

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

RSA No.2148 of 2011 (O&M)

Date of decision : 08.12.2017

Ram Krishan

...Appellant

Versus

Risal Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Harish Mehla, Advocate for the appellant.

Mr. S.K. Kaushik, Advocate for respondent Nos.6 and 7.

ANIL KSHETARPAL, J. (ORAL)

CM No.1943-C of 2016

For the reasons stated in the application, which is supported by an affidavit, legal heirs of respondent No.4-Ram Pal as mentioned in the application are ordered to be brought on record, for the purpose of prosecuting the present appeal.

Application stands allowed.

CM No.5974-C of 2011

For the reasons stated in the application, which is supported by an affidavit, delay of 32 days in refiling the appeal is condoned.

Application is allowed.

Main Case

The plaintiff is in the Regular Second Appeal against the order

passed by the learned trial Court dated 06.06.2009, whereby the plaint was rejected on account of non-payment of the Court fees, as also the order passed by the First Appellate Court dismissing the appeal on the ground that it is barred by time.

The plaintiff-appellant had filed a suit for declaration that the Civil Court decree dated 06.05.1993 passed in Civil Suit No.53 of 1993 is null, void and ineffective. The prayer made in the suit reads as under:-

“That the plaintiff prays that a decree for declaration to the effect that civil court decree passed in civil suit No.53 of 1993 on 6.5.1993 by Smt. Navita Parsoon, the then Senior Sub Judge Kaithal in case re: Ishwar versus Soran in respect of suit land is null and void in effective and does not confer any right, title or interest in defendants No.2 to 5 and the sale deed No.714/1 dt. 23.5.95 in respect of land measuring 69 kl, 12 mls cut of suit land in favour of defendants No.6 & 7 is also null and void, in effective and does not confer any right, title or interest in defendants No.6 & 7 and the plaintiff is the owner of the suit land to the extent of ½ share and further a decree for joint possession in respect of ½ share of suit land fully detailed and described in para No.1 above may kindly be passed with costs in favour of plaintiff and against defendants.”

In fact, there was an earlier suit filed by Ishwar Singh and others against Soran. The aforesaid suit was for declaration that the plaintiff is owner by way of family settlement. Soran did not contest the suit and admitted the contents of the plaint. On the basis of the aforesaid written statement and the statement made in the Court, the decree was passed by the Court in terms of Order 12 Rule 6 CPC on 06.05.1993.

This decree of 1993 was challenged by the plaintiff-appellant by a subsequent suit, prayer whereof has been extracted above. It is apparent that the plaintiff-appellant was not party to the earlier decree. The plaintiff was also not party to the sale deed dated 23.05.1995. During the pendency of the suit, the Court vide order dated 03.09.2005 directed the plaintiff to pay the ad valorem Court fee on the sale consideration. The order passed by the trial Court is extracted as under:-

“Arguments on the point of court fees have already been heard. In this suit the plaintiff has challenged the civil court decree dated 6.5.1993 passed in civil suit no.53 of 1993 titled as Ishwar Singh and others versus Soran passed by Ms. Navita Parsoon, the then learned Senior Sub-Judge, Kaithal along with the registered sale deed No.714/1 dated 23.5.1995 regarding 69 kanals 12 marlas of the suit land executed by defendant Nos.4 and 5 in favour of defendant Nos.6 & 7, whereas he has valued the suit for the purposes of court fee and jurisdiction at Rs.200/- only. The suit has been filed by the plaintiff on the plea that Soran his father was not competent to suffer the decree in favour of Ishwar and defendants No.4 and 5 as the suit land was ancestral in his hand and the plaintiff had also a right therein by birth. In view of this fact, I am of the view that the plaintiff is liable to pay the ad valorem court fee on the suit value of the previous suit No.53 of 1993 titled as Ishwar Singh and others versus Soran passed by Ms. Navita Parsoon, the then learned Sub Judge, Kaithal. Furthermore, the plaintiff is liable to pay the court fee on the sale consideration of the impugned sale deed no.714/1 dated 23.5.1995 executed by defendants no.4 and 5 in favour of the defendant no.6 and 7. Here reliance can be placed on 2001 (3) LJR-52 Bagrawat versus Mehar Chand and others wherein it has been held

that if the sake of the ancestral property is challenged on the grounds that it was made without legal necessity and consideration, the ad valorem court fee as per the sale consideration in the sale deed will have to be paid by the plaintiff.

Accordingly the plaintiff is directed to pay the ad valorem court fee on this plaint in pursuance of this order. Court fee already paid by him will be adjusted therein. Now, to come upon 12.9.2005 for payment of ad valorem court fee by the plaintiff.

Sd/-

CJ(JD), Kaithal”

Counsel for the plaintiff refused to pay the Court fee. Faced with this situation, the learned trial Court rejected the plaint under Order 7 Rule 11 CPC vide order dated 06.06.2009.

The plaintiff filed an appeal against the order dated 06.06.2009 on 27.07.2009. The plaintiff also challenged the order dated 03.09.2005. Learned First Appellate Court dismissed the appeal on the ground that in fact the order dated 03.09.2005 has been challenged and, therefore, the appeal is barred by time.

That is how this appeal has been filed before this Court.

In this case, the entire approach of the Courts was incorrect. The plaintiff was neither party to the Civil Court decree nor to the sale deed. Therefore, the ad valorem Court fee was not payable by the plaintiff. It is well settled that Non-Executant is not required to seek cancellation of the sale deed. The Non-Executant can file a suit for declaration claiming that such sale is not binding on his rights.

It has been held by the Hon'ble Division Bench of this Hon'ble

Court in the judgment *2014(1) ICC 1054, Tarsem Singh and others Vs. Vinod Kumar and others* that Non-Executant is not required to pay the ad valorem Court fees, therefore, the entire basis of the rejection of the plaint was erroneous.

Even the First Appellate Court had committed an error while recording that the appeal filed by the appellant is barred by time. The plaintiff had filed an appeal against the rejection of the plaint dated 06.06.2009. The appeal was filed on 27.07.2009 after obtaining the certified copy of the judgment of the trial Court. Learned First Appellate Court committed an error in treating such appeal to be an appeal against the order dated 03.09.2005. No doubt, the order dated 03.09.2005 was challenged. This was in terms of Order 43 Rule 1-A of the Code of Civil Procedure, wherein it is provided that non-appealable orders passed by the Court during the currency of the suit can be challenged while challenging the final judgment and decree.

Therefore, the First Appellate Court committed material irregularity in dismissing the appeal as time barred.

Learned counsel for the respondents has submitted that since the plaintiff has also prayed for joint possession, therefore, ad valorem Court fee is payable.

In the considered opinion of this Court, the argument is without any substance. As per the amendment to Section 7 by Haryana Act No.11 of 1974, further amended by Haryana Act No.22 of 1974 in respect of the agricultural lands, for relief of possession, the Court fee is payable as prescribed under the aforesaid amendment.

In view of what have been stated above, the Regular Second Appeal is allowed. The orders passed by the Courts on 03.09.2005, 06.06.2009 and 05.10.2010 are set aside.

The parties through their counsel are directed to appear before the lower Court on 09.01.2018.

All the pending miscellaneous applications are disposed of, in view of the abovesaid judgment.

08.12.2017

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No