

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

C.R. No.7454 of 2017

Date of Decision.23.04.2018

Ashok Kumar Jain and anotherPetitioners
Vs
Ajay Jain and othersRespondents

2. C.R. No.7456 of 2017

Ashok Kumar Jain and anotherPetitioners
Vs
Ajay JainRespondents

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jaivir Yadav, Advocate
for the petitioner(s).

Mr. Rajesh Punj, Advocate
for the respondent.

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AMIT RAWAL J.(ORAL)

This order of mine shall dispose of two revision petitions bearing No.7454 of 2017 and 7456 of 2017. C.R. No.7454 of 2017 has arisen out of impugned order dated 12.04.2017 passed in Civil Suit bearing No.3101 of 2015 titled as "Ajai Jain Vs. Ashok Kumar Jain and others" (hereinafter called as the 'first suit') whereby the application moved by the defendants under Order 7 Rule 11 CPC for rejection of the plaint has been dismissed.

C.R. No.7456 of 2017 has arisen out of the impugned order dated 12.04.2017 passed in Civil Suit bearing No.20331 of 2014 titled as "Ajai Jain Vs. Ashok Kumar Jain and another" (hereinafter called as the 'second suit') whereby the application moved by the defendants under Order 7 Rule 11 CPC for rejection of the plaint has been dismissed. The facts are

The first suit titled as “Ajai Jain Vs. Ashok Kumar Jain and others” had been filed by the plaintiff on the premise that he being the son of defendant No.1 and 2 claiming relief of declaration with consequential relief of mandatory injunction on the ground that defendant No.3 and 4 after executing irrevocable power of attorney in favour of plaintiff again without any right, interest and title fraudulently executed sale deed dated 3.7.2007 in favour of defendant No.1 and 2. Defendant No.5 being a company had entered into agreement for development of group housing on the land which defendant No.1 and 2 fraudulently got mutated in their favour on the basis of illegal and void sale deed.

In April, 1993, the plaintiff and defendant No.1 and 2 shifted to Namibia, South Africa and started a company in the name and style of INB International. The aforementioned company had an account having an amount of \$200,000 and the aforementioned amount was transferred by plaintiff back in India in the accounts maintained by defendant No.1 and 2.

On 10.07.1996, defendant No.3 and 4, who were owners of agricultural land as described in para 3 of the plaint executed an irrevocable power of attorney in favour of the plaintiff on receipt of the full consideration of the value of the agricultural land and also handed over the physical possession. After having taken the possession of the land, plaintiff and defendant No.1&2 got constructed a farm house on the agricultural land after taking due permission from the authorities. However, on 3.7.2007, the defendant No.1 and 2 illegally got executed a sale deed of the disputed land from defendant No.3 and 4, who were left with no title and interest.

The Government approved the rate of the agricultural land at village Chauma, Tehsil and District Haryana in 2007-08 in the vicinity as

₹40,00,000/- per acre. On 14.08.2013, defendant No.1 and 2 made a false and frivolous representation to defendant No.5 namely Lotus Realtech Pvt. Ltd., representing themselves as owner of the suit land and defendant No.6 without verification of the right, title and ownership granted licence for development of group housing. With the aforementioned averments, the plaintiff claimed the following relief:-

- “i. Pass decree of declaration that irrevocable power of attorney dated 10.07.1996 executed in favour of plaintiff is valid and subsisting for land bearing Khewat No.422/463, Rect. No.39, Killa No.is(7-4), 23(7-11), 24(5-10) and*
- ii. Pass decree of declaration that the sale deed dated 3.7.2007 executed by defendant No.3 and 4 for land bearing Khewat No.422/463, Rect.No.39, Killa No.is(7-4), 23(7-11), 24(5-10) is null and void ab initio and*
- iii. Pass decree of declaration that licence granted by defendant No.6 in favour of defendant No.1 and 2 is null and void, ab initio and*
- iv. Pass decree of permanent injunction that defendant No.1, 2 and 5 to carry out any construction in the land bearing Khewat No.422/463, Rect. No.39, Killa No.is (7-4), 23(7-11), 24(5-10),*
- v. Grant cost of the suit in favour of the plaintiff and against the defendant, and*
- vi. Pass any other decree/order or direction as this court may deem fit and proper in facts and circumstances of the case.”*

The petitioners-defendants appeared in pursuance of receipt of

notice and filed the application (Annexure P-2) under Order 7 Rule 11 CPC for rejection of the plaint for non-payment of the court fee as relief No.2 (ii) pertained to claiming declaration of the sale deed executed by defendant No.3 and 4 to be null and void and therefore, the court fee affixed was deficient. It was alleged that the irrevocable power of attorney in favour of the plaintiff was a sale which was still subsisting and it is in that background of the matter, the petitioner had filed the another suit i.e. second suit claiming following relief:-

