

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

(110)

CR no.8070 of 2018 (O&M)

Date of Decision: 20.02.2019

Jyoti

...Petitioner

Vs.

Sanjay Kansal and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. Naresh Kumar, Advocate, for the petitioner.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order of the learned trial court (Civil Judge, Jr. Divn., Panipat), dated 18.10.2018, by which he has been asked to pay court fee *ad valorem* on the sale consideration mentioned in the sale deed qua which the petitioner seeks a declaration that it be set aside.

The said sale deed (dated 28.12.2015) is contended to have been obtained as the result of a fraud allegedly perpetrated by the respondents-defendants upon the petitioner (the plaintiff in the suit).

The learned trial court while passing the impugned order, has referred to a judgment of the Supreme Court in **Suhrid Singh @ Sardool Singh v. Randhir Singh and others**, AIR 2010 (SC) 2807, and has quoted the following passages from the judgment:-

“...where the executant of deed wants it to be annulled, he has to seek cancelation of the deed. But if a non executant seeks annulment of the deed, he has to seek to 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 the 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 account 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."

Thus, holding that the petitioner being the executant of the sale deed *qua* which she seeks a declaration that it be set aside, whereas she actually should have filed a suit seeking cancellation of the sale deed, for which she is required to pay the court fee *ad valorem*, the said order has been passed.

Learned counsel for the petitioner submits that the trial court has erred in directing as above because the petitioner has not asked for the consequential relief for possession of the suit land, such possession contended to be already with the petitioner, and therefore her contention is

that sub-clause (c) (iv) of Section 7 of the Court Fees Act, 1870, would not be applicable, and in fact it would actually be Article 1 of Schedule 1 to the Act that would apply.

To substantiate his contention, he has referred to a judgment of a Full Bench of this Court in *Niranjan Kaur v. Nirbigan Kaur*, 1982 PLR 127, specifically referring to the following passages contained therein:-

“7. It is well settled that the Court in deciding the question of Court-fee should look into the allegation made in the plaint to find out 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. Thus, in each case the Court has to find out the real relief claimed by the plaintiff in the suit. Where the main relief is that of the cancellation of the deed, and the declaration, if any, is only a surplusage, the case would not be covered under [Section 7\(iv\)\(c\)](#) of the Act, because in a suit under that clause, the main relief is that of a declaration and the consequential relief is just ancillary. In this respect, reference may again be made to *Mt. Zeb-ul-Nisa's case* (AIR 1941 Lah 97)(FB)(supra), wherein it has been observed as follows:

"It seems obvious that the consequential relief referred to in [section 7\(iv\)\(c\)](#) could not mean a substantive relief, the valuation of which is separately provided for in the [Court-fee Act](#). If it were so held, a plaintiff could easily evade payment of the necessary Court-fee on the substantive relief by prefacing it with a declaration as to his rights. Every suit involves the establishment of certain rights of the plaintiff as a necessary preliminary to the grant of the relief claimed by him. But the addition of a prayer for a declaration as to such rights cannot convert a suit for a substantive relief into one for a declaratory decree where consequential relief is prayed for within the meaning of [Section 7\(iv\)\(c\)](#), Court-fee Act. It is significant that the valuation of the relief in cases falling within the scope of [Section 7\(iv\)\(c\)](#) is left to the plaintiff. This is presumably because the consequential relief contemplated by the

section is some ancillary relief to which the plaintiff becomes entitled as a necessary result of the declaration but for which no separate provision is made in the Act. The essence of the relief in such cases lies in the declaratory part and the consequential relief being merely an auxiliary equitable relief, its evaluation seems to have been left to the plaintiff. The meaning of the expression 'consequential relief' as used in [section 7\(iv\)\(c\)](#) Court-fees Act, was recently considered by a Full Bench of the Allahabad High Court (consisting of five Judges) in [Kalu Ram v. Babu Lal](#), ILR 54 All 812 : (AIR 1932 All 485) and it was held that the expression 'consequential relief' means some relief, which would follow directly from the declaration given the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a 'substantial relief'. It follows, therefore, that if the relief claimed in any case is found in reality to be tantamount to a substantial relief and not a mere 'consequential relief' in the above sense the plaintiff must pay Court-fee on the substantial relief."

