

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 1137 of 2019
Date of decision: 26.3.2019

Atma Singh

.. Petitioner

v.

Manjeet Kaur and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. K. R. Dhawan, Advocate for the petitioner.

...

AVNEESH JHINGAN, J. (Oral)

The present civil revision petition has been filed being aggrieved of the order dated 22.5.2017 passed by Civil Judge (Junior Division), Moga (hereinafter described as 'Civil Court') dismissing the application filed by the petitioner-defendant No. 1 (hereinafter described as 'the petitioner') under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short, 'CPC') for rejection of the plaint for want of proper court fee.

The facts in brief are that respondent No. 1-plaintiff (hereinafter described as 'the respondent') filed a suit for declaration to the effect that she along with proforma respondents-defendants are owners of the land detailed in the head note of the plaint, situated in village Chugha Kalan, Tehsil Dharamkot, District Moga on the basis of a registered Will bearing Vasika No. 213 dated 19.4.1968 executed by Moohinder Singh son of Nand Singh in favour of the husband of the respondent. Further prayer

was that the transfer deed dated 25.2.2002 registered in the office of Sub Registrar, Dharamkot vide Vasika No. 4153 along with mutation No. 6550 dated 10.5.2002 sanctioned on the basis of the alleged gift deed is illegal, null and void having no effect on the rights of the respondent. Consequential relief of symbolic possession of the land detailed in the suit was also sought.

During the pendency of the suit, an application under Order VII Rule 11 read with Section 151 CPC was filed by the petitioner which was dismissed vide impugned order. Aggrieved of the order, an appeal was filed before the Appellate Court, same was dismissed as not maintainable, hence the present civil revision petition.

Learned counsel for the petitioner states that ultimately if the respondent succeeds, she will get physical possession of the land, hence ad valorem court fee should be fixed.

The contention raised by learned counsel for the petitioner lacks merit.

At the stage of deciding the application under Order VII Rule 11 CPC, only the contents of the plaint are to be considered. The same is reproduced below:

“ ORDER VII
 PLAINT

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11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff,

on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9;

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

The Supreme Court in **Urvashiben and another v. Krishnakant Manuprasad Trivedi**, 2019 (1) R.C.R. (Civil) 366 has held as under:

“15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view

that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O. VII R. 11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O. VII R. 11(d) of CPC.”

It was held that while rejecting a plaint only the contents of the plaint are to be gone into and the courts need not to go into the merits.

In the present case, learned counsel for the petitioner is not in a position to dispute that the respondent was not the executant of the gift deed being challenged in the suit. Moreover, no relief for actual physical possession of the suit property has been prayed and only symbolic possession has been asked for. The Supreme Court in **Suhrid Singh @ Sardool Singh v. Randhir Singh and others**, 2010 (4) SCC (Civil) 585 held as under:

“5. Court fee in the State of Punjab is governed by the Court Fees Act, 1870 as amended in Punjab (‘Act’ for short). Section 6 requires that no document of the kind specified as chargeable in the First and Second Schedules to the Act shall be filed in any court, unless the fee indicated therein is paid. Entry 17(iii) of Second Schedule requires payment of a court fee of Rs.19/50 on plaints in suits to obtain a declaratory decree

where no consequential relief is prayed for. But where the suit is for a declaration and consequential relief of possession and injunction, court fee thereon is governed by section 7(iv)(c) of the Act which provides :

"7. Computation of fees payable in certain suits : The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

(iv) in suits - x x x x (c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed, x x x x x according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought:

Provided that minimum court-fee in each shall be thirteen rupees.

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."

The second proviso to section 7(iv) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with

reference to the revenue payable under clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under clause (e) thereof.

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. “

It has been held that where the non-executant files a suit, he is not to pay the ad valorem court fee. It is only when he is asking for the declaration that the sale deed is invalid and consequential relief of physical possession, then the court fee is payable. In the present case, as the respondent is neither the executant of the gift deed nor is asking for physical possession, no ad valorem court fee is payable.

No interference is called for in the impugned order.

The revision petition is dismissed.

(AVNEESH JHINGAN)
JUDGE

26.3.2019
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No