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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5168-2012 (O&M)

Date of decision : 10.01.2018

M/s Green Estate and HRE Plot Holders Association

... Petitioner(s)

Versus

Kishan Lal Sharma @ Vidur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. O.P. Sharma, Advocate
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. R.S. Hooda, Advocate
for respondent Nos.23 to 25, 27 to 29 and 31.

AMIT RAWAL, J. (ORAL)

CM-19219-CII-2016

Annexure P-40 filed along with the application is taken on
record, subject to all just exceptions.

CM stands disposed of.

CM-2999-CII-2014

This is an application under Order 22 Rule 4 read with Section
151 CPC for impleading the legal heirs of respondent No.36, namely, Sona
Devi w/o Dal Chand.

For the reasons stated in the application, which is duly
supported by an affidavit, the application is allowed and the LRs of
respondent No.36, namely, Sona Devi w/o Dal Chand are ordered to be
brought on record for the purpose of prosecuting the revision petition.

CR-5168-2012

The petitioner-plaintiff is aggrieved of the impugned order dated 06.08.2012 (Annexure P-1), whereby an application under Order 7 Rule 11 of the Code of Civil Procedure moved by defendant Nos.44 and 45 has been allowed and the petitioner-plaintiff has been called upon to deposit *ad valorem* court fee for claiming the relief of declaration along with possession, within a period of one month.

Mr. O.P. Sharma, learned counsel appearing on behalf of the petitioner-plaintiff, in support of his arguments, has drawn the attention of this Court to the prayer in the suit, which reads thus:-

"44. That the plaintiff, therefore, pray as under

a) That the Hon'ble Court be pleased to pass a decree of declaration to the effect that the sale deeds, relinquishment deed, lease deeds, GPAs, SPAs and the deeds registered on their basis and particularly the sale deeds and lease deeds bearing No.8490, 8488, 8499, 8491, 9492, 9493, 8494, 8495 all dated 14.9.2005, 8995, 8996, 8997 all dated 22.9.2005, 1370 dated 25.9.2005, 980, 985 both dated 17.4.2009, 5696, 5697 both dated 5.6.2008 1470 dated 28.5.2003, 2342 dated 4.7.2003, 7945 dated 3.3.2004, 9428 dated 31.3.2004, 3951 dated 26.7.1999, 1552 dated 12.5.2000, 15718 dated 6.1.2006, 15317 dated 6.1.2006, GPAs No.484 dated 13.3.2001, 9435 dated 31.5.2001, SPA dated 6.1.2006, 16637 dated 22.9.2001 relinquishment deeds No.9427, 9428, 9429, 9430 all dated 5.10.2005 and agreement dated 29.8.2005 and the mutations sanctioned on their basis as fully detailed and described in para Nos.9 to 20 are illegal null and void-ab-initio and not binding on the rights title and interest of the plaintiff, may kindly be passed in favour of plaintiff and against the defendants No.1 to 45.

b) that decree of declaration to the effect that filing and

withdrawal of suits detailed and described in para No.21 as also various resolutions dated 2.5.2005, 5.10.2005, 25.10.2005, 6.11.2005, 12.11.2005, 10.5.2006, 20.5.2006 and 16.7.2006 are illegal, forged, void ab initio and not binding over the rights title or interest of the plaintiff may also be kindly passed in favour of plaintiff and against defendant Nos.1 to 45.

c) That a decree of permanent injunction restraining defendants No.1 to 45 from carrying out any construction and from interfering in the peaceful possession of plaintiff over the suit land fully detailed and described in para No.4 of the plaint may also be kindly passed in favour of plaintiff and against defendant Nos.1 to 45.

d) That in case during the pendency of suit, the defendants succeed in taking possession of the suit land from the plaintiff forcibly and illegally, the Hon'ble Court be also pleased to pass a decree of possession for the land detailed and describe in para No.4 of the plaint in favour of the plaintiff and against the defendants, in the alternative.

e) That the cost of the suit or any other relief which this Hon'ble Court deems fit and proper may also be kindly granted in favour of plaintiff and against defendants No.1 to 45.”

