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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-6357-2015 (O&M)

Date of decision : 09.05.2019

Satya Parkash

... Petitioner

Versus

Nafe Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Kunal Dawar, Advocate for the petitioner.

Mr. Ashish Aggarwal, Senior Advocate with
Mr. Kulwant Singh, Advocate for respondent Nos.2 to 4.

AMIT RAWAL, J.

The present revision petition is directed against the impugned order dated 09.09.2015 (Annexure P1), whereby in a suit filed for declaration with consequential relief of possession filed by the petitioner-plaintiff, the trial Court, while allowing the application of the respondents-defendants, called upon plaintiff, to affix the ad-valorem court fee on the plaint and leaving the issue with regard to the fraud and impersonation open, to be considered at the appropriate stage.

Mr. Kunal Dawar, learned counsel appearing on behalf of the petitioner-plaintiff submitted that the plaintiff, vide Annexure P-2, filed the civil suit asserting his claim along with proforma defendant Nos.5 to 10, to be owner in possession of land measuring 43 kanals, having 24/63 i.e. 16 kanals 7 marlas, on the premise that the same was previously owned and possessed by the father of plaintiff-Khem Chand, who died on 05.06.1976

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intestate, therefore, the plaintiff and proforma defendants became the owners. The plaintiff recently acquired the knowledge that Nafe Singh/defendant No.1 claimed himself to be owner of the land, on the basis of the sale deed dated 11.06.1976 and had further sold the land to defendant Nos.2 to 4, vide sale deeds dated 17th, 21th and 22th January 1997, i.e. 20 kanals 8 marlas and shown himself to be owner of 16 kanals 7 marlas. The sale deeds were illegal, null and void as Khem Chand expired on 05.06.1976. There was no alienation by Khem Chand, during his life-time. Defendant No.1, had been shown to be owner in possession of land measuring 16 kanals 7 marlas, on the basis of the sale deed, which was an act of impersonation. The suit did not contain any prayer for cancellation of the sale deed, except declaration for the sale deeds to be illegal and nonest in the eyes of law.

The application of the defendants for rejection of the plaint has erroneously been allowed calling upon the plaintiff to affix the *ad valorem* court fee on the plaint.

Per contra, Mr. Ashish Aggarwal, learned Senior Counsel assisted by Mr. Kulwant Singh, learned counsel appearing on behalf of respondent Nos.2 to 4, submitted that the suit for declaration, by assailing the sale deed, was filed by the plaintiff, would be deemed a party, in respect of the act done by the father. In the year 1978, he had already filed the suit challenging the sale deeds, claiming his father, to be alive. It is a case of fraud and misrepresentation. Under the garb of declaration of the sale deeds, to be null and void, primary relief amounts to cancellation, therefore, the *ad valorem* court fee is required to be paid and not under Article 17(iii) of the Second Scheduled of the Court Fee Act, 1870 (in short 'the 1870

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Act'). In support of his contention, relies upon the ratio decidendi culled out by the Division Bench of this Court rendered in **"Tarsem Singh and others V/s Vinod Kumar and others" 2011 (31) RCR (Civil) 709** as well as the Division Bench of Madhya Pradesh High Court rendered in **"Smt. Israt Jahan V/s Rajia Begum" 2010 AIR (M.P.) 36.**

I have heard learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr. Dawar.

It would be apt to reproduce the prayer clause in the suit, which reads as under:-

"It is, therefore, humbly prayed that a decree for declaration in favour of the plaintiffs may be passed declaring the sale deeds bearing vasika No.1422 dated 11.6.1976, 14813 dated 17.1.1997, 14854 dated 21.1.97 and 14898 dated 22.1.97 as illegal, null and void, nonest and not binding upon the plaintiff and subsequent mutation may also be cancelled and proforma defendants and further a decree of permanent injunction may be passed restraining the defendants from alienating the said suit land in any body else favour or interfering in the possession of the plaintiff or proforma defendants in any other manner with costs of the suit. Any other relief which this Hon'ble Court deems appropriate and suitable be also granted to the plaintiffs."

The plaintiff has not sought the relief of possession or cancellation of the sale deed. It is simpliciter suit for declaration as they are stated to be in possession.

In the judgment rendered in **Tarsem Singh's case** cited supra by Mr. Aggarwal, it was a case where declaration of the sale deed was sought, therefore, the court fee as per Article 17(iii) of the 1870 Act, was

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required to be paid and not under Section 7(iv) (c) of the 1870 Act as the plaintiff has not sought the possession. Had it been so, the plaintiff is required to pay the same. In *Israt* (supra), it was a case of declaration, possession and mesne profit and by noticing the facts, the plaintiff was directed to pay the court fee, thus, the aforementioned judgments would not apply to the present case.

It cannot be believed that the plaintiff would deem to be party of the sale deed in an act done by his father. The payment of ad valorem court fee, in such circumstances, is a mixed question of fact and law, which cannot be decided at threshold as parameters for entertaining the application under Order 7 Rule 11 of the Code of Civil Procedure, are to be examined as per the averments in the plaint and not the defence. Since the trial Court has kept the other issue with regard to fraud and impersonation open, the issue of payment of ad valorem court fee is also required to be kept open, to be decided at the final stage of the suit.

Keeping in view the aforementioned facts, the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby set aside. Resultantly, the present revision petition stands allowed.

However, this will not preclude the defendants to press for issue of ad valorem court fee, which can be decided by the trial Court, at the final stage.

09.05.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned	Yes/ No
Whether Reportable	Yes/ No