act") has been rejected by the Civil Judge (Junior Division), Dasuya holding that since the main relief is for cancellation of sale deed, the case would not be covered by Section 7 (1) (iv) (c) and the case on court fee would fall under Article 1 Schedule 1 of the 1870 Act under which ad valorem court fee is required to be affixed as per consideration agreed in the sale deed. The Civil Judge has relied on the judgment of the Supreme Court in Suhrid Singh @ Sardool Singh v. Randhir Singh and others, (2010) 12 SCC 112 in support of the order. The Supreme Court in *Suhrid* affirmed the principle in law that in case where plaintiff seeks a declaration that the sale deed is null and void and he was not party thereto but does not seek possession of the suit land, the plaintiff is not required to pay ad valorem court fee but where the plaintiff seeks cancellation of sale deed along with consequential relief of possession he is required to pay ad valorem court fee to maintain the suit.

4. It is well settled that for purposes of determining the question of court fee the averments in the plaint alone are required to be considered. The present suit was by Manpreet Singh disputing the sale deeds executed by his father Darshan Singh as an attorney of Sukhraj Singh in favour of Pal Kaur defendant No.1 conveying property on May 10, 2011. Sukhraj Singh is the brother of plaintiff said to be residing abroad since 2007. He was declared a proclaimed offender in a criminal case registered by the police

under Sections 427/148/149 and 447 of the IPC.

5. The plaintiff built his case on a compromise arrived at on May 10, 2011 with Kartar Singh defendant No.2, husband of Pal Kaur. Defendants were the complainants in the criminal case. In order to avoid arrest in India and detention in jail a settlement was arrived at to bring an end to the civil litigation and the criminal case and accordingly the father of the plaintiff agreed to transfer 32 Kanals of land to the defendants, in case, they agreed to withdraw the criminal case titled *State v. Darshan Singh and others* pending in the Dasuya Court. The agreement was to the effect that in case, the criminal case was not withdrawn the sale deed would be open to stand cancelled. It is asserted that the plaintiff with his father as co-petitioner filed case CRM No.20914 of 2011 under Section 482 Cr.P.C. In this Court for quashing of the FIR but Kartar Singh-defendant No.2 refused to appear and give statement despite appearance of counsel engaged at the expense of the father of the plaintiff. The petition failed for want of making statement on the compromise by the complainant side.

6. In these circumstances, the suit for declaration was filed to the effect that plaintiff is owner in joint possession of land measuring 13 Kanals and 4 Marlas situated in Village Rarha, H.B. No.522, Tehsil Dasuya District Hoshiarpur and the registered sale deed should be declared null and void being a result of fraud and want of consideration and on false assurances of the defendants.

7. As per averments in the plaint in Para.1 itself the plaintiff asserts that he is joint owner in possession of Khewat No.320 as more fully described in the head note to the plaint.

8. Learned counsel for the petitioner during preliminary hearing on November 12, 2013 had relied on precedents in Mandip Kaur & Others v. Bhag Singh @ Kehar Singh & Others, CR No. 2741 of 2013 decided on October 25, 2013, Ishwar v. Smt. Om Pati and others, 2006(2) RCR (Civil) 514 and Krishna Devi and another v. Jaswant Singh, 2006(4) RCR (Civil) 563 passed by this Court to contend that suit property is agricultural land and market value, thereof, has not been calculated as per the consideration mentioned in the sale deed and, therefore, its market value shall be ten times of the land revenue payable on the suit land for purposes of court fee since it is agricultural in nature.

9. On notice, the respondents put in appearance and have contested the case.

10. I have heard Mr. Rathore and Mr. Cheema at considerable length and perused the case papers.

11. Mr. Cheema relies on *Suhrid Singh @ Sardool Singh* case which was noticed by the Civil Judge in the impugned order. Sections 6 & 7 (iv) (c) of the 1870 Act fell for consideration of the Supreme Court as to the method of computation of fees payable. In the suit from where the proceedings arose there is no prayer for cancellation of sale deed. The prayer is for declaration that the sale deeds did not bind the co-parcenary and for a declaration on joint possession. It was also a fact that the plaintiff in the suit was not the executant of the sale deed. In these circumstances, the Supreme Court held that court fee is computable under Section 7 (iv) (c) of the 1870 Act. The trial Court and the High Court were, therefore, not justified in holding that the effect of the prayer was to seek cancellation of

the sale deed and, therefore, court fee had to be paid on the sale consideration mentioned in the sale deeds. In para.6 of the judgment the Court drew a perfect pen picture which strikes the mind best when it is read verbatim. The passage is reproduced below:-

“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 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.

12. There can be no proper discussion on the point without first noticing the Full Bench of this Court in Niranjan Kaur v. Nirbigan Kaur, AIR 1981 Punjab 368: 1982 PLR 127 rendered after noticing as many as 23 judgments of many High Courts and a few of the Supreme Court. The question which was referred by the learned Single Judge (J.V. Gupta, J.) was decided by the Full Bench of which the referring Judge became the author, was framed thus:-

“where the plaintiff, who is a party to a document relating to the agricultural land, files a suit for its cancellation or for declaring it voidable against him, is such a suit governed by section 7 (iv) (c) or Article 1 Schedule I of the Court-fees Act?”

13. The following principles of law were declared by the Full bench:-

(i) 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) and the only provision applicable is Article 1 Schedule 1 of the Act as far as court fee is concerned.

(ii) 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

(iii) If no consequential relief is claimed or could be claimed in the suit then Section 7 (iv) (c) will not be attracted.

(iv) Section 7 (iv) (c) contemplates suit to obtain the

declaratory decree or order where consequential relief is prayed.

(v) The same section provides that in all such suits, the plaintiff shall state in the plaint the amount at which he values the relief sought.

14. A proviso was added to Section 7 (iv) (c) by the Punjab Act No.31 of 1953 which reads 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.”

15. The Full Bench further held that 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.

16. It is trite that possession follows transfer of property by sale deed and in a case where sale deed itself is in question and the substantive relief is to cancel the instrument of transfer by a decree of the Court, if the plea for cancellation of sale deed, executed as a result of fraud and therefore void and not binding on the plaintiff, the same does not convert the suit into one for declaration with the consequential relief of possession so as to fall within the ambit of Section 7 (iv) (c) of the 1870 Act. The Full Bench opined that to such a suit, the only article applicable is Article 1, Schedule 1 of the Act. In this proposition, the Full Bench relied on an earlier Full Bench of the Allahabad High Court in Kalu Ram v. Babu Lal and others, AIR 1932 Allahabad 485. The Allahabad Full Bench was of the view that as regards valuation of the relief as to cancellation of the alienation such relief falls neither under Section 7 (iv) (c) nor under

Schedule II Article 17 (iii), but under the residuary Article 1, Schedule 1 of

the Act.

17. The factual matrix before the Punjab Full Bench was that the plaintiff-petitioner was a party to the sale deed and could not sue for mere declaration that the sale deed was fraudulent and the vendees had not acquired any title thereunder. The sale deed had to be cancelled, otherwise, title in the land had already passed to the vendee under the deed. Therefore, the plaintiff had to get the sale deed cancelled since she was a party thereto before she could seek possession of the land. In this factual background the Full Bench held that the substantive relief being the cancellation of the sale deed it is Article 1 Schedule 1 of the Act which is applicable to the suit of the plaintiff. The plaintiff was given time to make up the deficiency in the court fees already paid by her.

18. The computation of court fee payable in terms of Section 7 (iv) (c) of the 1870 Act is quantified by the method in Section 7 (v) of the 1870 Act. In a suit for mere declaration without any consequential relief, the Court fee payable is under Schedule II Article 17 (iii) of the 1870 Act. See Ishwar v. Smt. Om Pati and others, 2006 (2) RCR (Civil) 514.

19. In a suit for declaration and possession of agricultural land the plaintiff has to pay market value ten times the land revenue applicable to the suit land. In Hardam Singh v. Angrej Singh and others, 2014 (1) RCR (Civil) 929 the learned Single Judge held that where suit was for declaration and possession of agricultural land, the order of the trial Court directing plaintiff to pay ad valorem court fee on the market value of the suit land as per collector rates was improper and deserves to be set aside.

20. In the cases cited and relied upon, the issue can be divided into

two parts. Ad valorem court fee or court fee on the ad valorem value of the suit land which is agricultural in nature and relief is for possession the question to be determined in such case, is as to what would be the market value of the suit land for this purpose. It is not as per the collector rates as market value but the market value shall be ten times the land revenue of the land.