“i. Pass decree declaring Surrender of Lease dated 29.06.2011 executed by Plaintiff in favour of Defendant No.1 of land being Khewat/Khata No.291/3593 Mustakil No.39 Kila 17/1(1-17), 17/2(6-13) Kita 2 Rakba 8 kanal 0 marla situated in banka siwan, mauza chauma, tehsil and district Gurgaon as null and void ab-initio in favour of plaintiff and against defendant; and

ii. Pass decree cancelling Surrender of Lease dated 29.06.2011 executed by Plaintiff in favour of Defendant No.1 of land being Khewat/Khata No.291/3593 Mustakil No.39 Kila 17/1(1-17), 17/2(6-13) Kita 2 Rakba 8 kanal 0 marla situated in banka siwan, mauza chauma, tehsil and district Gurgaon as null and void ab-initio in favour of plaintiff and against defendant; and

iii Pass a decree of declaration that Plaintiff is a Co-owner of undivided share in land belonging Khasra No.Khewat/Khata No.422/463, Rect. No.39, Kila No.18[7-4], 23[7-11], 24[5-10] total land measuring 20 kanals and 6 and Khewat/Khata

No.291/3593 Mustakil No.39 Kila 17/1(1-17), 17/2(6-13) Kita 2 Rakba 8 kanal 0 marla herein after referred as “suit property”.

iv. Pass a decree of mandatory and permanent injunction restraining defendants not to create third party rights in land being Khewat/Khata No.291/3593 Mustakil No.39 Kila 17/1 (1-17), 17/2(6-13) Kita 2 Rakba 8 kanal 0 marla situated in banka siwan, mauza chauma, tehsil and district Gurgaon as null and void ab-initio in favour of plaintiff and against defendant.

v. Pass any other decree/order or direction as this court may deem fit and proper in facts and circumstances of the case.”

Therefore, the plaintiff was required to pay the ad valorem court fee. The finding of the trial Court declining the application by holding that the plaintiff was not signatory to the sale deed is misreading of the document as it is pleaded case of the plaintiff that the market value of the land at the relevant point of time was ₹40,00,000/- per acre. The land is not subjected to land revenue and therefore, the court fee as per the provisions of Section 7 (iv)(c) is required to be paid. In support of his contention, he relied upon the judgment of Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others (2010) 12 SCC 112**, thus, urges this Court for setting aside the order under challenge.

Per contra, Mr. Rajesh Punj, learned counsel appearing on behalf of the respondent-plaintiff submitted that it is settled law that where any relief for declaration is sought, a person who is not signatory of document cannot be called upon to pay the court fee. The plaintiff was an

agent and not principal, therefore, rightly so, the court fee has been affixed as per the averments made in the plaint. The trial Court rightly appreciated the evidence brought on record, much less, High Court Rules and Regulations. Even the ratio decidendi culled out by Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh's case** has rightly been applied and the Court fee of Rs.19.50 has been held to be correct, thus, urges this Court for dismissal of the revision petitions.

I have heard learned counsel for the parties and appraised the paper book. It would be in the fitness of things to reproduce paragraph 1, 3, 4 and 6 of the plaint in first suit and para nos.1, 4 and 7 of the plaint in second suit, which are as under:-

“First suit

- 1. Plaintiff is the son of defendant No.1 and defendant No.2. Defendant No.3 and 4 after executing irrevocable power of attorney in favour of Plaintiff have again without any right, interest and title fraudulently executed sale deed in favour of defendant No.1 and 2. Defendant No.5 is the company who had entered into agreement for development of group housing on the land which defendant No.1 and 2 fraudulently got mutated in their names on the basis of ab-initio void sale deed. Defendant No.6 is the Government authority who without verifying the facts with regard to title and ownership of the land have granted licence in favour of defendant No.1 and 2.*
- 3. On 10.07.1996, Defendant No.3 and Defendant No.4 who were the owner of agricultural land Khewat No.422/463, Rec. No.39, Killa No.is[7-4], 23[7-11], 24[5-10] situated in*

revenue estate of village Chauma, Tehsil and District Gurgaon (hereinafter referred as "Disputed Land") executed irrevocable General Power of Attorney in favour of the plaintiff on receipt of full consideration of the value of agricultural land. That at the time of the execution of the Power of Attorney defendant No.3 and 4 also handed over vacant physical possession of the land to the plaintiff.

4. That after taking over the possession of the land Plaintiff and Defendant No.1 and 2 got constructed farm house at the agricultural land after taking due permission from the authorities and shifted in the farm house built on the land in the year 1998-99.

6. That it is submitted that circle rate/Government approved rates from agricultural rate at village Chauma, Tehsil and District Haryana in 2007-08 was Rs.40,00,000/- per acres annexed hereto is copy of the circle rate in 2007-2008."