On going through the prayer, he submits that there is no relief of cancellation of the sale deed except for seeking declaration viz-a-viz the relief of possession, the Court fee has already been paid. He relied upon the *ratio decidendi* culled out by Hon'ble Supreme Court in **“Suhrid Singh @ Sardool Singh V/s Randhir Singh & others” 2010 (2) RCR (Civil) 564.**

This Court vide interim order dated 13.01.2014 had stayed the operation of the impugned order, which reads thus:-

“As per office report, remaining respondents could not be served for want of correct addresses.

Respondent No.36 is reported to have expired. Learned counsel for the petitioner seeks time to move an application for impleading her LRs.

Needful be done within a period of two weeks, thereafter, fresh notices be issued to unserved respondents, returnable for 16.05.2014.

The operation of the impugned order is hereby stayed till further orders.”

He further submits that few of the persons purporting to be members of the society had executed the sale deed sought to be declared null and void by acting as imposters. It is, in this backdrop of the matter, the suit for declaration and permanent injunction and possession was filed. The trial Court abdicated in calling upon the petitioner-plaintiff in payment of the Court fee on the relief of declaration, as no cancellation has been sought for.

On the other hand, Mr. Rajbir Singh, AAG, Haryana, submits that even if the declaration was sought, it entail into seeking cancellation sale deed and therefore, the Court fee as directed by the trial Court is just and equitable and no fault can be found, thus, urges this Court for dismissal of the revision petition.

As per the trial Court also, the defence of defendant Nos.3 & 9, respondents herein, vide order dated 28.05.2011 had been struck off. Defendant Nos.2, 4 to 8, 10 to 30, 32 to 34, 36 to 43 & 47 proceeded *ex parte*, whereas defendant No.1, 31, 35, 44 to 46 were represented.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the law on the payment of Court fee is no longer *res integra* in view of the *ratio decidendi* culled out by Hon'ble

Supreme Court in “Suhrid Singh's case (supra) and the relevant portion of the same reads thus:-

“5. Court fee in the State of Punjab is governed by the Court Fees Act, 1870 as amended in Punjab ('Act' for short). Section 6 requires that no document of the kind specified as chargeable in the First and Second Schedules to the Act shall be filed in any court, unless the fee indicated therein is paid. Entry 17(iii) of Second Schedule requires payment of a court fee of Rs.19/50 on plaints in suits to obtain a declaratory decree where no consequential relief is prayed for. But where the suit is for a declaration and consequential relief of possession and injunction, court fee thereon is governed by section 7(iv)(c) of the Act which provides :

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

(iv) in suits - x x x x (c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed, x x x x x 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:

Provided that minimum court-fee in each shall be thirteen rupees.

Provided further that in suits coming under sub-clause (c), in cases where the relief sought 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 this section."

The second proviso to section 7(iv) of the Act will apply in this case and the valuation shall not be less than the

value of the property calculated in the manner provided for by clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with reference to the revenue payable under clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under clause (e) thereof.

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-parcenery" 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.

8. We accordingly allow these appeals, set aside the orders of the trial court and the High Court directing payment of court fee on the sale consideration under the sale deeds dated 20.4.2001, 24.4.2001, 6.7.2001 and 27.9.2003 and direct the trial court to calculate the court fee in accordance with Section 7(iv)(c) read with Section 7(v) of the Act, as indicated above, with reference to the plaint averments.”

On conjoint reading of the findings referred above and as well as prayer clause, the petitioner-plaintiff has not sought the cancellation of the sale deed except for declaration and in view of the statement made by the counsel for the plaintiff, which is reflected from the suit also, the court fee @ ₹ 30 per acre has already been paid for the purpose of possession. For the sake of brevity, paragraph 43 of the suit reads thus:-

“43. That the valuation of the suit for the purpose of Court fee and jurisdictions is assessed at ₹ 200/- with regard to the relief of declaration and injunction and for the purpose of

possession, it is assessed as ₹ 3840/- being in consonance with law regarding Court fee i.e. @ ₹ 30/- per acre, the nature of land being Banjar over which a Court fee of ₹ 96/- has been paid.”

Keeping in view the aforementioned facts and circumstances of the case, impugned order dated 06.08.2012 (Annexure P-1) is not sustainable in the eyes of law being erroneous and without jurisdiction and accordingly, the same is hereby set aside.

Resultantly, the revision petition stands allowed.

10.01.2018

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**