

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

112

CR-6076-2019

Date of Decision: 19.10.2023

MEENA

...Petitioner

Versus

RAMJI LAL @ AJAY

....Respondent

CORAM:HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. S.S. Nain, Advocate
for the petitioner.

Mr. Parminder Singh, Advocate
for the respondent.

SANJAY VASHISTH, J.(Oral)

1. Present revision petition has been filed by the defendant/petitioner against the impugned order dated 11.07.2019 (Annexure P-1) passed by learned Civil Judge (Junior Division), Kalka, whereby the application filed by the defendant/petitioner under Order VII Rule 11 read with Section 151 C.P.C. was dismissed.

Further challenge has been made to the order dated 14.08.2019 (P-2), whereby review application filed by the petitioner was dismissed.

2. Mr. S.S. Nain, learned counsel for the petitioner argues that the sale deed dated 20.09.2013 is in question and suit for declaration has been instituted on 09.02.2017, which is beyond the

prescribed period of limitation of three years. Learned counsel for the petitioner further argues that the required ad-Valorem Court fee has also not been paid, because the sale consideration mentioned in the sale deed dated 20.09.2013 is Rs.14,00,000/- and suit had been filed with deficient amount of Court fee, thus, on both accounts, suit is worth for its dismissal.

3. On the other hand, learned counsel for respondent/plaintiff submits that the application filed by the defendant/petitioner under Order VII Rule 11 C.P.C. before the learned Civil Court is misconceived and has been rightly dismissed by learned trial Court on the issue of limitation. Learned counsel while producing the copy of the suit refers to paragraph No.17 of the plaint, wherein, it has been explained that plaintiff came to know of the said sale deed in the police Station at Pinjore on 24.11.2015 only. For the sake of convenience, paragraph No.17 of the plaint is reproduced hereunder:

'17. That the cause of action has arisen in favour of the plaintiff and against the defendant firstly on several occasion and again on when the defendant filed a false and frivolous complaint against the plaintiff with the police of P.S.Pinjore and on 24.11.2015, when the plaintiff came to know about the execution and registration of the alleged sale deed on the basis of alleged GPA by misrepresenting the facts and again when the request of the plaintiff was declined by the defendant to get the said sale deed cancelled and thereafter on several occasions and lastly on 08.02.2017, when the defendant threatened to alienate the property in question to some third person and also create charge over the same forcibly and illegally just to make the matter complicated. The cause of action is still continuing one.'

Thus, learned counsel for respondent/plaintiff submits that in the present case, issue of limitation is a mixed question of facts and law and a categoric pleading in this regard has already been taken in the plaint, therefore, on account of limitation, application under Order VII, Rule 11 C.P.C. cannot be allowed at this stage.

4. While responding to the second argument i.e. of making payment of deficient Court fee, Mr. Parminder Singh, learned counsel for the respondent submits that the judgment relied upon by learned trial Court is the correct proposition of law.

This Court has also gone through the judgment of Hon'ble Supreme Court, titled as **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others 2010 AIR (Supreme Court) 2807**, and relevant paragraph No. 6 of the said judgment clarifies the situation that in case, plaintiff is not the party to the sale deed and he is not seeking cancellation but declaration without seeking possession or even without seeking consequential relief of possession, he has to pay ad-Valorem Court fee as provided under Section 7 (IV) (c) of the Court Fees Act, 1870. For sake of convenience paragraph No.6 of the said judgment is reproduced hereunder:

'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 Rs19.50 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.'

5. This Court has also noticed the title of the suit and prayer made therein. In the title as well as in prayer plaintiff has sought declaration of the sale deed and he is not a party/or signatory to the said document. Moreover, no prayer, for seeking possession has been made in it, rather there is categoric prayer for granting of permanent injunction by restraining the defendants or her agents from alienating the suit land by way of sale, mortgage or in any manner. For the sake of convenience, prayer clause of the plaint is also reproduced as under:

'Suit for a decree for declaration to the effect that the Sale Deed bearing No1781 dated 20.09.2013 registered in the office of sub registrar Kalka

alleged to be executed by Late Smt. Ratni Devi wife of Shri Karta Ram acting as General Power of Attorney in favour of defendant no.1 in respect of House constructed over 3 Biswas, comprised under Khata No.23/24, Khasra No.311(1-9), 312(1-3) Kitte 2 measuring 2-12 share to the extent of 3/52 i.e. 03 Biswas, situated at Manakpur Thakurdass, Tehsil, Kalka, District Panchkula is illegal, null, void, inoperative, ineffective without jurisdiction, without authority and is sham transaction and is not binding upon the rights of the plaintiff and the same is a sham transaction in the eye of law and is liable to be declare as illegal, null, void and is liable to be set aside

AND

Further decree of an for a decree for Permanent Injunction restraining defendant, herself through her agents, representatives, or through anybody else from alienating the suit land by way of sale, mortgage or in any manner; whatsoever and from creating any charge or encumbrance or changing the nature of the suit property illegally and forcibly in any manner whatsoever. Suit based on the basis of oral as well as documentary evidence.'

6. Taking note of the judgment of the *Suhrid Singh's case* (supra), this Court is of the view that there is no illegality or perversity in the impugned order passed by learned trial Court and same is worth to be maintained, accordingly, the present petition is dismissed.

It is made clear that if the proceedings are adjourned by learned trial Court by virtue of order dated 25.09.2019 passed by this Court, during the pendency of the present revision petition, the proceedings shall commence as per law and it would be appreciated, if the proceedings of the civil suit are concluded at the earliest.

October 19, 2023
rashmi

Whether speaking/reasoned
Whether reportable?

[SANJAY VASHISTH]
JUDGE

yes/no
yes/no