



CR-4313-2024 (O&M)

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129 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCR-4313-2024 (O&M)
Date of Decision: 02.08.2024

SMT. SUNITA DEVI

... Petitioner

VS.

JASBIR MALIK AND ANR

... Respondents

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present : Mr.Madan Pal, Advocate,
for the petitioner.

RITU TAGORE, J.

1. This revision, filed under Article 227 of the Constitution of India, challenges the order dated 09.04.2024 (Annexure P-1), passed by learned Civil Judge, (Jr. Division), Panipat, by which, an application (Annexure P-3) for rejection of plaint on account of deficiency in payment of Court fee, filed by the petitioner-defendant has been dismissed.

2. Learned counsel for the petitioner submits that respondents/plaintiffs, instituted a suit against the petitioner (Annexure P-2), seeking a declaration and permanent injunction, claiming to be the rightful owner in possession of the suit land, as detailed in the head note of the plaint, with further relief to restrain the petitioner/defendant from interfering in their peaceful possession of the suit land.



3. Learned counsel contends that petitioner/defendant filed an application (Annexure P-3) under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC'), seeking a directions to the respondents/plaintiffs to affix *ad valorem* Court fee on the market value of the suit property and to make up the deficiency, failing compliance, the plaint should be rejected.

4. Learned counsel contends that the learned trial Court, after considering the response (Annexure P-4) of the respondents/plaintiffs and hearing the parties, dismissed the application vide order dated 09.04.2024 (Annexure P-1) in arbitrary manner. It is stated by the learned counsel that the learned trial Court failed to note that suit of the respondents/plaintiffs for declaration is indeed a suit for cancellation of the sale deed in favor of the petitioner. Therefore, it falls under Section 7 (iv) (c) of the Court Fees Act, 1870 (for short 'the Act') and the respondents are liable to pay *ad valorem* Court fee on the market value of the suit land. The learned counsel contends that the order dated 09.04.2024 (Annexure P-1) is unsustainable in the eyes of law as it is in violation of, and contrary to, the settled provisions of law regarding the payment of court fee. Therefore, a prayer is made to set aside the impugned order and direct the respondents to pay the *ad valorem* Court fee.

5. I have heard learned counsel for the petitioner and have gone through the paper book.



6. Hon'ble the Supreme Court in 'Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Ors, 2010 AIR (Supreme Court) 2807, while dealing with the issue of payment of Court fee observed as under: -

“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 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. As evident from the plain reading of the plaint, the respondents/plaintiffs are not seeking any annulment/cancellation of the sale deed registered in the favour of the petitioner/defendant. They are also not seeking the possession of the suit land as they claim their possession over the suit land. Keeping in view the averments of the plaint, the provisions of law and ratio of the judgment *ibid*, the case of the respondents/plaintiffs does not fall in category of Section 7 (iv) (c) of the Act.

8. The learned trial Court after considering the averments contained in the plaint and the substantive relief claimed by the respondents/plaintiffs, rightly concluded that fixed court fee is liable on the plaint and not the *ad valorem* court fee.

9. As a sequel to the foregoing discussion, it is held that the learned trial Court has rightly exercise the jurisdiction that vested in it and the order does not suffer from any illegality, irregularity, infirmity or perversity so as to warrant any intervention by this Court.



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10. Resultantly, the revision petition is dismissed.
11. Pending application(s), if any, shall also stands disposed of.

02.08.2024
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(RITU TAGORE)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No