21. There is, however, a twist which is whether the entire estate is to be taken into consideration or part thereof, say out of one khewat where there may be co-owners in joint possession. There is no doubt that Court has to look into the allegations made in the plaint to find out the substantive relief asked for as indicated in *Niranjan Kaur* (FB). If the main relief is for cancellation of sale deed and declaration, if any, a surplusage the case is not covered by Section 7 (iv) (c) and only Article 1 Schedule 1 is applicable. However, for a suit under Section 7 (iv) (c) the main and substantive relief should be that of declaration and consequential relief should be just ancillary thereto. It is only where no consequential relief is claimed or could be claimed then Section 7 (iv) (c) is not applicable.

22. The main relief in the present suit was for declaration that plaintiff is owner in joint possession of suit land and, therefore, the sale deed executed by the plaintiff himself in the name of defendant No.1 is null and void as a result of fraud perpetrated by false assurances of the defendants. The value of the suit for the purpose of court fee and jurisdiction as per the plaint in para.7 is assessed as ₹250/- being the requisite court fee on the plaint.

23. The plaintiff stoutly opposed the application of the defendant

filed under Order 7 Rule 11 CPC asserting that he is not bound to pay court fee on sale consideration as mentioned in the sale deed. It was asserted by the plaintiff in reply to the application under Order 7 Rule 11 CPC that he had not handed over actual physical possession of the suit property to them defendants on or after the sale deed as defendants had not withdrawn the case pending between the parties filed by defendant No.2 Kartar Singh and the family members of defendant No.1 Pal Kaur wife of Kartar Singh.

24. There appears to be no doubt that as far as the compromise is concerned, which is a matter of trial and therefore no opinion can be expressed at this stage, that if there is a recital in the compromise arrived at out of Court that in case of breach of promise to withdraw the case, the sale deed would stand cancelled, which is also a matter of trial and interpretation of the trial court and no opinion can be expressed on this point either at this stage. If it is a simpliciter suit for declaration and joint possession as asserted by the plaintiff then no court fee is required to be paid on ad valorem basis then it is also a matter of evidence whether sale deed stood automatically cancelled and, therefore, the substantive relief sought in the suit is for cancellation of sale deed which postulates as a legal presumption of passing of possession to the vendee and if the sale deed is not cancelled by a decree no declaration can be given by Court unless the presumption is rebutted by unimpeachable evidence.

25. I have read the compromise deed/agreement (Annex P-1) executed on stamp paper of ₹500/- signed on May 10, 2011 with Kartar Singh and plaintiff as first party and defendants, the second. It records that out of entire estate of 80 Kanals an area of 28 Kanals has been purchased

from the defendants from Darshan Singh and plaintiff by defendant-Pal Kaur and the remaining area of 52 Kanals had already been purchased by one Jagroop Singh. The compromise records that possession is already with Smt. Pal Kaur and Jagroop Singh and neither Darshan Singh nor plaintiff and their legal heirs will interfere in the possession in future and if any of the parties betray the compromise, the other party will have a right to approach Courts and litigation expenses and fine would have to be paid by person who is held to be at fault. In case, Kartar Singh or Pal Kaur (defendants) do not withdraw the case titled *State v. Darshan Singh and others* pending in the Court at Dasuya then the sale deeds which have been executed on the day of compromise in favour of the defendants will be cancelled.

26. When the compromise is read two things become apparent that possession of the suit land already passed to the defendants and secondly, if any party resiles from the compromise or does not fulfill its terms then the sale deeds executed will be cancelled. The compromise contemplates litigation by breach of terms of the compromise and, therefore, I am of the considered view that the substantive relief sought in the plaint is for cancellation of sale deed and mere assertion that plaintiff is in joint possession is not sufficient for the purposes of valuation of suit for purposes of court fee and accordingly Article 1 Schedule 1 of the 1870 Act will be applicable which requires affixation of ad valorem court fee on the plaint.

27. I would, therefore, support the order of the Civil Judge (Junior Division), Dasuya directing the plaintiff to pay court fee on the amount of

the sale deed and in this it matters little whether the land is agricultural in nature. The hidden relief sought by the plaintiff in both the cases is annulment/cancellation of registered sale deeds and the plaintiff being executant of the sale deeds is required to pay ad valorem court fee as per the value of the sale deeds both dated May 10, 2011.

28. Accordingly, for the reasons stated above, the petition is devoid of merit and is ordered to stand dismissed. The plaintiffs would affix proper court fee on the plaint in terms of the trial court order on a date to be fixed by the trial Court as per consideration recorded in the sale deed after which the trial would proceed.

(RAJIV NARAIN RAINA)
JUDGE

11.08.2017
manju

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>