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

%   **Date of decision: 22nd August, 2017**

+   **CM(M) No.890/2017**

SHIV SHANKAR JINDAL   **..... Petitioner**

Through: Mr. S.P. Aggarwal & Mr. Pradeep Kumar, Advs.

Versus

DEEPAK KUMAR & ORS   **..... Respondents**

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM No.29712/2017 (for exemption)

1. Allowed, subject to just exceptions.

2. The application is disposed of.

CM(M) 890/2017 & CM No.29711/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the orders dated 15th July, 2017 and 26th July, 2017 in Suits No.601423/2016 and No.19653/2016 of the Court of Additional District Judge (ADJ)-11, Central District, Tis Hazari Courts, New Delhi.

4. Vide order dated 15th July, 2017, the application of the petitioner / defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) for rejection of the plaint on the ground of appropriate court fees having not been paid thereon was allowed and the respondents / plaintiffs were directed to make up the deficiency in court fees.

5. The grievance of the petitioner / defendant with respect to the order dated 15th July, 2017 is that though the respondents / plaintiffs have been

directed to make up the deficiency in court fees but not of the correct amount.

6. The suit filed by the respondents / plaintiffs, as per the amended plaint dated 20th August, 2015, is for the reliefs of i) declaration that the sale deed in favour of the petitioner / defendant is null and void and for recovery of possession of immovable property; and, ii) for the relief of injunction restraining the petitioner / defendant from acting on the said sale deed.

7. The contention of the counsel for the petitioner / defendant is that the plaint for the relief of declaration qua the sale deed has to be valued at the market value of the property and for the relief of possession, has to be again valued at the market value of the property. Reliance in this regard is placed on ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh*** AIR 2010 SC 2807 and on ***Chintamani Devi VS. Vijay Kumar*** 215 (2014) DLT 385. It is contended that though the respondents / plaintiffs have paid court fees on the market value of the property, but only once and not twice as is required to be paid.

8. Section 7(iv)(c) of the Court Fees Act, 1870 (as applicable to Delhi), which according to the counsel for the petitioner / defendant also applies, provides that in suits for a declaratory decree or order, where consequential relief is prayed, the court fee payable shall be computed according to the amount at which the relief sought is valued in the plaint and the plaintiff is to state the amount at which he values the relief sought. Vide proviso thereto, in cases where the relief sought is with respect 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.

9. Section 7(v) provides that the amount of court fee payable in suits for the possession of land, houses and gardens will be according to the value of the subject matter and such value shall be deemed to be where the subject matter is a house or a garden, according to the market value of the house or garden and where the subject matter is land, where the land is paying annual revenue to the Government, ten times or five times the revenue so payable depending on whether the said revenue is permanently settled or though settled but not permanently and where it is not charged to any revenue, or is exempted from revenue, fifteen times of net profits arising from the land during the year next before the date of presenting the plaint.

10. The suit from which this petition arises is for cancellation of a sale deed and for recovery of possession of land admeasuring 3 bighas of land out of khasra Nos.45/16 (0-15), 46/20 (1-17) and 46/21 (0-08) in the revenue estate of Village Bakoli, Delhi.

11. Though the suit is with respect to land, from its description revenue paying, but there is no mention of the said facts in the plaint and the land has been valued as provided for a house in Section 7(v) supra at its market value. Judicial notice can be taken of, the revenue payable to the government for land, being meagre. The valuation of the suit, as per the annual revenue payable for the land to the government, would be much lower than the valuation as per the market value.

12. Be that as it may, we are here concerned with the question, whether the valuation has to be separate for the relief of declaration and the consequential relief.

13. Section 7(iv)(c) provides for a composite suit for declaration with consequential relief. Else, Article 17 (iii) of the Second Schedule to the Court Fees Act provides for fixed court fees of Rs.10/- for a suit to obtain a

declaratory decree where no consequential relief is prayed. Once the legislature has separately provided for valuation for the purpose of court fee of the suits for declaration simpliciter and a suit for declaration coupled with consequential relief, no principle of interpretation of statutes permits this Court to read Section 7(iv)(c) as providing valuation separately for the declaratory relief and for the relief consequential to such declaration. However, even if it were to be so done, even in that case, for the relief of declaration simpliciter, fixed court fees of Rs.10/- under Article 17 (iii) of Schedule II of the Limitation Act and for the relief of possession as consequential thereto, ad valorem court fees in terms of Section 7(v) would be payable.

14. A Division Bench of this Court in ***Ranchhoddas Shamji Khirani Vs. Balwant Kaur Malik*** AIR 1971 Del 249 and a Full Bench of this Court in ***Mahant Purshottam Dass Vs. Har Narain*** AIR 1978 Del 114 interpreted Section 7(iv)(c) of the Court Fees Act as applicable to Delhi and though not directly on the aspect as has arisen herein, can be referred to with benefit. It was *inter alia* held in the said judgments has as also in ***Union of India through Chief Commissioner, Delhi State Vs. Sir Sobha Singh & Sons (P) Ltd.*** 1969 (5) DLT 464 that the Court Fees Act being a taxing statute, in the event of any ambiguity, the provisions thereof have to be interpreted in favour of the litigant who is to pay the court fees.

15. A Full Bench of the Lahore High Court in ***Mt. Zeb-ul-Nisa Vs. Chaudhri Din Mohammad*** AIR 1941 Lah 97 held that the true criteria for determining the question of court fees is the substance of the relief as disclosed in the plaint and not merely the language and the form of the relief claimed therein. If the relief so disclosed is a declaration pure and simple and involves no further relief, the suit would fall under Article 17 (iii) of

Schedule II to the Court Fees Act; if on the other hand, the declaratory relief involves a consequential relief within the meaning of Section 7(iv)(c) of the Court Fees Act, the plaintiff has the option to state any value he likes on the relief for the purpose of court fees; again, where the declaration asked for is merely a surplusage and the so called consequential relief is in reality an independent substantial relief which cannot be arbitrarily valued under Section 7(iv)(c), the court fees payable would be ad valorem. In the facts of that case, the relief that the property was wakf property was held to be purely declaratory entailing fixed court fees of Rs.10/- and the relief to have the alienations of the wakf property to be declared null and void as against the wakf property was held to be substantive relief in the shape of setting aside or cancellation of alienation and entailing payment of ad valorem court fees thereon under Section 7(iv)(c) of the Act. It was further held that the expression 'consequential relief' means some relief which would follow directly from the declaration given.

16. When we apply the aforesaid law, on a reading of the plaint, the relief sought of possession flows from the relief claimed of declaration of the sale as void and cancellation of sale deed and it cannot be said that the relief of recovery of possession is independent of the relief of declaration and cancellation, since without declaration and cancellation, the respondent / plaintiff would not be entitled to the relief of possession.

17. Mention may also be made of the dicta of the Full Bench of the Allahabad High Court in ***Kalu Ram Vs. Babu Lal*** AIR 1932 All 485 holding that the expression consequential relief in Section 7(iv)(c) means some relief which would follow directly from the declaration given.

18. Supreme Court in ***Suhrid Singh @ Sardool Singh*** supra was concerned with a suit for declaration *inter alia* to the effect that the sale deed in favour of the defendant was bad and for consequential injunction restraining the defendant from alienating the property. Section 7(iv)(c) supra was for consideration. It was *inter alia* held 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".

19. Supreme Court in the aforesaid judgment has nowhere stated that the court fees has to be paid twice over, once on the relief of declaration and

again on the consequential relief. Rather, the same would be contrary to the language of Section 7(iv)(c) of the Act also which considers the relief claimed "of declaration with consequential relief" as one only and not as two separate reliefs.

20. A Co-ordinate Bench of this Court in ***Chintamani Devi*** supra was concerned, as can be deciphered from the short judgment, with a suit for declaration, injunction and possession and the argument was that once possession is claimed as a consequential relief it is not an independent relief. The said argument was rejected and it was held that court fees has to be paid with respect to the suit claiming the relief of possession as per Section 7(v) of the Act by valuing the property as per market value on the date of filing of the suit and thus the order of the Trial Court seeking the plaintiff to value the property of which possession was claimed at market value did not require any interference. From a reading of the short judgment, it transpires that the Co-ordinate Bench therein was concerned with an interpretation of Section 7(v) of the Court Fees Act and not of Section 7(iv)(c) of the Court Fees Act, the language of which does not permit any ambiguity and which is how the court also interpreted it in ***Suhrid Singh @ Sardool Singh*** supra. Reliance in this regard on ***Chintamani Devi*** supra is thus not apposite.

21. There is thus no merit in the challenge insofar as it relates to the order dated 15th July, 2017.

22. Vide order dated 26th July, 2017, the learned ADJ has allowed the amended memo of parties filed by the respondents / plaintiffs to be taken on record and on oral request of the counsel for the respondents / plaintiffs, permitted the siblings of the respondents / plaintiffs to be added as plaintiffs and recorded statement of the counsel for the respondents / plaintiffs that the

plaint is not required to be amended and affidavits in support of the plaint of the newly impleaded plaintiffs shall be filed.

23. The contention of the counsel for the petitioner / defendant in challenge thereto is firstly that on oral application, the same could not have been permitted.

24. A perusal of the order dated 26th July, 2017 shows that the said impleadment by the respondents / plaintiffs of their siblings was in terms of the order dated 3rd December, 2015 in an appeal arising from the same suit which at that point of time was pending before the Court of Civil Judge, Delhi as per its then valuation and wherein the plea of the petitioner / defendant that the suit filed by the respondents / plaintiffs was bad for the reason of non impleadment of the siblings of the respondents / plaintiffs was rejected and opportunity was granted to the respondents / plaintiffs to implead the said siblings.

25. The said order dated 3rd December, 2015 has not been challenged by the petitioner / defendant and has attained finality and the order dated 26th July, 2017 impugned is only consequential thereto.

26. Another challenge made by the counsel for the petitioner / defendant to the order dated 26th July, 2017 is that the plaintiff no.3 at the time of institution of the suit was a minor and no steps have been taken in terms of Order XXXII Rule 15 of the CPC on his attaining majority.

27. The same was also subject matter of order dated 3rd December, 2015 and it was the contention of the counsel for the petitioner / defendant therein also that the suit could not be continued for the said purpose but it was held that the same was merely an irregularity. What has been held above equally applies to this aspect also.

28. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

AUGUST 22, 2017
'gsr/bs'..
(Corrected & released on 6th October, 2017)