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 1 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 suits 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:

"Provided 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."

9. In a Suit to obtain declaratory decree where no consequential relief is prayed, sub-clause (iii) of [Article 17](#) of Schedule II of the Act, will be applicable but the suit filed by the plaintiff-petitioner was virtually to all intents and purposes, for the cancellation of the sale deed, executed by her, in favour of the defendant-respondent. She cannot claim possession unless the said deed is cancelled by a decree of the Court. To say in the plaint that it be declared that the sale deed, got executed from her as a result of the fraud, was void and not binding on her, does not convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provision of [section 7\(iv\)\(c\)](#) of the Act. To such a suit, the only article applicable is [Article 1](#) Schedule I of the Act, and for that proposition, further support can be had from a Full Bench decision of the Allahabad High Court in Kalu Ram's case (AIR 1932 All 485)(supra) also wherein as regards the valuation of the relief as to the cancellation of the alienation it has been held that such a relief falls neither under [Section 7\(iv\)\(c\)](#) nor under Schedule II [Article 17\(iii\)](#), but under the residuary [Article 1](#), Schedule 1 of the Act."

The contention therefore is that the petitioner allegedly having been played a fraud upon (as alleged), it would be the ratio of the judgment of the Full Bench that would be applicable and not the ratio of the judgment of the Supreme Court, in the specific circumstances of the case.

Having considered the matter, it is first to be noticed that this Court had directed counsel for the petitioner to place on record a copy of the sale deed that is sought to be "set aside" by way of a declaration, pursuant to which he has done so.

A perusal thereof shows that in the sale deed she is shown as the vendor/seller of the property, the respondents herein having been shown to be the vendees or purchasers. That factual position with regard to what is

contained in the sale deed in any case is not in dispute.

Undoubtedly, the petitioners' contention is that despite the sale deed containing a recital to the effect that the property was sold by her for a sum of Rs.28,62,000 and that the said amount has already been paid by the purchasers to the seller and accepted as such, the sale deed actually is the result of a fraud; however, the contention of the petitioner now is that the agreement of sale was actually for an amount of Rs.95 lacs, with the remaining amount to be paid subsequently.

Without making any comment whatsoever on the aforesaid contention which otherwise seems only too obvious, what is to be seen by this Court is that the ratio of the judgment of the Supreme Court in **Suhrid Singh** (supra), is to the effect that where the executant of a sale deed sues for negating the sale deed/getting it set aside, it has to be by way of a suit seeking cancellation of the sale deed, for which court fee *ad valorem* is necessarily to be paid.

Undoubtedly, the ratio of the Full Bench in that context may read otherwise, as it has been stated therein that where no consequential relief other than a declaratory decree is sought, Section 7(iv) (c) of the Court Fees Act would not be applicable; yet, in the opinion of this Court, it would be the ratio of the judgment of the Supreme Court, specifically holding as above, which naturally would prevail.

The contention of the learned counsel that since Section 7(iv) (c) of the Court Fees Act has not been specifically interpreted by the Supreme Court, it would be the ratio of the judgment of the Full Bench of

this Court that would prevail, is an argument which is only to be noticed to be rejected by this Court, in view of the fact that the judgment of the Supreme Court duly deals with Section 7(iv) (c) and holds as herein above.

Consequently, without making any comment on the merits of the case of the petitioner, other than what has been held herein above in the context of Court fee to be paid *ad valorem*, I see no ground to entertain this petition.

Consequently, it is dismissed in *limine*.

20.02.2019

vcgarg

(Amol Rattan Singh)

Judge

Whether speaking/reasoned : Yes

Whether reportable : Yes