

231

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 23.03.2018

1.

RA-CR-56-CII-2016 IN
CR-1017-2016

Pawan Kumar

... Petitioner(s)

Versus

Subhash Chander Singla and another

... Review applicant/respondent(s)

2.

CR-2093-2016

Subhash Chander Singla and another

... Petitioner(s)

Versus

Pawan Kumar and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. N.S. Wahniwal, Advocate
for the applicant(s)/respondent(s) in CR-1017-2016 and
for the petitioner(s) in CR-2093-2016.

Mr. Sandeep Punchhi, Advocate
for the non-applicant/petitioner.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of one review application bearing **RA-CR No.56-CII of 2016 in CR No.1017 of 2016** titled as **“Pawan Kumar V/s Subhash Chander Singla and another”** and one revision petition bearing **CR No.2093 of 2016** titled as **“Subhash Chander Singla and another V/s Pawan Kumar” and others.**

This Court vide order dated 11.02.2016 had disposed of the

revision petition bearing CR No.1017 of 2016 by modifying the order of the trial Court dated 05.01.2016 directing the non-applicant/petitioner/plaintiff-Pawan Kumar to pay the Court fee viz-a-viz his share i.e. 1/10th mentioned in the sale deed, in dispute.

Learned counsel for the review applicant/respondent(s) in RA-CR-56-CII-2016 and for the petitioners in CR-2093-2016 submitted that the non-applicant/petitioner/plaintiff-Pawan Kumar instituted the suit seeking following relief:-

“Suit for declaration to the effect that plaintiff is owner in joint possession of 1/10th share out of land measuring 96 sq. yards having municipal number B-6/112 bounded as East-Shastri Market, West-Kalu Ram and Amrjit Kaur, North-Shastri Market, south-Jasvir Singh, Parveen Kumar situated in Shastri Market Kotkapura, District Faridkot (29ft 5 inch x 29 ft 5 inch) and the alleged Transfer Deed No.925 dated 15.07.2015 alleged to be executed by defendant No.1, 3 to 6 and the plaintiff is illegal, ineffective , inoperative and void against the rights of the plaintiff being the same has been manipulated by defendants in connivance and collusion with each other by playing undue influence, fraud, misrepresentation on the plaintiff on the pretext of power of attorney from the plaintiff and the alleged Transfer Deed No.927 dated 15.07.2015 alleged to be executed by defendants No.2, 6 to 10 in favour of Subash Singla, Vinod Singla and Parmod Singla and the same has been procured and manipulated by defendants in connivance with each other to give support to the alleged transfer Deed No.925 dated 15.07.2015 referred above and further sale deed No.926 dated 15.07.2015 regarding property measuring 47 sq. yards, bounded as on East : Darshana Devi, West : Vikram Singh & passage & Chhabra Complex, North : Babu Ram Pansari, Sought : Gurudwara Bazar, situated within

the area of Municipal Limits, Kotkapura, alleged to be executed by defendants No.1, 3 to 10, plaintiff in favour of defendants No.11 and 12 is also illegal, ineffective, inoperative and void against the rights of the plaintiff being the same has been manipulated by defendants in connivance and collusion with each other by playing undue influence, fraud misrepresentation on the plaintiff.

AND

For separate possession through partition of the above said land/plot by metes and bounds and put the plaintiff in possession of the separate portion which may fell into his share in the partition.

AND

For permanent injunction restraining the defendants from alienating the suit property in any manner and changing the nature of the property as detailed mentioned above.”

He was a party to the transfer deed No.925 dated 15.07.2015, but not with regard to the transfer deed Nos.926 and 927 dated 15.07.2015. The trial Court passed the order for payment of Court fee, which was, as indicated above, modified by this Court, by directing the plaintiff-Pawan Kumar to pay the Court fee viz-a-viz 1/10th share.

He next submitted that along with aforementioned suit, a prayer had been made for separate possession being out of possession, therefore, the Court fee was required to be paid for that purpose. Since there are other two transfer deeds as indicated above and the Court fee has not been paid, thus, an occasion has arisen for the review applicant/respondent(s)/ to file an review application being an error apparent on record.

