

2024:PHHC:103557



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4144-2024

Reserved on: 05.08.2024

Pronounced on: 12.08.2024

NAVEEN CHAUDHARY

.... PETITIONER

Vs.

Harsh Chaudhary

.... RESPONDENT

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Aman Pal, Advocate, for the petitioner.

DEEPAK GUPTA, J.

Plaintiff (*petitioner herein*) and defendant (*respondent herein*) are husband and wife. They are in litigation before Family Court, Faridabad.

2.1 Petitioner is aggrieved by an order dated 12.04.2024 (*Annexure P1*) passed by Id. Principal Judge, Family Court, Faridabad, whereby in an application moved by the respondent under Order 7 Rule 11 CPC for rejection of the plaint, he has been asked to pay *ad valorem* Court fee on the property in question.

2.2 Subject matter of the suit is a residential house, which was purchased on 12.01.2001 in the name of petitioner and respondent in the ratio of 50:50. It was sold by both of them to raise funds to construct a school vide sale deed dated 19.01.2009, but later on, the suit property was again purchased by them in the ratio of 50:50 by way of sale deed dated 13.02.2014 for consideration of ₹1,50,00,000/-. Claiming that he is the exclusive owner of the suit property and that he had paid the entire sale consideration for repurchasing of the same in 2014, but out of love and affection, the name of his wife-respondent was also inserted in the sale deed, petitioner-plaintiff sought a declaration to that effect. He also prayed for a decree of permanent injunction to restrain the respondent-defendant to interfere in his possession.

2.3 After appearance, respondent- defendant moved an application under Order 7 Rule 11 CPC to reject the plaint on account of non-payment of *ad valorem* Court fee.

2.4 By way of the impugned order dated 12.04.2024, the learned

Principal Judge of the Family Court allowed the application to the extent that plaintiff was asked to pay *ad valorem* court fee on the suit property in the light of a decision of Hon'ble Supreme Court rendered in ***Suhrid Singh @ Sardool Singh Vs. Randhir Singh, 2010 AIR Supreme Court 2807.***

3. The short submission made by learned counsel for the petitioner is that requirement to pay the ad valorem Court fee arises only when executant seeks cancellation or annulment of an instrument or when he is seeking possession of the suit property, but in this case, petitioner-plaintiff is only seeking a decree of declaration to the effect that he is the exclusive owner of the property in dispute and the decree of permanent injunction so as to restrain the defendant from interfering in his possession. He is neither seeking cancellation /annulment of the sale deed nor seeking possession of the suit property and in these circumstances, decision in the case of ***Suhrid Singh @ Sardool Singh (supra)*** has been wrongly applied by the trial court. *Ld. Counsel referred to Shefali Grover vs. Pawan Grover, Law Finder Doc Id # 2404294*

4. On the other hand, the contention raised by *Id. counsel* for the respondent is that in whatever form the relief claimed by the petitioner is couched, his real intention is required to be seen and that in the present case, in the garb of seeking declaration and permanent injunction, plaintiff wants annulment of the sale deed to the extent of 50% share in the suit property and therefore, is liable to pay *ad valorem* court fee on the entire value of the suit property. Reliance is placed on full bench judgment of this court rendered in ***Niranjan Kaur vs Nirbigan Kaur AIR1981 P&H 368***, apart from ***Suhrid's case (supra)***.

5. I have considered submissions of both the sides and have appraised the record carefully.

6. As will be evident on perusal of the plaint, the actual relief claimed by the plaintiff is that he is the real owner of the entire property and that defendant-respondent-his wife is recorded to be owner only as a *benamidar* to the extent of 50% share. The said relief can be granted only by annulling the sale deed in favour of defendant to the extent of her share as recorded in sale deed and so, the relief is the annulment of the sale deed to the extent of 50 %.

7. The first question is whether any such declaration as sought by the plaintiff; and the sale deed in question is hit by the provision of Prohibition of Benami Property Transactions Act, 1988.

