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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4929-2014 (O&M)

Date of decision: April 17, 2023

Maya Rani and others

....Petitioners

versus

Ranbir Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. R.S. Mamli, Advocate for petitioners.

Mr. Krishan Singh, Advocate for respondents No.1 to 3.

Mr. Ravinder Malik, Advocate for respondent No.11.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside order dated 31.05.2014 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Yamuna Nagar at Jagadhri whereby petitioner-plaintiffs were directed to *ad valorem* Court fee on the amount of Rs.47,95,862/- in a suit for declaration and permanent injunction with consequential relief of mandatory injunction.

2. Learned counsel for petitioner-plaintiffs would contend that plaintiff No.4/proforma respondent No.12 entered into an agreement with defendants No.1 to 3 to sell land @ Rs.12,55,000/- per acre. An amount of Rs.6,00,000/- was paid as earnest money at the time of agreement to sell. Petitioners paid total sale consideration of Rs.46,90,562/- and spent Rs.1,00,000/- on stamp and registration. He would further contend that upon discovery, petitioners found that mutation No.2487 was entered in the name of defendant No.7 on the basis of sale-deed dated 28.08.2009 regarding land measuring 15K-1M. He would contend that plaintiffs filed suit for declaration *qua* property in question against defendants-respondents along with consequential relief of mandatory injunction directing defendants No.1, 3 and 11 to pay actual sale consideration and expenses of sale-deed amounting to Rs.47,95,862/-.

2.1. Learned counsel for petitioner-plaintiffs would further contend that respondent-defendants filed an application under Order VII Rule 11 of Code of Civil

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Procedure, 1908 (for short 'CPC') for affixing *ad valorem* Court fee, which was allowed vide impugned order dated 31.05.2014 (Annexure P-1) directing plaintiffs to affix *ad valorem* Court fee amounting to Rs.47,95,862/-.

2.2. Learned counsel for petitioners further submits that primary prayer of plaintiffs in the suit is for seeking declaration that they are owners in possession of the suit property and have challenged the sale deed/alienation and in the alternative, they have prayed for damages. Learned Trial Court, while deciding the application of defendants under Order VII Rule 11 of CPC, has ordered for payment of *advalorem* Court fee. He contends that learned Trial Court has erred in passing the impugned order because the Court fee cannot be asked to be paid on the alternative prayer, because in case the alternative prayer is granted by learned Trial Court, *advalorem* Court fee would be paid.

3. On the other hand, learned counsel for respondent-defendants No.1 to 3 and learned counsel for respondent No.11 oppose the revision and pray for dismissal of the same.

4. Having heard the arguments, I am of the view that revision petition deserves to be allowed primarily on the count that possession of the suit property being with plaintiffs (petitioners herein) is not disputed herein by defendants before Court below and main relief sought in the suit is for declaration of possession based on a sale-deed and permanent injunction and that there is only an alternative prayer of recovery of money, and at this stage, requisite Court fee to be affixed is only *qua* relief of declaration and injunction.

5. Concededly, suit is for declaration *qua* a subsequent sale-deed to which plaintiffs are not party and to that extent, alternative relief of money decree, if at all found to be admissible will necessarily depend on the findings to be rendered by learned trial Court *qua* declaration and injunction sought by plaintiffs. In case, learned trial Court comes to the conclusion that alternative relief is to be granted, then as a condition precedent, plaintiffs will have to be first given an opportunity to affix *ad*

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valorem Court fee at a subsequent stage. As regards relief of declaration, the same is governed by Section 7(iv)(c) of the Court Fee Act, 1870. Reference may be had to judgment rendered by the Supreme Court in **Suhrid Singh @ Sardool Singh versus Randhir Singh and others**, reported in **2010 AIR (SC) 2807**, wherein it has been observed as below:-

“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 xxx (c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed, x xxxx 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 nonest/ 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.

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "coparcenery" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds."

6. In view of the aforesaid, revision petition is allowed. Impugned order is set aside with liberty to defendant-respondents to raise objections *qua* affixing appropriate Court fee, in case at a subsequent stage in the trial Court, the Court comes to the conclusion that the alternative relief is to be granted to the petitioners.

7. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 17, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No