

CR 1246/2022

2023:PHHC:038655

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR 1246/2022

Date of decision:14/03/2023

Neena Rani

.....Petitioner.

Vs.

Kailash Devi and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Mohit Jaggi,Advocate for the petitioner.
 Mr. Hardeep Singh,Advocate for the respondent.

Nidhi Gupta, J.

Present revision petition has been filed by the plaintiff seeking setting aside of the order dated 9.2.2022 (Annexure P-1) passed by Id. Civil Judge (Junior Division), Patiala whereby the application filed by the respondents/defendants under Order 7 Rule 11 of Code of Civil Procedure,1908 (hereinafter referred to as 'the CPC') for rejection of the plaint for want of court fee has been allowed, and petitioner has been directed to pay ad valorem court fee on the suit property.

Facts in brief are that plaintiff/petitioner filed a suit for declaration challenging the sale deed dated 29.1.2009 in respect of a suit property situated in Patiala; and also challenging sale deed dated 28.4.2021 in respect of a suit property situated in Bathinda. Respondents/defendants appeared and filed application dated 27.10.2021 (Annexure P-3) U/O 7 Rule 11 CPC seeking rejection of the plaint on the ground that: (a) plaintiff has not paid ad valorem court fee on the plaint and therefore, the suit filed by the plaintiff is undervalued and liable to be rejected; and (b) that the plaintiff has filed the suit for declaration regarding different properties situated at Patiala, and Rampura Phul, Distt. Bathinda, and as such, the Hon'ble Court has no jurisdiction to decide the matter regarding the property situated at Rampura Phul Distt. Bathinda and the plaintiff can only file the suit regarding the property situated at Rampura Phul, in the Court of competent jurisdiction, and as such, the Id. Court below has got no jurisdiction to try and decide the present suit and the plaint is also liable to be rejected.

Petitioner filed reply dated 17.11.2021 (Annexure P-4) to the said application. However, vide impugned order dated 9.2.2022 (Annexure P-1) the above said application of the respondent has been allowed. Hence, the present revision petition.

It is submitted by the learned counsel for the petitioner/plaintiff that the trial Court is in material error in allowing the respondents' application u/O 7 Rule 11 CPC as the petitioner is not the executant of the sale deeds in question, and is not claiming exclusive possession of the suit properties. It is submitted that petitioner has claimed joint possession as co-owner qua the suit properties and as such ad valorem court fee is not payable thereupon.

It is submitted that it is well settled proposition of law that if a

person is not a party and/ or is not executant of the sale deed under challenge, then he/she is not required to pay ad valorem court fee thereupon.

It is further submitted that the petitioner is a resident of Patiala and one of the suit properties is situated in Patiala therefore, the Civil Court at Patiala has the jurisdiction to try and decide the suit. In this regard, Ld. Counsel for the petitioner relies upon Section 17 CPC to submit that ground of jurisdiction raised by the respondent is erroneous and misconceived.

It is further submitted that it was open to the trial Court to frame an issue in this regard and decide the same, however, petitioner could not have been directed to pay ad valorem court fee in view of inter-alia, the submissions made hereinabove. It is submitted that issues raised by the respondents are mixed questions of law and fact and therefore, the trial Court was in error in passing the impugned order. Ld. Counsel relies upon judgments of this Court in **Kuljeet Singh v Vikramjeet and others, Law Finder Doc Id # 767638; Kulwinder Kaur v Sukhwant Singh, Law Finder Doc Id # 227883; Baldev Kaur vs Hardeep Kaur and another Law Finder Doc Id #705572; and Paramjit Kaur and anr. Vs Mohinder Singh and others Law Finder Doc Id # 253939.**

In response, it is submitted by the learned counsel for the respondents/defendants that possession has to be delivered to the parties and therefore, Court fee has to be paid. It is further submitted that the petitioner is seeking a declaration that the sale deed is invalid, and petitioner is not in possession and, therefore, she is required to pay ad valorem court fee as provided u/s 7(iv)(c) of the Court Fees Act, 1870.

