

(2008) 09 P&H CK 0078

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Pawan Kumar and Another

APPELLANT

Vs

Banwari and Others

RESPONDENT

Date of Decision: Sept. 8, 2008

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11

Citation: (2009) 1 CivCC 198 : (2008) 152 PLR 806 : (2008) 4 RCR(Civil) 572

Hon'ble Judges: Mahesh Grover, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Mahesh Grover, J.

This revision petition is directed against the order dated 4.5.2007. The respondent had filed suit for declaration and joint possession in which he challenged various sale deeds dated 24.9.1986, 25.6.93 and 2.3.94 and a decree dated 1.2.95. The petitioner who was the defendant in the suit filed an application under Order 7 Rule 11 CPC praying for rejection of the plaint on the ground that proper court fee has not been affixed as the value of the property was more than Rs. 50 lacs and prayed that since ad valorem Court fee has not been paid keeping in view the prayer in the suit, the plaint be rejected. The respondent who was the plaintiff in the suit contended that the challenge to the sale deed may be treated to the extent of 1/7th of the share as he has not confined himself to any specific khasra Nos. and was merely a co-sharer by virtue of sale of 1/7th share in his favour.

2. The trial Court accepted this plea and rejected the application of the petitioner. Learned Counsel for the petitioner while assailing the aforesaid order relied upon a Full Bench judgment of this Court titled as Niranjana Kaur v. Nirbigan Kaur (1982) 84 P.L.R. 127 wherein this Court held as follows:

Held, that 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 u/s 7(iv)(c) of the Act. Because in a suit under that Clause, the main relief is that of a declaration and the consequential relief is just ancillary.

Held, further, that in case the main relief in the suit is held to be that of cancellation of the sale deed, then the case is not covered by Section 7(iv)(c) and the only provision applicable is Article 1 Schedule I of the Act. In order to bring the case u/s 7(iv)(c) of the Act, the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. Moreover, if no consequential relief is claimed or could be claimed in the suit, then, Section 7(iv)(c) will not be affected. To say in the plaint, that it be declared that the sale deed, got executed from her as a result of the fraud was void and not binding on her, does not convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provisions of Section 7(iv)(c) of the Act. To such a suit, the only Article applicable is Article 1 Schedule I.

3. On the other hand, learned Counsel for the respondent relied upon a case reported as AIR. 1958 P&H 245, 1918 Pc 188 and also a Single Bench judgment of Madhya Pradesh High Court reported as 2001 R.C.R. (Civil) 797 to contend that the petition regarding Court fee is primarily between the plaintiff and the State and the plaint cannot be rejected at the threshold.

I have heard the learned Counsel for the parties.

A perusal of the impugned order shows that the respondent who is the plaintiff before the Trial Court had limited his challenge to 1/7th of the share in the sale deed. In this eventuality, whether the entire sale deed is questioned or only limited to the extent indicated by the plaintiff-respondent would be a matter to be determined during the course of proceedings in the suit.

4. The plaint, therefore, cannot be dismissed at the threshold on the objection raised by the petitioner keeping in view the facts of the case. In the judgment relied upon by the learned Counsel for the petitioner a specific issue had been struck during the course of proceedings, which this Court had deliberated upon to arrive at the observations which have been reproduced above.

5. The Trial Court, therefore, was perfectly right in dismissing the application under Order 7 Rule 11 CPC and there is no infirmity in the impugned order. Needless to say that the parties shall have liberty to ask for striking of an issue on the said question which shall be answered on the basis of the facts, pleadings and the

relevant law.

6. No merit. Dismissed.