8. The word 'benami transaction' is explained in Section 2(9) of the Prohibition of Benami Property Act, 1988, which reads as under: -

"Benami transaction" means,—

(A) a transaction or an arrangement—

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

except when the property is held by—

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) **any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;**

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.—For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,—

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;

(ii) stamp duty on such transaction or arrangement has been paid; and

(iii) the contract has been registered.

9. Thus, as per the aforesaid definition, when the property is held by any person being an individual in the name of his spouse or in the name of any child or any individual and the consideration for such property has been provided out of the known sources of the individual, the same cannot be considered to be a benami transaction.

10. In the present case, it will be a matter of evidence as to whether plaintiff paid the entire consideration for purchasing the property from his known sources of income or the 50% of the sale contribution was contributed by his wife-respondent. As of now, the court is required to see the contents of the plaint, as per which plaintiff is claiming to have contributed the entire sale contribution so as to purchase the property in dispute including the 50 % share in the name of his wife - respondent. As such, at this stage, it cannot be stated that transaction hit by the provision of Prohibition of Benami Property Transactions Act, 1988.

11. The next question is whether Court fee is liable to be paid *ad valorem* in view of the declaration sought by plaintiff. The issue has been considered at depth in ***Suhrid Singh @ Sardool Singh (Supra)*** and the same has been followed by a Division Bench of this Court in ***Tarsem Singh Vs. Vinod Kumar, 2014(1) ICC 1054***. It was held by the Division Bench after referring to the case of ***Suhrid Singh @***

Sardool Singh (Supra) as under: -

“i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay ad valorem Court fee on the consideration stated in the said sale deed.

ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) 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 by Clause (v) of Section 7 of the Act.

In view of the aforesaid judgment of the Hon'ble Supreme Court, the issue leading to payment of the Court fee is decided in terms of the parameters laid down above.”

12. At the same time, it is required to be kept in mind that Court can go behind the plaint to find out the real nature of the relief claim, on which plaintiff is liable to pay the Court fee, in order to see that plaintiff has not disguised the relief so as to avoid the payment of Court fee, as has been held in **Robust Tyre and Rubber Company (P) Ltd. Vs. State Bank of India and others 1987 (2) PLR 394 and Shanti Dhawan Vs. S.M. Khan, 2011 (2) CCC 62 P&H**. In **Niranjan Kaur vs Nirbigan Kaur AIR1981 P&H 368**, a Full Bench of this court held as under:

“7. It is well settled that the Court in deciding the question of Court-fee should look into the allegation made in the plaint to find out what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for. Thus, in each case the court has to find out the real relief claimed by the plaintiff in the suit, where the main relief is that of the cancellation of the deed, and the declaration if any is only a surplusage, the case would not be covered under [Section 7\(iv\)\(c\)](#) of the Act, because in a suit under that clause, the main relief quintal relief is just ancillary.”

13. When in the light of above said legal position, the facts of the present case are examined, it will become clear that the actual claim put forth by the plaintiff-petitioner herein is the annulment of the sale deed dated 13.02.2014 (*Annexure P3*) to the extent of 50% share in the name of the respondent-defendant, though plaintiff-petitioner has drafted the plaint in such a way that he is simply seeking declaration to the effect that he is the actual owner of the entire property.

14. By way of the impugned order dated 12.04.2024 (*Annexure P1*), the trial Court has directed the plaintiff to deposit *ad valorem* Court fee on the entire sale consideration of the impugned sale deed dated 13.02.2014 (*Annexure P3*). However, this Court is of the view that plaintiff is liable to pay *ad valorem* Court fee only to the extent of 50% share of the sale consideration as mentioned in the sale deed, as he is seeking annulment of the said sale deed only to the extent of 50% share in the name of the defendant.

15. Consequently, the present Revision Petition is partly allowed. The impugned order dated 12.04.2024 (*Annexure P1*) is modified to the extent that plaintiff-petitioner is liable to pay *ad valorem* Court fee to the extent of 50% of the sale consideration, as mentioned in the impugned sale deed dated 13.02.2014 (*Annexure P3*).

Disposed of.

12.08.2024
Vivek

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?	Yes
Whether reportable?	No