

(2010) 12 P&H CK 0541

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 4682 of 2010 (O and M)

Delhi Diocesan Trust Association

APPELLANT

Vs

Smt. Usha Yadav and Others

RESPONDENT

Date of Decision: Dec. 6, 2010

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

L.N. Mittal, J.

CM No. 13882.C of 2010

1. Allowed as prayed for.

CM No. 13884.C of 2010

2. Although sufficient ground for condonation of delay of 163 days in refiling the appeal is not made out from the averments, yet adopting liberal approach delay of 163 days in refiling the appeal is condoned.

RSA No. 4682 of 2010

3. This is second appeal by Plaintiff Delhi Diocesan Trust Association, New Delhi.

4. The Plaintiff-Appellant filed suit challenging sale deed dated 27.7.2009 executed on behalf of and in the name of the Plaintiff-Appellant by one Alberd Singh alleging himself to be authorized to execute the sale deed on behalf of the Plaintiff-Appellant. The Plaintiff, inter alia, alleged that Alberd Singh was not authorized by the Plaintiff-Appellant to execute the sale deed and consequently the sale deed is result of fraud and misrepresentation etc. The Plaintiff, therefore, sought cancellation of the sale deed.

5. Learned trial court i.e. learned Civil Judge (Senior Division), Rewari vide order dated 24.12.2009 held that Plaintiff is required to pay ad-valorem court fee on sale consideration recited in the sale deed and gave 20 days time to the Plaintiff to pay the ad valorem court fee accordingly. Thereafter the trial court vide order dated 8.1.2010 rejected the plaint since the Plaintiff failed to pay the ad-valorem court fee. First appeal preferred by the Plaintiff has been dismissed by learned District Judge, Rewari vide judgment dated 11.2.2010 because the Plaintiff-Appellant expressed inability to pay ad-valorem court fee as per orders of the trial court. Feeling aggrieved, Plaintiff has filed the instant second appeal.

6. I have heard learned Counsel for the Appellant and perused the case file.

7. Learned Counsel for the Appellant vehemently and repeatedly contended that resolution mentioned by Alberd Singh in the impugned sale deed to have been passed by the Appellant-Plaintiff was, in fact, passed by Defendant No. 6 Church of India and was not passed by the Plaintiff-Appellant. However, this question cannot be adjudicated upon in the instant second appeal but has to be adjudicated upon by the trial court after requisite court fee is paid by the Appellant-Plaintiff. The contention raised by counsel for the Appellant cannot be accepted in instant second appeal because parties have to lead evidence regarding the same.

8. Learned Counsel for the Appellant next contended that fraud has been committed with the Plaintiff by execution of impugned sale deed and since Plaintiff is not executant of the impugned sale deed, it is not required to pay ad-valorem court fee on sale consideration mentioned in the sale deed. Reliance in support of this contention has been placed on *Suhrid Singh @ Sardool Singh v. Randhir Singh and Ors.* 2010 (2) RCR 564.

9. I have carefully considered the aforesaid contention but find no merit therein. There is no dispute with the legal preposition laid down in the case of *Suhrid Singh (supra)* that if non-executant of the sale deed challenges the same then he is not liable to pay ad-valorem court fee if prayer is not made for cancellation of the sale deed. In the instant case, however, the Plaintiff is seeking cancellation of the impugned sale deed. According to the ratio of law laid down by the Hon'ble Supreme Court in the case of *Suhrid Singh (supra)*, if cancellation of sale deed is sought then ad-valorem court fee has to be paid. In the instant case, the Plaintiff is seeking cancellation of the sale deed and therefore, even according to this judgment, the Plaintiff is required to pay ad-valorem court fee on consideration recited in the sale deed.

10. In addition to the aforesaid, it has also been laid down in the case of *Suhrid Singh (supra)* that if executant of the sale deed challenges the sale deed then he has to pay ad-valorem court fee on the sale consideration mentioned in the sale deed. In the instant case, sale deed has been executed on behalf of and in the name of the Plaintiff-Appellant. Consequently, the Plaintiff-Appellant is executant of the sale

deed and is, therefore, liable to pay ad-valorem court fee on the consideration mentioned in the sale deed. It is a different matter if ultimately execution of the sale deed is not proved to be legal and valid on behalf of the Plaintiff-Appellant after adjudication. Presently for the purpose of court fee the Plaintiff-Appellant is the executant of the sale deed. However, it is expressly made clear that if the Plaintiff pays requisite court fee in the trial court, its claim would be adjudicated on merits and nothing observed in this order shall mean that the sale deed has actually been executed by or on behalf of Plaintiff-Appellant legally and validly.

11. For the reasons aforesaid, I find no infirmity much less illegality or jurisdictional error in order dated 24.12.2009 passed by the trial court holding the Plaintiff liable to pay ad-valorem court fee on sale consideration mentioned in the sale deed.

12. Learned Counsel for the Appellant next pointed out that vide order dated 24.12.2009, the trial court granted 20 days time to the Plaintiff-Appellant for payment of ad-valorem court fee but even before expiry of 20 days, the trial court vide order dated 8.1.2010 rejected the plaint. This grievance of the Plaintiff-Appellant can be redressed by granting further time to the Plaintiff-Appellant to pay requisite court fee in the trial court.

13. For the reasons aforesaid, order dated 24.12.2009 passed by the trial court is upheld but order dated 8.1.2010 passed by the trial court and order dated 11.2.2010 passed by the lower appellate court are set aside. The Plaintiff-Appellant is granted two months from today to pay requisite court fee on the plaint in the trial court. If the court fee is paid accordingly, the trial court shall proceed with the adjudication of the suit in accordance with law. However, if the requisite court fee is not paid in the trial court within stipulated period, the plaint shall stand rejected.