

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 427 of 2017

Date of decision : August 24, 2018

Sarabjeet Kaur

..... Petitioners

Versus

Panjab Singh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Sonia G. Singh , Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for the respondents.

AMOL RATTAN SINGH, J (oral).

Learned counsel for the petitioner relies upon paragraph 14 of the judgment in Niranjan Kaur Vs. Nirbigan Kaur 1982 PLR 127. She submits that no consequential relief of possession is sought by the plaintiff and only a declaratory decree is sought, that the sale deed be declared as null and void, it having been obtained by fraud, as also was the power of attorney alleged to have been executed by the petitioner in favour of respondent no.1, who is stated to be her brother-in-law (sister's husband of the petitioner). She is also stated to be still having possession of the suit property. Paragraph 14 of the judgment of the Full Bench reads as follows:-

“Reference to the other cases cited at the bar, is not necessary. Every suit involves the establishment of certain right so of the plaintiff as a necessary preliminary for the grant of the relief claimed by him, but the addition of a prayer for a declaration as to such right cannot convert such a suit for a substantive relief into one for a “declaratory decree where a consequential relief is prayed for”

within the meaning of section 7 (iv)(c) of the Act. Therefore it will have to be seen in each case as to what, its effect, is the substantive relief that has been claimed in the suit by the plaintiff and the determination thereof will decide the payment of the Court-fee.”

She also relies upon judgments of co-ordinate Benches, in Surjit Singh Vs. Karamjit Kaur 2012 (3) RCR (Civil) 364, Krishna Devi and another Vs. Jaswant Singh 2006 (4) RCR (Civil) 563 and Tarsem Singh and others Vs. Vinod Kumar and others 2014 (1) ICC 1054.

Learned counsel for the respondents points to paragraphs 9 and 15 of the judgment of the Full Bench, which read as follows:-

“9. 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, but the suit filed by the plaintiff-petitioner was virtually, to all intents and purposes, for the cancellation of the sale deed, executed by her, in favour of the defendant-respondent. She cannot claim possession unless the said deed is cancelled by a decree of the Court. To say in the plaint, that it be declared that the sale deed, got executed from her as a result of the fraud, was void and not binding on her, does not convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provisions of Section 7 (iv) (c) of the Act. To such a suit, the only article applicable is Article 1, Schedule I of the Act, and for that proposition, further support can be had from a Full Bench decision of the Allahabad High Court in Kalu Ram's case (supra) also wherein as regards the valuation of the relief as to the cancellation of the alienation, it has been held that such a 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.

15. *As regards the present case, the plaintiff-petitioner claimed possession of the suit and after getting a declaration that the sale deed was null and void because of the alleged fraud etc. It is significant to note that the plaintiff-petitioner herself being a party to the said deed could not sue for a 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. In the present case, the plaintiff-petitioner had to get the said deed, to which she was a party, cancelled, before she could seek possession of the land. Thus, the substantive relief being the cancellation of the sale deed, it is Article 1, Schedule I of the Act, which was applicable to the suit of the plaintiff-petitioner.”*

Mr. Parminder Singh, learned counsel for the respondents, submits that especially in terms of what has been held in paragraph 15 of the Full Bench Judgment, to the effect that it is essentially the sale deed which is sought to be nullified on the basis of which consequential relief of possession would be sought, even if the sale deed is treated to have been obtained by fraud, court fee *ad valorem*, in terms of clause (iii) of Article 17 of the Second Schedule to the Court Fees Act, 1870, is to be paid.

Having heard learned counsel for the parties, in view of the fact that in the suit filed by the petitioner-plaintiff, the relief sought by her (copy Annexure P-1) she has only prayed for a decree declaring that the sale deed in question, as also the power of attorney allegedly executed by her (which she denied), be declared to be illegal, null and void, the consequential relief sought being one of permanent injunction restraining the respondents-defendants from interfering in her possession of the suit

possession. Therefore, in my opinion, the petitioner's case is covered in her favour by the judgment of the Full Bench relied upon by learned counsel for the petitioner, holding that it would be Article I of Schedule I of the Court Fees Act that would apply in such a case, and not Section 7 (iv) (c) thereof. This would be especially so where the contention is that the power of attorney was obtained by fraud by respondent no.1 and that the sale deed executed by him in favour of his wife, i.e. respondent no.2 (sister of the husband of the petitioner), was based upon that fraud. Of course, whether that contention would be eventually proved or not is, naturally, not to be commented upon at this stage.

Consequently, this petition is allowed and the impugned order is set aside with the trial Court to proceed with the matter without seeking court fee, *ad valorem*.

(AMOL RATTAN SINGH)
JUDGE

August 24, 2018
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Whether speaking/reasoned	Yes
Whether Reportable	Yes