Second suit.

1. Plaintiff is the co-owner in the Suit Property and the son of Defendant No.1 and Defendant No.2. Plaintiff is residing at "Abhinandan Farm", Ansal Palam Vihar, Behind Chiranjeev Bharti School, Gurgaon, Haryana constructed on land parcel comprising of Khasra No.Khewat/Khata No.422/463, Rect. No.39, Killa No.18[7-4], 23[7-11], 24[5-0] total land measuring 20 kanals and 6 and khewat/khata No.291/3593 Mustakil No.39, Killa No.17/1(1-17), 17/2(6-13) Kita 2 rakba 8 kanal 0 marla hereinafter referred as "Suit Property".

4. *On 10.07.1996, Rajinder and Om Prakash s/o Sh. Ram Chander executed two separate General Power of Attorney in favour of Plaintiff and Defendant No.1 with respect to parcel of land bearing Khewat/khata No.422/463, Rect. No.39, Kila No.18[7-4], 23[7-11], 24[5-10] total land measuring 20 kanals and 6 marlas out of the funds jointly owned by Plaintiff and Defendant.*

7. *Plaintiff is in possession of the undivided share of the khewat/Khata No.422/463, Rect. No.39, Kila No.18[7-4], 23 [7-11], 24[5-10] total land measuring 20 kanals and 6 along with defendant No.1 and land purchased on 03.07.2007 not being part of surrender lease.”*

On juxtaposition of averments made and relief sought in both the suits, it is evident that the plaintiff is claiming the validity of the irrevocable power of attorney executed by defendant No.3 and 4 in his favour to be subsisting and for possession of the suit property. In other words, the settled case of the plaintiff is that it was a complete sale when the defendant No.3 and 4 executed an irrevocable power of attorney as the entire consideration had been paid. It would be a contract of sale as per the provisions of Section 200 of the Contract Act. In such circumstances, the plaintiff cannot back out from the ratio decidendi culled out in paragraph 6 of *Suhrid Singh @ Sardool Singh's case*, which is extracted herein below :-

“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](#).”

In second suit he is claiming declaration of ownership and possession of the suit property by challenging the sale deed dated 03.07.2007 and as well as the lease deed having a valuable consideration. In view of the proposition laid down by Hon'ble Supreme Court in **Suhrid Singh @ Sardool Singh's case**, in respect of relief of declaration where the person is not in possession, the provisions of Section 7(iv)(c) had been made applicable as for challenging the sale deed, a person is required to pay the court fee.

Now the question to be decided by this Court is whether in view of the facts and circumstances pleaded in the plaint, the respondent-plaintiff would be allowed to get away by paying court fee of ₹19.50, the answer would be 'No', for the following reasons:-

- (i) The conceded case is that the irrevocable power of attorney is valid.
- (ii) The plaintiff had claimed ownership of the property by challenging the sale deed in para 2(i) and (ii). Therefore, he made an attempt to circumvent the payment of court fee, for, he claimed ownership on the basis of irrevocable power of attorney on payment of full consideration to defendant No.3 and 4. At the most, he is required to pay court fee on the amount mentioned in the sale deed and not at the market value, for, in para 6 of the plaint by attaching the circle rate in the year 2007-2008, it was pleaded that value of the land at that time was ₹40,00,000/- per acre.

It was also contended by Mr. Punj that in identical matter in C.R. No.7325 of 2017 titled as “Ashok Kumar Jain and another Vs. Ajai Jain and another” this Court had passed the order on 01.02.2018 wherein the revision petition filed by the defendants against the dismissal of the application filed under Order 7 Rule 11 CPC, was dismissed. I am afraid that the aforementioned order would not be applicable as in the said order it is not made out that the plaintiff had claimed any relief, which would be falling within the purview of Section 7(iv)(c) and 7(c) of the Court Fees Act, therefore, the aforementioned argument would not come to the rescue of Mr. Punj and hereby repelled.

Therefore, in my view, the plaintiff cannot be called upon to pay the court fee on the market value of the property but at least at the value mentioned in the sale deed, which will be subject matter of the decision in the suit in case both the parties are able to lead evidence with regard to value of the land than the one referred to in the sale deed. This aspect has totally been ignored by the trial Court resulting into illegality and perversity.

The orders under challenge passed are not sustainable being lacking jurisdiction and are hereby set aside. The respondent-plaintiff is granted one month's time to pay the court fee on the value mentioned in the lease deed dated 29.06.2011 and the sale deed dated 03.07.2007.

Both the revision petitions are allowed in above terms.

(AMIT RAWAL)
JUDGE

April 23, 2018
Pankaj*

Whether reasoned/speaking Yes

Whether reportable No