



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-5866-2022(O&M)
Date of Decision: May 23, 2024

Mohinder Singh
...Petitioner

Versus

Dilbag Singh and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Rakesh Gupta and Mr.Amandeep Singh, Advocates
for the petitioner.

Mr.S.S.Dinarpur, Advocate
for respondents No.1, 2 and 4.

None for respondents No.3 and 5 to 8.

ARCHANA PURI, J.

Challenge in the present petition is to the order dated 17.03.2022 (Annexure P-1) passed by learned trial Court, whereby, the petitioner-plaintiff has been directed to pay Court fee, with regard to five sale deeds and further, also challenged the order dated 18.11.2022 (Annexure P-2), vide which, an application filed for review of the aforesaid order dated 17.03.2002, was dismissed.

In pursuance of the notice issued, respondents No.1, 2 and 4, made appearance through counsel.

Learned counsel for the parties heard.



At the very outset, learned counsel for the petitioner has submitted that erroneously, learned trial Court had directed the petitioner (plaintiff before trial Court) to affix ad-valorem Court fee, as per the sale consideration mentioned in the impugned sale deeds. Rather, it is submitted that from the contents of the plaint, it is evident that petitioner-plaintiff had taken the plea regarding Power of Attorney to have been obtained from the petitioner in a fraudulent manner and on the basis thereof, he had challenged the questioned sale deeds, which forms the basis of the suit.

Furthermore, it is submitted that no relief of possession was being claimed by the petitioner and as such, ad-valorem Court fee, was not required to be affixed. In fact, the petitioner has only claimed the relief of declaration.

On the contrary, learned counsel for respondents No.1, 2 and 4 has submitted that the petitioner was signatory to the Power of Attorney and on the basis thereof, the sale deeds were further executed and therefore, learned trial court had appropriately considered the petitioner to be signatory of the impugned sale deeds and such being the position, it has correctly directed the petitioner to affix ad-valorem Court fee.

The facts germane, to be noticed, are as follows:-

That, initially, the petitioner (who is plaintiff before learned trial Court) had filed a suit against the respondents-defendants, thereby, seeking declaration, permanent injunction and for damages and compensation. A perusal of the plaint, copy whereof is Annexure P-3, reveals that petitioner has given detail of the land, about which, he asserts himself to be owner in



possession and furthermore, he has also deposed about respondents-defendants No.1 and 2, to be his brother and nephew respectively and manner in which, they have called him on the pretext of execution of Will, at the instance of respondent-defendant No.1 and furthermore, he was made to consume liquor and thereupon, he was taken to Tehsil office to get the Will prepared, where his signatures were obtained on blank papers. Later on, he came to know the same to be the Power of Attorney. In the plaint, it is also averred that on the basis of the Power of Attorney, having got executed on the pretext of taking the petitioner for the purpose of execution of the Will by respondent-defendant No.1, he was made to appear before the Revenue Authorities and his photograph was also clicked. On the basis of the said Power of Attorney, got executed in this manner, in favour of Dilbagh Singh, under the guise of Will, the further sales were got effected, in favour of Surinder Kaur, on the basis thereof, further sale deeds were got executed, which were challenged in the aforesaid suit.

Perusal of the head-note as well as the relief clause reveals that the petitioner-plaintiff had made a prayer for decree of declaration to the effect that he is owner in possession of the suit land and challenged the alleged Power of Attorney as well as challenged the legality and validity of the sale deeds dated 27.06.2019, 27.06.2019, 02.12.2019, 10.2.2019 and 10.12.2019 got executed, subsequently, on the basis of the aforesaid Power of Attorney and also challenged the mutations. Besides the same, the petitioner had also sought issuance of permanent injunction to restrain the respondents-defendants from interfering into his possession over the suit



property. Also, in the alternative, he sought decree for damages to be paid to the plaintiff, as assessed by the Court.

Having considered the aforesaid contents, it is pertinent to mention that for the purposes of affixation of the Court Fee, the Court has to see the relief being claimed by the plaintiff. As observed aforesaid, the petitioner-plaintiff had sought relief for declaration, on the basis of the manner of having obtained the General Power of Attorney, under the guise of Will and further challenged the sale deeds executed, on the basis thereof. For that purpose, the plaintiff had affixed requisite Court fee. No relief of possession was being claimed by the petitioner. Rather, he asserts himself to be owner in possession of the suit land and he has sought decree for declaration, on the basis thereof.

The grounds taken by the petitioner-plaintiff for challenging the Power of Attorney and sale deeds is about the Power of Attorney having got executed in a fraudulent manner and mis-representation and in the given circumstances, the petitioner-plaintiff asserts himself to be the victim of fraud played upon him by the respondents-defendants No.1 and 2, as alleged in the plaint.

Considering the aforesaid assertions, it has to be seen as to whether the ad-valorem Court fee, is required to be affixed or not.

Suffice to make reference to the decision rendered in ***Suhrid Singh @ Sardool Singh vs. Randhir Singh and others, decided on 29.03.2010, in Civil Appeal Nos.2811-2913 of 2010***, wherein, the Hon'ble Apex Court had dilated in detail about the manner and circumstances, under



which, ad-valorem Court fee is required to be affixed, for the challenge to be made to the deed of transfer/conveyance. For the beneficial reference, paragraph No.6 of the aforesaid judgment, is reproduced, as herein given:-

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.

In this case, as evident from the contents of the plaint, which have been detailed aforesaid, the petitioner-plaintiff had sought declaration, thereby, asserting himself to be owner in possession of the suit land. Rather,



he had taken the plea of fraud being played upon him, by virtue of getting Power of Attorney executed under the guise of Will and on the basis of the Power of Attorney, so obtained from him, the questioned sale deeds were further executed. In this manner, it cannot be held that the petitioner-plaintiff is signatory to the sale deeds in question. In this regard, the observations so made by learned trial Court, are palpably wrong.

Precisely, on this account, the petitioner-plaintiff, at this stage, is not bound to affix the ad-valorem Court fee. Consequently, the present revision petition is hereby accepted and the impugned order is set aside and the application, filed at the instance of the respondents, stands dismissed.

May 23, 2024
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No