

(2011) 05 P&H CK 0310

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3045 of 2011 (O and M)

Khajan

APPELLANT

Vs

J.S.R. Land Developer
Pvt. Ltd. and Others

RESPONDENT

Date of Decision: May 9, 2011

Acts Referred:

- Constitution of India, 1950 - Article 227
- Court Fees Act, 1870 - Article 1, 17, 7

Citation: (2011) 163 PLR 364

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ram Chand Gupta, J.

C.M. No. 12102-CII of 2011

Application is allowed subject to all just exceptions.

Civil Revision No. 3045 of 2011

1. The present revision petition has been filed under Article 227 of the Constitution of India for setting aside order dated 16.4.2011, Annexure P2, passed by learned trial Court, vide which petitioner-plaintiff has been directed to pay ad valorem court fee on the amount of consideration of sale deed.

2. I have heard learned counsel for the petitioner and have gone through the whole record carefully including the impugned order passed by learned trial Court.

3. Facts relevant for the decision of present revision petition are that petitioner-plaintiff filed a suit for declaration and permanent injunction that he is owner and in possession of the property in dispute and that respondents-defendants by playing fraud upon him, got his signatures on some documents on the plea that agreement to sell was being executed and, however, later on he came to know that, in fact, sale deed was got executed and registered by them in their favour.

4. Though the suit has been filed for declaration that the sale deed dated 30.3.2011 is null, void and not binding upon the rights of the plaintiff, however, the relief sought by petitioner-plaintiff, in fact, is for getting the same set aside on the ground of fraud to which he is a party. Sale deed is a registered one.

5. Matter regarding Court fee has been settled by a Full Bench of this Court in *Niranjan Kaur v. Nirbigan Kaur* (1982) 84 PLR 127 by observing that the Court in deciding the question of court fee should look into the allegations made in the plaint to find out what is the substantive relief that is asked for and that 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. It has been further observed that 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 and in that case main relief in the main suit is held to be cancellation of the sale-deed, the only provision applicable is Article 1, Schedule I of the Act. Relevant paragraphs of the same reads as under:

7. It is well settled that the Court in deciding the question of Court fee should look into the allegations 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 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. In this respect, reference may again be made to *Mt. Zeb-ul-Nisa's* case (supra), wherein it has been observed as follows:

It seems obvious that the consequential relief referred to in Section 7(IVX)(c) could not mean a substantive relief, the valuation of which is separately provided for in the Court Fees Act. If it were so held, a plaintiff could easily evade payment of the necessary Court-fee on the substantive relief by prefacing it with a declaration as to his rights. Every suit involves the establishment of certain rights of the plaintiff as a necessary preliminary to the grant of the relief claimed by him. But the addition of a prayer for a declaration as to such rights cannot convert a suit for a substantive relief into one for a declaratory decree where consequential relief is prayed for within the meaning of Section 7(iv)(c) Court-fees Act. It is significant that the valuation of the relief in cases falling within the scope of Section 7(IVXC) is left to the plaintiff. This is presumably because the "consequential

relief contemplated by the section is some ancillary relief to which the plaintiff becomes entitled as a necessary result of the declaration, but for which no separate provision is made in the Act. The essence of the relief in such cases lies in the declaratory part and the consequential relief being merely an auxiliary equitable relief, its valuation seems to have been left to the plaintiff. The meaning of the expression "consequential relief" and used in Section 7(iv)(c) Court-fees Act, was recently considered by a Full Bench of the Allahabad High Court (consisting of five Judges) in *Kalu Ram v. Babu Lal* AIR 54 All. 812 and it was held that the expression "consequential" relief means some relief, which would follow directly from the declaration given the valuation of which is not capable of being definitely ascertained and which is not specifically provided for anywhere in the Act and cannot be claimed independently of the declaration as a "substantial relief. It follows, therefore, that if the relief claimed in any case is found in reality to be tantamount to a substantial relief and not a mere "consequential relief in the above sense, the plaintiff must pay Court-fee on the substantial relief.

8. It is the common case of the parties 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(IVXC) will not be attracted. Section 7(IVXC) clearly contemplates suits to obtain the declaratory decree or order where consequential relief is prayed. It further provides that in all such suits, the plaintiff shall state the amount at which he values the relief sought. A further proviso has been added thereto by the Punjab Act No. 33 of 1953, which reads as follows:

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.

9. In a suit to obtain declaratory decree where no consequential relief is prayed, sub-clause (iii) of Article 17 of Schedule II of the Act, will be applicable, but the suit filed by the plaintiff-petitioner was virtually, to all intents and purposes, for the cancellation of the sale deed, executed by her, in favour of the defendant-respondent. She cannot claim possession unless the said deed is cancelled by a decree of the Court. 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 I, Schedule I of the Act, and for that proposition, further support can be had from a Full Bench decision of the Allahabad High Court in *Kalu Ram's* case (supra), also wherein as regards the valuation of the relief as to the cancellation of the deed, it has been held that such a relief falls neither u/s 7(iv)(c) nor under Schedule II Article (iii), but under the residuary article 1 Schedule I of the Act.

6. Law has also been laid down by Hon"ble Apex Court in a recent judgment in case of *Suhrid Singh @ Sardool Singh v. Randhir Singh and others* (2010) 158 PLR 707 (SC) wherein it has been held that if plaintiff is executants of a deed which is to be annulled, he has to seek cancellation of the deed. The relevant paragraph of the judgment reads as under-

6. Where the executants of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-existent 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 executants 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 executants 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-executants, 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 u/s 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.

7. In the present case, petitioner-plaintiff is a party to the sale deed, which he wants to get cancelled on the ground of fraud. Hence, even if it is taken that he has not claimed the relief of possession, in view of legal proposition settled by Hon"ble Apex Court in *Suhrid Singh's* case (*Supra*), he is required to pay ad valorem Court fee on the amount of consideration mentioned in the sale deed sought to be cancelled.

8. In view of the aforementioned facts, it cannot be said that any illegality or material irregularity has been committed by learned trial Court in passing the impugned order or that a grave injustice or gross failure of justice has occasioned thereby, warranting interference by this Court.

9. Moreover, law has been well settled by Hon"ble Apex Court in [Surya Dev Rai Vs. Ram Chander Rai and Others](#), that mere error of fact or law cannot be corrected in the exercise of supervisory jurisdiction by this Court. This Court can interfere only when the

error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law and that a grave injustice or gross failure of justice has occasioned thereby.

Hence, the present revision petition is, hereby, dismissed being devoid of any merit.