The revision petition bearing **CR No.2093 of 2016** is also against the order dated 05.01.2016 on the same lines.

From the perusal of the pleadings in paragraph Nos.4 & 8, the value of the property was more than 8 crores and therefore, the Court fee was required to be paid on that amount. In support of his contentions, he relied upon the *ratio decidendi* culled out by this Court in **“Sunita Rani and another V/s State of Punjab and others” 2015 (3) PLR 580** as well as in **“Amar Kaur etc. V/s Parkash Chand etc.” 1974 CurLJ 71,** to contend that the court fee was required to be paid on the market value and not as per the Court Fee Act as applicable. The provisions of Section 7 of the Indian Court Fees Act, 1870 are not applicable.

Mr. Sandeep Punchhi, learned counsel appearing on behalf of the non-applicant/petitioner-Pawan Kumar submitted that there is no error apparent on the face of the record in the order sought for review, for, the plaintiff was only a party to the transfer deed bearing No.925 dated 15.07.2015 and not the other ones. It is yet to be determined, in case, the suit succeeds and Court passes a preliminary decree via-z-viz possession, therefore, the plaintiff cannot be permitted to pay the Court fee as per the amount mentioned in the plaint. It was a ground to challenge the sale deeds as they were of a meagre amount, thus, urges this Court for dismissal of the review application as well as the revision petition.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Wahniwal, for, concededly and as per the relief as indicated above, the plaintiff/non-applicant/petitioner-Pawan Kumar is party to the transfer deed bearing No.925 dated 15.07.2015 and not to other ones, as indicated therein.

It is a settled law that a person, who is signatory to the document, has to pay

the Court fee as per the value mentioned therein, but with regard to the other relief, while claiming declaration, usual court fee has to be paid. The aforementioned view of mine is derived from the judgment rendered by this Court in **“Niranjan Kaur V/s Nirbigan Kaur” 1982 PLR 127.**

Now coming to the judgment rendered in **Sunita's case** (supra), I am of the view that it was a case, where the plaintiff was claiming damages and therefore, the Court after noticing the provisions of Section 7(1) of the Indian Court Fees Act, 1870, called upon the plaintiff to pay the Court fee, whereas in the case in hand, the challenge is only to the transfer deed, to which, the plaintiff is a party and, therefore, the order of mine calling upon the non-applicant/petitioner-Pawan Kumar to pay the court fee qua his share to the extent of 1/10th, does not call for any interference, much less, cannot be said to be error apparent on record. In **Suhrid Singh @ Sardool Singh V/s Randhir Singh and others, AIR 2010 SC 2807**, the Hon'ble Supreme Court had given an example with regard to the payment of Court fee. For the sake of brevity, the relevant para No.6 of the judgment cited supra reads thus:-

“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. ”

On going through the aforementioned findings, I am of the view that it is a fit case, where the court fee has to be paid as per the amount fixed in the transfer deed and viz-a-viz the other declaration, the plaintiff cannot be called upon to pay court fee to which he is not a party, therefore, the *ratio decidendi* culled out in **Sunita's case** (supra) would not apply.

As regards the judgment rendered in **Amar Kaur's case** (supra), I am of the view that it is yet to be ascertained during the course of evidence, whether the market value of the property was eight crores, without its determination, the plaintiff cannot be called upon to pay the

court fee as onus keeps on shifting. The Court below can always call upon the party at any stage of the suit, particularly in view of the evidence brought on record with regard to the valuation of the property, but not at this stage.

Keeping in view the aforementioned facts and circumstances, there is no error apparent on the face of record in the order dated 11.02.2016, much less, no ground is made out for interference, accordingly, the review application bearing **RA-CR No.56-CII of 2016 in CR No.1017 of 2016** as well as the revision petition bearing **CR No.2093 of 2016** are dismissed.

23.03.2018
Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned **Yes/ No**

Whether Reportable **Yes/ No**