

(2011) 08 P&H CK 0263

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No.22 of 2009 (O and M)

Dara Singh

APPELLANT

Vs

Gurbachan Singh and Others

RESPONDENT

Date of Decision: Aug. 18, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 11
- Constitution of India, 1950 - Article 17, 226

Hon'ble Judges: Ram Chand Gupta, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Ram Chand Gupta, J.

Petitioner-plaintiff has invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India for quashing of order dated 2.12.2008 passed by learned Civil Judge, (Junior Division), Nabha, vide which petitioner-plaintiff has been directed to affix ad valorem Court fee on the sale consideration of the sale deed dated 5.11.2003 challenged in the suit.

2. I have heard learned counsel for the parties 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 Sampuran Singh, respondent no.3-defendant was father of present petitioner, respondents no.1, 2, 4 and 6. Sampuran Singh has since expired. During his life-time he has executed the sale deed dated 5.11.2003 regarding some land in favour of respondents-defendants no.1 and 2. Present petitioner and pro forma respondents no.4 to 6, i.e., plaintiffs filed suit for declaration that the said sale deed executed by Sampuran Singh in favour of respondents no.1 and 2 is illegal, null, void and ineffective upon the rights of the plaintiffs in respect of the land in dispute. They have also sought relief of permanent injunction restraining respondents-defendants

no.1 and 2 from alienating the suit land, in any manner.

4. Respondents-defendants moved an application under Order VII Rule 11 of the CPC (hereinafter to be referred as the `Code`) for rejection of the plaint on the plea that requisite court fee was not affixed. It has been alleged that plaintiffs were liable to pay ad valorem court fee on sale consideration recited in the sale deed under challenge. The said application was resisted by plaintiffs. However, learned trial Court vide impugned order held that plaintiffs are liable to pay ad valorem court fee on the sale consideration recited in the sale deed giving rise to the present revision petition.

5. Earlier in view of conflicting judgments rendered by various single Benches of this Court on the point, the following question of law was referred for decision by a Larger Bench by Hon"ble Mr.Justice L.N.Mittal, vide order dated 18.12.2009:

Whether plaintiff in a suit challenging sale deed executed by his father or a third party is liable to pay ad valorem court fee on the sale consideration recited in the sale deed?.

6. Hence, the matter was considered by Hon"ble Division Bench of this Court vide order dated 3.5.2010 and it was ordered that the question referred to the Bench already stand answered by Hon"ble Apex Court in a recent judgment rendered in *Suhrid Singh @ Sardool Singh v. Randhir Singh and Others* 2010(2) RCR (Civil) 564: 2010(2) RAJ 436: 2010(2) CCC 510 (SC). The relevant paragraph of the said judgment reads as under:

6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executants seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or no nest, 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 nonest/ 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 nonexecutant, 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. As already stated above, in the present case, plaintiffs have sought relief of declaration for setting aside sale deed executed by their father in favour of respondents-defendants no.1 and 2 with a consequential relief of permanent injunction. They have not sought relief of possession. They are not the party to the said sale deed. Hence, it cannot be said that they are liable to pay ad valorem court fee on sale consideration recited in the sale deed under challenge.

8. In view of the aforementioned facts, the present revision petition is accepted. The impugned order passed by learned trial Court is set aside.