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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Pronounced on: 17.07.2017

+ CM(M) 1013/2014

MOHALLA SAMITI INDARA KUAN (REGD.) Petitioner
Through Mr.Ravinder Tyagi, Advocate

versus

SUNIL MOHAN & ORS. Respondents
Through Mr.S.D.Ansari, Advocate

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. This is a petition filed under Article 227 of the Constitution of India to impugn the order dated 13.08.2014 by which order the trial court adjudicated the two preliminary issues framed on 27.09.2013, i.e., Whether the suit of the plaintiff is improperly valued? If so, the effect thereof? OPD; Whether this court has no pecuniary jurisdiction to entertain and try the present suit? OPD.

2. The trial court by the impugned order held that since the petitioner/plaintiff is challenging the title of the respondents/defendants with respect to the property, the petitioner/plaintiff is required to value the suit for the purpose of court fees and jurisdiction as per market value of the suit property which cannot be below the consideration mentioned in the sale deed, i.e. Rs.14.5 lacs. It also held that the court would have no pecuniary jurisdiction to try the matter and that the petitioner/plaintiff would have to

amend the plaint in respect of the valuation of the plaint and to pay *ad-valorem* court fees, failing which the plaint shall be rejected.

3. The brief facts are that the petitioner/plaintiff filed a suit for declaration seeking a decree of declaration declaring the sale deeds dated 03.03.2000 and 12.06.2008 executed by respondent No.1 in favour of respondent No.2 and by respondent No.2 in favour of respondent No.3, respectively and the GPA dated 11.10.2000 executed by respondent No.2 in favour of Sh.Anup Agarwal respondent No.4 as null and void. As per the plaint, the petitioner/plaintiff claims that it is a registered Society and is in possession of Panchayati Chaupal bearing Municipal No.2158, Chah Indra, H.C. Sen Road, Delhi-110006. The said property was originally owned by Sh.Chhunamal Saligram. Respondent No.1 is one of the legal heirs of Sh.Chhunamal Saligram.

4. The case of the respondents is that respondent No.2 purchased the suit property from respondent No.1 vide sale deed dated 03.03.2000. Respondent No.3 claims to have purchased the suit property from respondent No.4 vide sale deed dated 12.06.2008. Respondent No.4 claims to be a General Attorney of respondent No.2 vide GPA dated 11.10.2000.

5. Respondent No.3 has now filed a suit as the owner of the said property for possession and *mesne profits* against the petitioner/plaintiff, which is pending in court of concerned ADJ, Tis Hazari Court, Delhi.

6. It is further urged by the petitioner/plaintiff that it is in possession of the said property prior to 1956 and the possession has been continuous, undisturbed and exclusive and to the complete ouster and within the knowledge of the persons claiming themselves to be the owner of the said property. It is also stated that the above facts are admitted as reflected in the

sale deed dated 03.03.2000 executed in favour of respondent No.2. The physical possession of the property was not handed over to him and only a symbolic and proprietary possession was handed over to respondent No.2. The petitioner/plaintiff claims that on account of its continuous, undisturbed, exclusive possession of the suit property to the complete ouster of the original owner, namely Sh.Chhunamal Saligram and their legal heirs, the petitioner/plaintiff has become the owner of the said property by way of adverse possession. Hence, respondent No.1 had no right to execute any sale deed as claimed. Hence the suit.

7. Based on the written statement filed by the respondents, the aforementioned preliminary issues were framed. The trial court has noted that the petitioner has sought to challenge the sale deeds dated 03.03.2000 and 12.06.2008 in addition to the GPA dated 11.10.2000. The petitioner has sought to represent himself to be the owner of the said property by way of adverse possession. The impugned order concludes that the person who is in adverse possession of any immovable property has no right in the property except to protect his possession and that it is not open to the petitioner to challenge the right of respondent No.1 to deal with title of the said property.

8. The order concludes that essentially the petitioner is seeking to challenge the title of the defendants and hence the suit does not fall within the provisions of Section 7(iv)(c) of the Court Fees Act. The impugned order concludes that the petitioner is required to mention in the plaint the said suit property for the purpose of court fees and jurisdiction as per the market value which cannot be less than the consideration mentioned in the sale deed and pay appropriate court fees. The market value of the said property as disclosed in the sale deed dated 12.06.2008 is Rs.14.5 lacs. Accordingly, the

trial court held that the court has no pecuniary jurisdiction to try the suit. The trial court granted four weeks time to the petitioner to amend his plaint with respect to the valuation of the plaint for the purpose of court fees and jurisdiction and to file requisite court fees, failing which the plaint would be rejected.

9. I have heard learned counsel for the parties. The controversy raised herein is squarely covered by the judgment of the Supreme Court in the case of *Suhrid Singh @ Sardool Singh v. Randhir Singh & Ors., II (2010) SLT 746*. In that case the court was dealing with an issue as to what amount is payable in regard to the prayer for a declaration that the sale deeds were void and not 'binding on the coparcenary' and for consequential relief for joint possession and injunction. The Supreme Court held as follows:

"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.

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "co-parceners" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the 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 deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds."

10. Hence, where a person who has not executed a sale deed and is in possession of the property seeks declaration, he has to merely pay a fixed court fee under Article 17(iii) of the Second Schedule of the Act. The position would be different in case the person seeking a declaration/relief is not in possession of the property. Then he has to pay an *ad-valorem* court fee as per under Section 7(iv)(c) of the Court Fees Act.

11. In the present case no relief of possession has been sought by the petitioner. Petitioner has made a categorical averment that he is in possession of the suit property. This fact is fortified by the fact that respondent No.3 herself has filed a suit against the petitioner seeking a decree of possession of the suit property and also a decree of mesne profits etc. It is also an

admitted fact that the petitioner is not an executant of the sale deeds dated 03.03.2000 and 12.06.2008 or GPA dated 11.10.2000. Hence, the petitioner has to pay court fees under Article 17(iii) of the Second Schedule of The Court Fees Act.

12. There is another aspect to be noted that the trial court by the impugned order has made observations on the ownership claimed by the petitioner by way of adverse possession. It may be noted that under Section 27 of the Limitation Act 1963 on the determination of the period fixed for adjudicating upon the suit for possession of any property right to such property stands extinguished.

13. Accordingly, the impugned order suffers from material illegality and has been passed contrary to the settled legal position. I, accordingly set aside the impugned order. I hold that the suit has been properly valued for the purpose of court fees and the trial court has pecuniary jurisdiction to entertain and try the present suit. The petition is accordingly allowed.

(JAYANT NATH)
JUDGE

July 17, 2017/v