IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.7474 of 2016
Date of Decision.23.04.2018

Babita Devi ......Petitioner

Vs

Geeta Sharma and others ....Respondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajay Jain, Advocate
for the petitioner.

Mr. Amit Jain, Advocate
for respondent No.5.

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AMIT RAWAL J.(ORAL)

The petitioner-plaintiff is aggrieved of the impugned order whereby on an application moved under Order 7 Rule 11 CPC by the respondent-defendant for rejection of the plaint for non-payment of the court fee has been allowed calling upon him to pay the ad valorem court fee in a suit for cancellation of release deed and as well as for possession.

Mr. Ajay Jain, learned counsel appearing on behalf of the petitioner submitted that the nature and character of the suit for the purpose of adjudication of application and payment of the court fee is to be seen. The suit as framed is for declaration, permanent injunction and consequential relief of possession, for, the plaintiff had purchased the property from defendant No.1, Geeta Sharma, vide sale deed dated 09.02.2011. Prior to that on 08.06.1993, defendant No.1 had executed the lease deed in favour of defendant No.2, who had obtained the loan from defendant No.3 and 4 on 12.07.1993. Since the petitioner-plaintiff was not into possession, cause of action accrued to file the suit and court fee of

₹75/- has been paid as per the provisions of Section 7(iv)(c) of the Court Fees Act, 1970. In support of his contention, he relied upon the ratio decidendi culled out by Hon'ble Supreme Court in ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others (2010) 12 SCC 112*** to contend that the instant case falls within the second illustration given in the judgment (supra) whereby the petitioner is a non-executant but not in possession and seeking relief of possession *vis-a-vis* primary relief of declaration, court fee as per the Section 7(iv)(c) has to be affixed. He has also drawn attention of the Court to the provisions of Section 7(iv)(c) and prayed for setting aside the order under challenge.

Per contra, Mr. Amit Jain, learned counsel appearing on behalf of respondent No.5 submitted that no doubt, the petitioner is not a signatory of the Lease Deed dated 12.07.1993 and 08.06.1993 but the fact of the matter is that he had already acquired the ownership of the property by virtue of sale deed dated 09.02.2011 and for the purpose of claiming possession he has to pay the court fee as per the market value in view of the provisions of Section 7(v)(e) of the Court Fees Act, thus, righly called upon to pay the court fee not only for relief of possession but on the consideration referred to in the lease deed dated 25.11.2002, thus, urges this Court for dismissal of the revision petition.

I have heard learned counsel for the parties, appraised the paper book. For the sake of brevity para 6 of the ratio decidendi culled out in the judgment supra is reproduced 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."

As per the aforementioned proposition of law, where a non-executant seeks only declaration, the ad valorem court fee is to be paid under Section 7(iv)(c) of the Act. No doubt, Section 7(v)(c) pertains to payment of court fee where the land is subjected to land revenue, however, as per Section 7(v)(c) where there is no land revenue then the court fee is to be paid on value of similar land in the neighbourhood. For the sake of brevity, Section 7(v)(c) reads as under:-

> *"7(v)(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue, (c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue," and net profits have arisen from the land during the year next before the date of presenting the plaint— and net profits have arisen from the land during the year next before the date of presenting the plaint—" fifteen times such net profits; fifteen times such net profits;" but where no such net profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood; but where no such net profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood."*

Since the petitioner-plaintiff has purchased the property, in my view, he is required to pay the court fee on the amount as referred therein, which would be subject matter of adjudication at the final stage of the suit in case the defendants had been able to make out a case that the market value of the property was more but the plaintiff could not have affixed the court fee of ₹75/-.

The finding of the trial Court *vis-a-vis* calling upon the plaintiff to pay the court fee qua the relief of possession does not call for interference. However, with regard to payment of court fee on the amount of lease deed dated 25.11.2002 executed by defendant No.3 and 4 in favour of defendant No.5 is not correct as the petitioner is not a signatory to the aforementioned document. The ad valorem court fee is ordered to be paid for the time being as per the amount referred in the sale deed dated 09.02.2011 for the purpose of relief of possession of the property. The aforementioned valuation is done for the time being as the value of the land will be subjected to the evidence brought on record by both the parties to the *lis,* whether provisions of Section 7(v)(e) would be applicable or not.

The revision petition is disposed of in the above terms.

(AMIT RAWAL)
JUDGE

April 23, 2018
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No