

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4192-2018(O&M)

Date of Decision: December 04, 2019

Kulwinder Singh and another

.....Petitioners

Versus

Saurabh Singh and others

.....Respondents

CORAM: HON'BLE MS.JUSTICE NIRMALJIT KAUR

Present: Mr.S.S.Dinarpur, Advocate
for the petitioners.

Mr.Inderjeet Singh, Advocate
for respondent No.1.

Mr.Anshul Mangla, Advocate
for respondent No.2.

Mr.Manmohan Swaroop, Advocate
for respondent Nos.3 to 5.

.....

NIRMALJIT KAUR, J.

This is a revision petition against the impugned order dated 29.05.2018 passed by the Civil Judge (Junior Division), Sub Division, Bilaspur, vide which the application under order 7 Rule 11 CPC filed by the respondent-defendants was allowed and the petitioner-plaintiffs were bound down to pay the *ad valorem* Court fee on the proportionate value of the suit property as mentioned in the agreement to sell.

The only question here is as to whether the petitioners are liable to pay the Court fee on the proportionate value of the suit property, as

mentioned in the agreement to sell or not.

While praying for setting aside the said order, learned counsel for the petitioners submitted that it was not a suit for specific performance and, therefore, the trial Court erred in coming to the conclusion that it was a relief of enforcement of the agreement by way of execution and registration of a sale-deed. Reliance was placed on the judgment of this Court in the case of Arun Sharma vs Usha Sunderam, 2015(2) RCR (Civil) 72 as well as on the judgment of Hon'ble Apex Court in the case of Saleem Bhai and others vs Sate of Maharashtra and others, 2003(1) RCR (Civil) 464. However, neither of the two judgments are relevant in the facts of the present case.

The judgment rendered in the case of Narinder Kumar vs Naresh Kumar and others, 2011(3) RCR (Civil) 298 was referred to contend that it will not attract the payment of *ad valorum* Court fee in the absence of consequential relief of possession on the plea that he is already in possession of the property in dispute.

While relying on the judgments rendered in the cases of Surinder Singh and others vs Narinder Singh, 2010(4) RCR (Civil) 138 and Ravinder Kumar vs Narinder Kumar and others 2007(2) RCR (Civil) 1, learned counsel for the petitioners, once again, submitted that the plaintiff is not required to pay the *ad valorum* Court fee in case he is seeking setting aside the sale-deed of which he is not a party and is also not seeking possession and since in the present case, they were neither a party to the sale-deed and nor seeking possession, they are not required to pay the Court fee.

Learned counsel also relied on the judgment of the Apex Court

in the case of I.S.Sikandar(D) by LRs vs K.Subramani and others

2014(1) RCR (Civil) 236 to argue that they could not have asked for specific performance of the suit as the same was not maintainable till they had succeeded in the declaratory suit. Thus, they were required to file the Court fee only in a case they had filed a suit for specific performance which they could only file after the suit for declaration was decided in their favour and they were required to pay the Court fee only at that stage, i.e after the declaration suit was decided in their favour and while filing of the suit for specific performance thereafter.

It was contended that the trial Court proceeded as if it was a suit for specific performance. The same was erroneous. They cannot file a suit for specific performance till such time they succeed in the suit for declaration. The suit of declaration does not require the Court fee.

It was further argued that petitioners are required to pay the Court fee only in a suit for setting aside the sale-deed in case their consequential relief was of setting aside the sale-deed in which they were party and in which they are not a party to the sale-deed, they are not required to pay the Court fee.

Heard.

In order to adjudicate the dispute, it is necessary to see the relief claimed in the suit, which is as under:-

- (a) For declaration to the effect that agreement to sell dated 06.10.2016 still subsists and is still valid and enforceable in law;
- (b) Notice dated 23.12.2017 with regard to cancellation of the agreement to sell dated 06.10.2016 is illegal, null and void;
- (c) Decree for mandatory injunction directing the

defendants to execute and get registered the sale deed in favour of the plaintiff;

(d) decree for declaration to the effect that the sale-deed dated 22.02.2018 is null and void;

(e) the declaration that they are entitled to get the sale-deed executed in furtherance of agreement to sell dated 04.10.2016

(f) a decree for permanent injunction restraining the defendants from alienating and transferring the land in dispute;

(g) a decree for mandatory injunction seeking direction to do all necessary acts for completing the title of the plaintiff.

The Full Bench of this Court in the case of Niranjan Kaur vs Nirbigan Kaur, 1982 PLR 127 held that in case the consequential relief is a substantive relief, the same shall fall under Section 7(iv)(c) of the Court Fee Act. Para 8 of the said judgment reads as under:-

“8. It is the common case of the parties that in case the main relief in the suit is held to be that of cancellation of the sale deed, then the case is not covered by Section 7(iv)(c) and the only provision applicable is Article 1, Schedule I of the Act. In order to bring the case under Section 7(iv)(c) of the Act the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. Moreover, if no consequential relief is claimed or could be claimed in the suit, then Section 7(iv)(c) will not be attracted. Section 7(iv)(c) clearly contemplates suit to obtain the declaratory decree or order where consequential relief is prayed. It further provides that in all such suits, the plaintiff shall state the amount at which he values the relief sought. A further proviso has been added thereto by the Punjab Act No.31 of 1953, which reads as follows:

'Provides 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 Apex Court in the case of **Shamsher Singh vs Rajinder Prashad and others**, 1973 AIR (SC) 2384 too observed that the allegations in the plaint and the prayer should be looked into in order to assess the relief claimed as to whether the same falls under Section 7(iv)(c) or not? Para 4 of the judgment reads as under:-

