
Sunil Kumar Vs Sheokaran Lal and Others

CR No. 3497 of 2013

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Oct. 14, 2014

Acts Referred:

Court Fees Act, 1870 – Section 7, 7(iv)(c)

Citation: (2015) 2 RCR(Civil) 385

Hon'ble Judges: Bharat Bhushan Parsoon, J

Bench: Single Bench

Advocate: P.S. Jammu, Advocates for the Appellant

Judgement

@JUDGMENTTAG-ORDER

Dr. Bharat Bhushan Parsoon, J.

A suit for declaration to the effect that the plaintiff, petitioner herein, is owner and in possession of

208/1855th share of the land in dispute and gift deed dated 9.7.2012 allegedly executed by respondent-defendant No. 1 in favour of respondent-

defendant No. 2 is illegal, wrong and not binding on the rights of the plaintiff, is pending adjudication before the lower court wherein the plaintiff

vide impugned order of 20.4.2013 (Annexure P-1) has been called upon to make good deficiency in payment of court fee by affixing ad valorem

court fee according to the value of the subject matter of the suit. Though counsel for the respondents had made appearance on 9.12.2013 but on

the date of arguments i.e. 9.10.2014 despite several pass overs, none had made appearance resulting in ex-parte proceedings against them.

2. It is case of the petitioner/plaintiff that he is in possession of the suit land pursuant to the family settlement. He is thus not seeking possession of

the land. Gift deed dated 9.7.2012 which concededly is without any consideration, is under challenge. He is not a party to the same. Property is

claimed to be ancestral. Support has been sought from Suhridd Singh @ Sardool Singh Vs. Randhir Singh and Others, wherein para 6, it has been

held by Hon"ble Supreme Court as below:

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. 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 valid but also the consequential relief of

possession, he has to pay an ad-valorem 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.

3. In the present case, no prayer for cancellation of the gift deed has been made. The petitioner-plaintiff has sought only declaration claiming that

the property is joint Hindu family co-parcenary property by stating that possession is resting with him pursuant to the family settlement. Jaswinder

Singh and Others Vs. Jasbir Kaur and Another, also supports the case of the petitioner on all scores. The same view has also been taken by this

Bench in a recent judgment of Rambai Vs. Kapoori, , where in para Nos. 11 and 12 thereof it was observed as under:

11. When neither the petitioner owns execution of the sale deed nor any consideration had been paid to her for execution of the sale deed nor the

possession has been disturbed, the only change which has come is the execution of a document which is disputed in its authorship as also in

consideration backing the document. Only relief sought in the suit is for declaration that the sale deed is illegal, null and void. Though relief of

permanent injunction has also been claimed but it emanates from the cancellation itself and does not become any substantive relief by its own

nature.

12. In a recent judgment of this Court decided on 22.5.2014 titled Om Parkash v. Smt. Bimla Devi and others bearing CR No. 5932 of 2012, this

matter has been discussed threadbare. In Full Bench decision of this Court in Nirranjan Kaur Vs. Nirbigan Kaur, , interplay of Section 7(iv)(c) and

Article 1 Schedule 1 of the Court-fees Act, 1870 was discussed at length. It was held that when suit is for cancellation of a sale deed executed by

the plaintiff and declaration sought is that it was executed as a result of fraud and thus, was not binding on him, does not convert the suit with one

for declaration with consequential relief of possession so as to fall with Section 7(iv)(c). It was further explained that the court should look into

allegations made in the plaint to find out substantive relief asked for. The court had gone even further and held that when main relief sought in the

suit is cancellation of deed and any other relief, if is surplusage, the case would not be covered by Section 7(iv)(c).

4. Keeping in view the totality of facts and circumstances, the impugned order dated 20.4.2013 (Annexure P-1) calling upon the petitioner to pay

ad-valorem court fee is not only wrong on facts but is so also in law. Consequently, setting aside the same, this petition is allowed. The parties are

directed to appear before the lower court on 18.11.2014.