



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

130

CR No.670 of 2024
Date of decision: 08.08.2024

GAURI SHANKAR ...Petitioner

V/S

SMT SUSHMA AND ORS ...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Mohd. Jameel, Advocate
for the petitioner.

VIKAS SURI, J.(ORAL)

1. The petitioner-Gauri Shankar through this petition under Article 227 of Constitution of India assails order dated 18.01.2024 (Annexure P-7), passed by learned Civil Judge (Jr. Division), Rohtak, on an application under Order VII, Rule 11 C.P.C., whereby plaintiff/petitioner has been directed to evaluate his suit for court-fee and affix the requisite Court-fee.

2. Briefly stated, plaintiff-petitioner filed a suit seeking the following relief:-

"It is, therefore, prayed that a decree for declaration to the effect that the sale deed No.3103 dated 21.09.2021 registered in the office of Sub Registrar Rohtak and subsequent mutation, revenue record may kindly be declared as illegal, null and void, same are not binding upon the rights of the plaintiff and the plaintiff be declared owner and in possession of the property in question as mentioned in the plaint.

A decree for permanent injunction by way of restraining the defendants from alienating transferring, mortgage or creating any third party interest over the suit property in any manner may kindly be passed in favour of plaintiff and against the defendant with costs.

Any other relief to which plaintiff may be found entitled be also granted".

3. Upon notice of the suit, respondent-defendant No.3, namely Smt. Savita Alwa, moved an application under Order VII, Rule 11 CPC, seeking rejection of the plaint for want of affixing proper Court-fee. It was pleaded that plaintiff has filed a suit for declaration to the effect that sale deed dated 21.09.2021 and subsequent mutation on that basis be declared illegal, null and void and not binding upon the rights of the plaintiff. It was further pleaded that sale consideration recorded in the said sale deed executed by the plaintiff-petitioner was Rs.15 lakh and he has not affixed *ad valorem* Court-fee as per the aforesaid amount but has only affixed Court-fee of Rs.50/-. Petitioner filed reply to the said application denying the averments made therein.

4. The trial Court after considering the pleadings and rival contentions, in the light of the decision in ***Smt. Laxmi Devi vs. Ashok Kumar and others***, **2019:PHHC:022738**, which had applied and followed the dicta of ***Suhrid Singh alias Sardool Singh vs. Randhir Singh and others***, (2010) 12 SCC 112, directed plaintiff-petitioner to evaluate the suit for the purposes of Court-fee and affix necessary Court-fee thereupon.

5. Aggrieved by the aforesaid order petitioner has by way of the instant petition invoked superintending jurisdiction of this Court.

6. Learned counsel for the petitioner contends that challenge to the sale

deed is on the ground that a cheque for an amount of Rs.3,75,000/-, issued towards part payment of sale consideration, was dishonoured and thus, said payment of Rs.3,75,000/- remains unpaid as such. It is further submitted that respondent-vendee had fraudulent intention from the very beginning and impugned sale deed is an out-come of said fraud. The plaintiff-petitioner is not required to affix *ad valorem* court-fee, as plea of fraud has been alleged. It is further submitted that proceedings before the trial Court stand posted to 21.08.2024, for compliance with the impugned order.

7. Heard learned counsel for the petitioner and appraised the impugned order as well as the material appended with the revision petition, with his able assistance.

8. The question arising for determination in the instant revision is whether *ad valorem* Court-fee is payable upon the suit challenging an instrument of sale executed by the plaintiff, when the challenge is on allegation of fraud.

9. Perusal of the record shows that it is not disputed that plaintiff-petitioner has sought the relief of declaration to the effect that sale deed dated 21.09.2021 be declared illegal, null and void, which sale deed is for consideration of Rs.15,00,000/-. Further, perusal of the plaint also shows that the plaintiff-petitioner has specifically averred that the value of the suit for purpose of jurisdiction is Rs.400/- and accordingly, Court-fee of Rs. 50/- has been affixed on the suit.

10. The question noticed herein-above is no longer *res integra*. The first part of the question stands settled by the Apex Court in ***Suhrid Singh alias Sardool Singh's case*** (supra), wherein it has been held that if the executant of the deed seeks its cancellation, he has to pay *ad valorem* court-fee on the

consideration stated in the impugned sale deed. The relevant portion of the said judgment reads as thus:-

"7. 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 the 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.

8. 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".

10. In *Smt. Laxmi Devi's case* (supra), challenge was to the order

directing plaintiff to affix *ad valorem* Court-fee being the executant of the impugned deed, which was sought to be challenged on the ground of fraud. In the said case, it was held by a coordinate Bench, even if plaintiff/petitioner sues on the basis of fraud, even then, in view of the law laid down by the Apex Court in ***M/s Omax Construction Ltd. vs. Dharam Singh and others***, CA No.8880 of 2015, decided on 26.10.2015, Court-fee has to be paid by the plaintiff according to first principle of ***Suhrid Singh alias Sardool Singh's case*** (supra). The second part of the question also stands answered by the ratio of the above decision.

11. In view of the above discussion, I am of the considered view that the trial Court has not committed any illegality or acted with material irregularity while passing the impugned order dated 18.01.2024, directing the plaintiff-petitioner to evaluate his suit for the purposes of court-fee and affix court-fee in terms of the law laid down in ***Suhrid Singh alias Sardool Singh's case*** (supra). The impugned order is a well reasoned order and neither does it suffer from any jurisdictional error nor any has been pointed out, which calls for interference by this Court under Article 227 of the Constitution of India.

12. Accordingly, the petitioner having failed to make out any ground to warrant interference, the revision petition being bereft of merit, is dismissed *in limine*.

August 08, 2024
Poonam Sharma

(VIKAS SURI)
JUDGE

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