No other argument is raised on behalf of the parties.

Heard Id. Counsel.

Perusal of the impugned order shows that the learned trial Court has allowed the application u/O 7 Rule 11 CPC primarily on the ground that:-

“3. But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the ad-valorem Court fee as provided under Section 7 (iv) (c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for the Clause (v) of Section 7 of the Act”. (Emphasis supplied)

In my view, the above said reasoning of the Id. Trial Court is prima facie erroneous as admittedly (a) petitioner is non-executant of the sale deeds in question; (b) the petitioner is not claiming exclusive possession of the suit property; (c) perusal of Headnote of the plaint (Annexure P2) clearly shows that the petitioner has filed a *“suit for declaration to the effect that petitioner and defendant nos. 1 to 4 are owners in joint possession to the extent of 1/5th share each... .”*; (d) It is further stated in para 8 of the plaint that the suit property *“was ancestral property of plaintiff and defendants no. 1 to 4 and the plaintiff and defendants no. 1 to 4 are owners and in joint possession of the same in equal shares.”*

From the above, it is clear that petitioner is not seeking exclusive possession of the suit property, and has categorically stated that she is in joint possession of the suit property as co-owner along with the defendants. Therefore, every member of the family would be deemed to have community of interest and unity of possession in the suit property, which is joint family property. It is thus, clear that reasons assigned by the ld. Trial Court for passing the impugned order are materially incorrect.

Further, this Court in identical circumstances, in para 10 of the relied upon case of **Kuljeet Singh**(supra) has held as under: -

“10. In the instant case, plaintiff-respondent No.1 has pleaded that he is co-owner in joint possession to the extent of one half share with the defendant in the residential house i.e. the disputed property, which was jointly purchased by them vide registered sale deed dated 20.05.1993 and 10.11.1993 respectively and after purchasing the plots the residential house was constructed thereupon by them jointly. So, as per the averments in the plaint the plaintiff-respondent No.1 has sought the partition of the suit property claiming himself to be the joint owner in possession to the extent of equal share. There is no dispute with the proposition of law that every co-sharer is deemed to be in possession of every inch of the joint land. So, it cannot be stated at this stage that plaintiff-respondent No.1 was out of possession. Thus, he was not required to affix the ad valorem court fees according to the value of the suit property. Thus, as per the averments in the plaint, there is no defect in the valuation of the suit for the purpose of court fees and jurisdiction”.

This Court in relied upon case of **Kulwinder Kaur** (supra) has held as under:-

Court Fees Act, 1870 Section 7(iv)C Sale deed - Assailing validity of sale deed - If a person is not a party to the sale deed, he is not required to affix ad valorem Court fee for challenging such a sale deed.

6. The law laid down by this Court in the case of Ravinder Kumar (supra) clearly shows that if a person is not a party to the sale deed, he is not required to affix ad valorem Court fee for the purpose of challenging the sale deed.”.

Reference in this regard need also be made to judgment of the Hon’ble Supreme Court in case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh & others, 2010 AIR (SC) 2807**, wherein the same law as noted above, has been enunciated. From the above, the legal position in such like cases as the present one is uncontrovertibly clear. No law contrary to the above has been cited by the counsel for the respondents.

Further, perusal of impugned order shows that no findings/ reasoning have been given by the ld. Trial Court regarding second ground of jurisdiction raised by the respondents in their application under Order 7 Rule 11 CPC. However, ld. Counsel for the respondents is unable to controvert that petitioner is a resident of Patiala and therefore, trial Court had jurisdiction to try and decide the suit. In addition, provisions of Section 17 CPC as reproduced hereinbelow are also very clear:

“17. Suits for immovable property situate within jurisdiction of different Courts - Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property

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situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate.”

Proviso to abovesaid Section 17 CPC further states that in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.

Accordingly, present revision petition is **allowed**, and impugned order dated 9.2.2022 (Annexure P-1) passed by Civil Judge (Junior Division), Patiala is set aside.

Pending applications, if any, also stand disposed of.

14/03/2023
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes/No