2024:PHHC:139309

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-7184-2023
Date of decision: 23.10.2024

MADAN LAL ....Petitioner

Versus

GEETA RANI AND OTHERS ...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. S.S. Sahu, Advocate
for the petitioner.

Mr. Munish Kumar Garg, Advocate and
Mr. Taanuj Goyal (Tohana), Advocate,
Mr. Vikas Mehra, Advocate
for respondent No.1.

PANKAJ JAIN, J. (ORAL)

Challenge is to the order dated 5th of October, 2023 whereby in application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 Additional Civil Judge, Tohana, District Fatehabad has directed the plaintiff to pay *ad valorem* Court fee on the sale deed in question.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the petitioner as the plaintiff and the respondents as the defendants.

3. The plaintiff filed suit for declaration to the effect that he is owner in possession of agriculture land as detailed in the headnote of the

plaint. Further declaration sought was that the sale deed/transfer deed executed by defendant No.3 in favour of defendant No.2 and sale deed in favour of defendant No.1 were illegal, null and void and were not prejudice to the rights of the plaintiff. Further relief sought was in the nature of decree for permanent injunction restraining the defendants from alienating the suit land.

4. An application was filed by defendants No.1 to 3 under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the suit was not sufficiently stamped. The Court fee paid was deficient and the plaintiff was required to pay *ad voleram* Court fee.

5. While allowing the application, Trial Court observed as under :

> "5. After hearing learned counsels for the parties, this court is of the view that the suit land has been originally owned by mother of the plaintiff. After whose death, it has been inherited by plaintiff and his sisters. The defendant no. 3 is the sister of the plaintiff who was absolute owner of the suit property. The plaintiff is claiming his title in the suit property on the basis of alleged family settlement which was not recorded in any revenue record of the suit property. So, the plaintiff has no any pre existing right of the suit property and he is still claiming his title in the suit property and sought the relief of declaration of title in the suit property. The defendant no. 3 being absolute owner of her share in the suit property has executed the release deed in favour of her son who further sold it to defendant no. 1 through registered sale deed in which it is categorically written that possession of the sold land is given at the spot to the purchaser. The plaintiff is not the executant of the sale deed, but has no prima-facie evidence to establish that he is in possession of the suit property. As per the jamabandi for

> the year 2020-21, all the co- owners in the suit property were in actual possession of it. In these discussed facts and circumstances of the case, the plaintiff is hereby directed to pay the advolerum court fees according to the sale deed in question. This order of mine shall have no effect on the merits of the present case."

6. Counsel for the plaintiff/petitioner while assailing the impugned order submits that the Trial Court has totally misconstrued the prayer of the suit as well as the bare provision of the law. The suit filed by the plaintiff is for declaratory decree and the consequential relief of permanent injunction. No prayer for possession has been made. The plaintiff is neither executant of the sale deed and nor has prayed for possession and is thus not liable to pay *ad voleram* Court fee.

7. Per contra, counsel for the respondent No.1 submits that as per the *jamabandi* for the year 2020-2021, all the co-owners in the suit property were stated to be in actual possession, it is for that reason that the Trial Court rightly directed the plaintiff to pay *ad valorem* Court fee.

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

9. Section 7 of the Court Fees Act, 1870 governs the computation of fees payable in suits including declaratory suits with consequential reliefs. The same reads as under :

> "**7. Computation of fees payable in certain suits.**-The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :-

xxxxx

(iv) In suits-

for moveable property of no market-value.-(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

to enforce a right to share in joint family property.-(b) to enforce the right to share in any property on the ground that it is joint family property,

for a declaratory decree and consequential relief.-(c) to obtain a declaratory decree or order, where consequential relief is prayed,

for an injunction.-(d) to obtain an injunction,

for easements.-(e) for a right to some benefit (not herein otherwise provided for) to arise out of land, and

for accounts.-(f) for accounts-

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

10. Counsel for the defendant is not in position to dispute that the plaintiff is neither executant of any of the transfer deeds/sale deeds which are subject matter of the plaint, nor has he claimed possession.

11. In view of afore-stated admitted position, the suit would not fall within the ambit of Section 7(iv)(c) and thus, the petitioner/plaintiff would not be liable to pay *ad valorem* Court fee. Reliance can be placed upon the

ratio of law laid down by the Supreme Court in the case of **Suhrid Singh @ Sardool Singh vs. Randhir Singh, 2010(2) RCR (Civil) 564** wherein the Apex Court while considering the import of Section 7(iv)(c) of the 1870 Act and explaining the same with an illustration held as under :

> "5. Court fee in the State of Punjab is governed by the Court Fees Act, 1870 as amended in Punjab ('Act' for short). Section 6 requires that no document of the kind specified as chargeable in the First and Second Schedules to the Act shall be filed in any court, unless the fee indicated therein is paid. Entry 17(iii) of Second Schedule requires payment of a court fee of Rs. 19/50 on plaints in suits to obtain a declaratory decree where no consequential relief is prayed for. But where the suit is for a declaration and consequential relief of possession and injunction, court fee thereon is governed by section 7(iv)(c) of the Act which provides :
>
>> "7. Computation of fees payable in certain suits : The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :
>>
>> (iv) in suits - x x x x (c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is prayed, x x x x x according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.
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>> In all such suits the plaintiff shall state the amount at which he values the relief sought:
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>> Provided that minimum court-fee in each shall be thirteen rupees.
>>
>> Provided further that in suits coming under sub-clause (c), in cases where the relief sought 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 this section."
>
> The second proviso to section 7(iv) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with reference to the revenue payable under clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under clause (e) thereof.

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. <u>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</u>

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."

(emphasis supplied)

12. In view thereof, the impugned order passed by the Additional Civil Judge (Senior Division) Tohana is found to be unsustainable in the eyes of law. Resultantly, the same is hereby set aside. Revision petition is allowed.

October 23, 2024 **(Pankaj Jain)**

Dpr **Judge**

Whether speaking/reasoned : Yes

Whether reportable : Yes