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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-996-2017 (O&M)

Date of Reserve: 04.05.2022

Date of Pronouncement: 16.05.2022

Kaushalya Devi @ Kaushalya Bhaskar (since deceased)
through her LRsPetitioner

Versus

Smt. Nirmal Bhardwaj and others Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

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Present: Mr. Vivek Goyal, Advocate
for the petitioners.

Mr. S.S.Momi, Advocate
for respondent No.1.

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MANJARI NEHRU KAUL, J.

The instant revision petition has been filed for setting aside the order dated 31.01.2017 (Annexure P1) passed by the Civil Judge (Senior Division), Kurukshetra, whereby the petitioner/plaintiff was directed to pay ad-valorem court fee in a suit for declaration and consequential relief of permanent injunction which had been instituted by her against the respondents/defendants.

Learned counsel for the petitioner submits that the trial Court erred in directing the petitioner to affix ad-valorem Court fee with the plaint as the same would have been payable only when cancellation of a registered deed along with possession of the property was prayed for. Learned counsel while drawing the attention of this court to the prayer clause of the plaint submits that the relief claimed by the petitioner is declaratory in nature, therefore, the relief was rightly valued and appropriate court fee was

ordered to be affixed. He further submits that ad-valorem court fee is to be paid on the consideration amount mentioned in a deed. However, no consideration amount is involved in a gift deed. Thus, ad-valorem court fee would not be payable.

Per contra, learned counsel for the respondents, while vehemently opposing the submissions made by the counsel opposite, submits that as the relief prayed for in the plaint is for declaration along with consequential relief of permanent injunction, the petitioner was bound to pay ad-valorem court fee as per the market value of the property in view of the proviso to Section 7(iv)(c) of the Court Fee Act as applicable to the States of Punjab and Haryana. He submits that the question of sale consideration in case of a gift deed would be of no relevance as only market value of the property has to be considered for assessing ad-valorem court fee. Learned counsel still further submits that since the petitioner is also seeking to set aside a Sale Deed No., therefore she would be bound to pay ad-valorem court fee on the consideration amount as stated in the sale deed.

I have heard learned counsel for the parties and perused the relevant material on record.

It would be relevant to observe here that when a party to a deed seeks its annulment, it will have to necessarily seek its cancellation as well. However, when a person who is seeking annulment of a deed is not a party thereto, he/she will have no other option but to seek a declaration to the effect that the deed was invalid and not binding upon him/her.

It is settled principle of law that for the purpose of deciding the question of court fee, the Court must look into the averments made in the

plaint to ascertain the substantive relief prayed for. In order to avoid payment of ad-valorem court fee many a times a relief may be couched in the form of some other relief, on which ad-valorem court fee would not be payable, through clever drafting of the plaint. Therefore, the Courts must not restrict their query only to the prayer clause of the plaint.

Since the form of relief sought for, is different for a party to the deed and a 3rd party, the court fee payable for such relief would also vary and may be summarized as follows:-

	<i>Status of party</i>	<i>Form of Relief sought</i>	<i>Court fee</i>
A	Party to the Deed	Cancellation (irrespective of whether consequential relief is sought or not)	Ad-valorem on sale consideration
B	3 rd Party	i) Declaration without consequential relief. ii) Declaration along with consequential relief of possession.	As per proviso to Section 7(iv)(c) of the Court Fee Act

Adverting to the case in hand, the petitioner has filed a suit for declaration to the effect that :Gift Deed No. 2081 dated 23.11.2012 regarding the land measuring 5 Kanal 7 Marla, situated at village Niwarsi, District Kurukshetra and mutation thereafter, Gift Deed bearing No. 2082 dated 23.11.2012 regarding the land measuring 48 Sq. Yards consisting of four shops situated at Ward No.9, Ladwa District Kurukshetra, Gift Deed bearing No. 2085 dated 23.11.2012 regarding the land measuring 46 Sq. Yard situated at Ward No. 9, Ladwa, consisting one Deed bearing No. 2086 dated 23.11.2012 regarding the land measuring 44 Sq. Yards consisting of two shops, situated at Ladwa District Kurukshetra, Gift Deed No. 2083/1 dated 23.11.2012 regarding land measuring 7 Kanal 5 Marla, situated at Village Niwarsi and thereafter mutation No. 3558 dated 26.11.2012 are null

relief of permanent injunction restraining the defendants from alienating, creating any charge, transferring, mortgaging over the suit properties. It needs to be pointed out that the petitioner being Executant of the gift deed is a party to it and in case her aforementioned prayer for declaration is accepted, it would indirectly also amount to cancellation of the gift deed. Thus, in essence the petitioner is seeking cancellation of the gift deed although the relief sought for has been termed to be declaratory in nature.

Before proceeding further, it needs to be pointed out :

- i) Firstly that the gift deed is always executed out of love and affection and without consideration;
- ii) Secondly that it should be accompanied with the delivery of possession;
- iii) Thirdly that it should also have been accepted by the donee.

In the present case since gift is without consideration, and possession has not even been delivered and continues to be in the possession of the executant coupled with the fact that the gift deed has been challenged on the ground of fraud, no court fee is required to be paid while challenging the gift deed.

In the instant case, admittedly the instrument in question which has been executed by the petitioner is not a sale deed but a gift deed wherein no consideration amount is involved. Since neither any consideration amount is involved nor relief of possession of the property is sought for, the petitioner cannot be directed to pay ad-valorem court fee. Further more, the contention of the learned counsel for the respondents that the petitioner is also seeking cancellation of the sale deed, and hence she is liable to pay ad-valorem court fee is unacceptable. The petitioner is a

stranger to the sale deed and her relief qua that would be of declaration. This Court therefore has no hesitation in holding that the petitioner is not required to pay ad-valorem court fee, more so, when she claims herself to be in possession of the property, coupled with the fact that she has not asked for consequential relief of possession.

As a sequel to the above, this petition is allowed and the order dated 31.01.2017 (Annexure P1) passed by the Civil Judge (Senior Division), Kurukshetra, is set aside.

16.05.2022

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Note: Whether speaking/reasoned
Whether Reportable:

(MANJARI NEHRU KAUL)
JUDGE

Yes / No

Yes / No