“4. As regards the main question that arises for decision it appears to us that while the court-fee payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiff’s suit will have to fail for failure to ask for consequential relief is of no concern to the court at that stage the court in deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for. In this case the relief asked for is on the basis that the property in dispute is a joint Hindu family property and there was no legal necessity to execute the mortgage. It is now well settled that under Hindu Law if the manager of a joint family is the father and the other members are the sons the father may by incurring a debt so long as it is not for an immoral purpose, lay the joint family estate open to be taken in execution proceedings upon a decree for the payment of the debt not only where it is an unsecured debt and a simple money decree for the debt but also to a mortgage debt which the father is personally liable to pay and to a decree for the recovery of the mortgage debt by the sale of the property even where the mortgage is not for legal necessity or for payment of antecedent debt (Faqr Chand v. Harnam Kaur(1) 1967 SCR 68. Consequently when the plaintiffs sued for a declaration that the decree obtained by the appellant against

their father was not binding on them they were in reality asking either for setting aside the decree or for the consequential relief of injunction restraining the decree holder from executing the decree against the mortgaged property as he was entitled to do. This aspect is brought out in a decision of the Full Bench of the Lahore High Court in Zeb-ul-Nisa v. Din Mohammad AIR 1941 Lahore 97 where it was held that :

"The mere fact that the relief as stated in the prayer clause is expressed in a declaratory form does not necessarily show that the suit is for a mere declaration and no more. If the relief so disclosed is a declaration pure and simple and involves no other relief, the suit would fall under Art. 17(iii)."

This Court in the case of T.C.C.Residents Welfare Association vs M/s Technological Consultants Centre and others, 2007(2) PLJ 689, wherein a mandatory injunction was sought to register the deed of sale in pursuance to a resolution of purchase, held that it amounted to a specific performance and further held that the plaintiff was in such a situation liable to pay the *ad valorem* court fee. Para 2 of the judgment reads as under:-

“2. It is the case of the plaintiff that defendant Nos.2, 3 & 4 assured the members of the plaintiff-society that as soon as the formalities of liquidation are over, the sale deed would be executed. It is pointed out that the plaintiff called upon defendant Nos.2, 3, & 4 to accept the final payment but the sale deeds are not executed. Whereas, the sale deeds have been executed in favour of defendant Nos.6 to 9 and some other persons. The names of the purchasers were mentioned in the plaint. On the basis of such facts inter alia, the plaintiff sought a suit for permanent injunction restraining the defendants from

alienating the suit property and from dispossessing the members of the Society from their respective residential accommodations. The plaintiff also sought declaration declaring the sale deeds in favour of other defendants as illegal, null and void and not binding on the plaintiff. The plaintiff has also claimed a decree of mandatory injunction to execute and register the deed of sale which they purportedly purchased from the defendant No.2 vide resolution dated 16.11.1995 in favour of the members of the plaintiff-Society in terms of the agreement of sale executed by defendant Nos.3 & 4. A reading of the plaint leads no manner of doubt that, in fact, the suit is to seek specific performance of the agreement/promise made by defendant Nos.2 to 4. The challenge is also to the sale deeds executed by defendant Nos.2, 3 & 4 in favour of other defendants. Since the challenge is to the sale deeds, the plaintiff has been rightly called upon to affix the ad valorem Court fee in terms of the judgment of the Full Bench of this Court in case “Niranjan Kaur versus Nirbigan Kaur 1981 P.L.J.-423”.

Another learned Single Bench in the case of **Mohit Kumar and others vs Bharat Singh and others**, 2016(3) PLR 572 held that the plaintiff was indirectly seeking a suit for specific performance by terming the decree for declaration just to avoid payment of court fee by mere jugglery of words. Para 4 of the same reads as under:-

“4. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that the Court below has rightly decided the application under Order 7, Rule 11 CPC because the petitioners had in fact filed suit for specific performance of agreement of sale dated 28.01.2008, though merely because of jugglery of words, petitioner sought decree for declaration just to avoid the payment of court fee. The same is not

permissible as per law. On these facts, the present case is distinguishable from the case of **Bant Singh vs Noble Trade Cone Pvt.Ltd.and others** (supra). For all intents and purposes, the decree for specific performance of agreement of sale was sought and the Court below has rightly directed the petitioners to affix the Court fee.”

Applying the law laid down in the above mentioned cases, in order to ascertain the Court fee, the Courts are required to look into the allegations made in the plaint to find out the substantive relief. Two agreements to sell are involved. One agreement to sell is dated 06.10.2016 and the second one is dated 04.10.2016. They are seeking the declaration that the agreement to sell dated 06.10.2016 is valid and at the same time seeking mandatory injunction to execute sale deed in pursuance to the agreement to sell dated 06.10.2016, which is nothing, but a suit for specific performance. Besides the above, they are also seeking an execution of the sale-deed in pursuance to the agreement to sell dated 04.10.2016, which is again nothing but a suit for specific performance.

A perusal of the relief, as mentioned and detailed above, leaves no doubt in mind that in fact it was also a suit for specific performance under the garb of mentioning the same as being suit for declaration and mandatory injunction.

The argument that petitioners are not required to pay the Court fee in a suit where they are seeking the setting aside of the sale-deed of which they are not party, does not help as besides seeking the setting aside of the sale-deed of which they are not a party, the petitioner-plaintiffs are also seeking an execution of two separate sale-deeds in their favour on the basis of two separate agreement to sell which is nothing but a suit for

specific performance and, therefore, they cannot be permitted to avoid *ad valorem* Court fee by simply using different words and language.

The revision petition is, accordingly, dismissed being devoid of merit.

December 04, 2019
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(NIRMALJIT KAUR)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |