

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

**CR no.327 of 2017 (O&M)
Date of Decision: 26.11.2018**

Amarjit Singh

...Petitioner

Vs.

Sunita and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Munish Gupta, Advocate, for the petitioner.
Mr. Manish Mehta, Advocate, for respondent no.1.

Amol Rattan Singh, J (Oral)

By this petition, the order of the learned trial court, dated 23.12.2016 (Annexure P-4), has been challenged, by which the application filed by the respondent-defendant under Order 7 Rule 11 CPC has been allowed, thereby holding that the petitioner-plaintiff was required to affix court fee *ad valorem*, as per the value of the property.

To hold as so, that Court has stated as follows:-

“...the plaintiff has filed the present suit for declaration and permanent injunction against the defendant no.1 wherein he has claimed his ownership qua the suit property and has challenged the sale-deed registered in the name of defendant no.1. The plaintiff has even stated that the defendant no.1 is in possession of the suit property. When the plaintiff has claimed the ownership of the suit property challenging the sale-deed which is *prima facie* in the name of defendant no.1 and the plaintiff is also not in possession of the suit property then in the considered opinion of this Court, the plaintiff must pay the *advalorem* court fee over the value of the suit property as per the collector rate...”

Thus holding that the plaintiff has admitted the possession of the suit property to be that of the defendant (respondent no.1 herein), the

trial court has gone to hold that therefore court fee *ad volorem* would be payable.

Learned counsel for the petitioner submits that the declaration sought by the petitioner being one that he is the owner of the suit property and that the defendants (respondents herein) be restrained from alienating or creating any charge on it, with no possession sought by him, court fee *ad volorem* is not liable to be paid.

In response, learned counsel for respondent no.1 submits that with the petitioner having admitted that the possession of the suit property is not his, with him also challenging the legal rights of the respondents-defendants (respondent no.1 being his wife), the learned trial court has not erred in passing the aforesaid order.

Interestingly, both learned counsel have relied upon a judgment of the Supreme Court in **Suhrid Singh @ Sardool Singh v. Randhir Singh and others**, 2010(2) RCR (Civil) 564, in support of their contentions.

Learned counsel for respondent no.1 has also relied upon another judgment of the Supreme Court in **J. Vasanthi and others v. N. Ramani Kanthammal (D) represented by LRs & others**, 2017(4) RCR (Civil) 407, to again submit that as a matter of fact the trial court has not erred in holding as above.

Having considered the matter, first what is to be noticed, as regards the judgment in **J. Vasanthis'** case (supra), is that it was dealing with the provisions of the Tamil Nadu Court Fees and Suit Valuation Act,

1955 and moreover, that was a case by which a suit was filed seeking the setting aside of a sale deed.

An issue of a revision petition being maintainable under Section 115 CPC with regard to valuation of the suit property, was also gone into by their Lordships.

In the suit in the present lis, on the other hand, as already noticed, the petitioner is not seeking either the setting aside of any deed of conveyance (either by way of a sale-deed or gift deed), nor is he seeking possession of the suit property, even while admitting that the possession thereof is with defendant no.1 (respondent no.1 herein).

It seems in fact that the petitioner is seeking such declaration as a *benamidar*.

However, that not being in issue in this petition and is something which is to be gone by the trial court on the basis of the evidence led before it, no comment is made by this Court on that aspect.

Whether the petitioner should have asked for a consequential relief of possession along with his suit for declaration, again is not something to be commented upon by this Court in the present revision petition, which is only as regards the court fee payable, with the petitioner having shown that he is simply seeking a declaration with a consequential relief of permanent injunction only, as also a relief of prohibitory injunction with regard to restraint on alienation of the property, court fee *ad volorem* as per market value of the property would not be payable and it would

actually be payable in terms of Section 7(iv)(d) of the Court Fees Act, 1870, which reads as follows:-

“7. Computation of fees payable in certain suits.-The amount of fee payable under this Act in the suits next herein after mentioned shall be computed as follows:-

- (i) xxx xxx xxx
- (ii) xxx xxx xxx
- (iii) xxx xxx xxx
- (iv) In suits-
- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed.
- (d) for an injunction- to obtain an injunction.
- (e) xxx xxx xxx
- according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought.”

Consequently, the impugned order is set aside and the trial court is directed to determine, as to whether the court fee has been paid by the petitioner in terms of Section 7 (iv) (d), and to pass an appropriate order thereafter.

26.11.2018
vcgarg

(Amol Rattan Singh)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No