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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-3435-2022 (O&M)
Date of decision : 09.09.2024

MANOJ KUMARPetitioner

Versus

AMARJIT SINGH AND OTHERSRespondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sanjiv Gupta, Advocate
for the petitioner.

Mr. Raman Mohinder Sharma, Advocate
for respondents No.1 and 2.

None for respondents No.4 and 5.

PANKAJ JAIN, J. (ORAL)

Challenge in the instant revision is to the order dated 17th of March, 2022 whereby the application filed by the petitioner/defendant under Order 7 Rule 11 of the Code of Civil Procedure, 1908 seeking rejection of the plaint stands dismissed by Civil Judge (Senior Division), Patiala.

2. Plaintiffs filed suit seeking declaration to the effect that the plaintiffs are owners in possession of the suit property as detailed in the headnote of the plaint and that the sale deed dated 11th of July 2017 purported to have been executed by the plaintiffs in favour of defendants



No.1 and 2 through attorney is illegal, null and void. Further challenge was to the sale deed bearing Vasika No.7408 dated 15th of September, 2017 executed in favour of defendants No.1 and 2 by the alleged attorney of the plaintiffs are illegal, null and void. Consequential relief sought was in form of decree of permanent injunction restraining the defendants or their agents from interfering in the peaceful possession of the plaintiffs.

3. Defendants filed an application under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 seeking rejection of the plaint on the ground that the suit has been undervalued. The plaintiffs were required to pay *ad valorem* Court fee on the sale consideration as described in the sale deed to maintain suit challenging the same.

4. By way of impugned order, the application stands rejected holding that since the plaintiffs claim to be in possession and have sought declaration and challenged power of attorney dated 11th of July, 2017 on the strength of which the attorney holder further executed sale deeds, the plaintiffs being non-executant of the sale deed are not required to pay *ad valorem* Court Fee.

5. Mr. Gupta while assailing the impugned order submits that sale deed executed by an agent on the strength of power of attorney has to be treated as an instrument executed by the principal. Thus, the plaintiffs being executant of the sale deed, cannot avoid the same. They are thus required to affix *ad valorem* Court Fee on the plaint challenging the sale deed executed



by their agent. He relies upon law laid down by the Apex Court in Supreme Court in **Suhrid Singh @ Sardoo Singh vs. Randhir Singh and others (2010) 12 SCC 112.** Further reliance is being placed upon **Tmt. Kasthuri Radhakrishnan and others vs. M. Chinniyan and another, (2006) 3 SCC 296** to substantiate the plea that all the acts done by the agent in law are deemed to have been executed by the principal.

6. Per contra, Mr. Raman Mohinder Sharma, Advocate for the respondents No.1 & 2 submits that the plaintiffs have challenged the power of attorney itself. The petitioner himself has registered two criminal cases alleging fraud on account of forgery, fabrication and impersonation *qua* power of attorneys and the sale deeds which are subject matter of the present suit. Thus, the defendants cannot raise plea in the present case that the action of the agent is deemed to be action of the principal. The plaintiffs can well avoid the sale deed and thus are not required to pay *ad valorem* Court Fee.

7. I have heard counsel for the parties and have gone through records of the case.

8. The issue w.r.t. to fixation of Court fee on the plaint challenging sale deed stands addressed by the Supreme Court in the case of ***Suhrid Singh @ Sardool Singh's*** case (supra). While explaining the difference between annulment of the sale deed and the cancellation thereof, Apex Court observed as under:

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“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 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.”



9. Applying the aforesaid parameters to the present case, the two things worth noticing are: *firstly*, in the present case, the plaintiff has not sought decree of possession but has only sought decree of injunction and claims to be in possession of the property which is subject matter of sale deed and *secondly*, the power of attorney on the strength of which the sale deed sought to be avoided by the plaintiff was executed is also subject matter of challenge in the present suit.
10. Thus, in case the plaintiff succeeds in proving that the power of attorney itself was result of fraud and is null and void, the natural corollary will be that he will be proved to be a non-executant to the sale deed. Further, since no possession has been prayed for, the Court Fee shall be governed by the provisions as contained under Section 7(iv)(c) wherein the suit for declaration along with injunction has to be valued as suit for injunction only.
11. In view of above, this Court does not find any merit in the instant revision petition. The same is accordingly dismissed.

September 09, 2024
Dpr

(Pankaj Jain)
Judge

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