

(2014) 11 P&H CK 0203

High Court Of Punjab And Haryana At Chandigarh

Case No: C.R. No. 7866 of 2014

Iqbal Singh

APPELLANT

Vs

Lakhwinder Kaur

RESPONDENT

Date of Decision: Nov. 29, 2014

Acts Referred:

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

Citation: (2015) 178 PLR 284

Hon'ble Judges: Gurmeet Singh Sandhawalia, J

Bench: Single Bench

Advocate: Navdeep Monga, Advocate for the Appellant

Judgement

Gurmeet Singh Sandhawalia, J.

Challenge in the present revision petition is to the order dated 09.09.2014 (Annexure P-4) passed by the Civil Judge (Sr. Divn.), Mansa whereby, the present petitioners-plaintiffs have been directed to fix the court fees at the ad valorem rate while allowing the application under Order 7 Rule 11 CPC filed by the defendants-respondents.

2. Counsel for the petitioners has vehemently relied upon judgment of this Court in [Smt. Santosh Malhan and Another Vs. Naina Devi and Others](#) to contend that in spite of the fact that the sale deed was executed by their attorney, they were not entitled to fix the ad valorem court fees.

3. After hearing counsel for the petitioner, this Court is of the opinion that the said argument is not liable to be accepted.

4. A perusal of the present facts in controversy would go on to show that Iqbal Singh, predecessor-in-interest of the petitioners-plaintiffs, filed a suit for declaration that he was in possession of the land in dispute and the sale deed dated 15.09.2009 executed by defendant no. 1 in favour of defendant nos. 2 and 3 on the basis of

power of attorney was a result of fraud committed by the defendants. It was submitted that the attorney had been given to defendant no. 1, who was married to the younger brother of the plaintiff's wife and was staying with the plaintiff's mother-in-law. The plea was that she being a close relative would not misuse the said attorney. It is further averred that the attorney was cancelled on 24.10.2009 in United Kingdom and then on 22.02.2010 in India. The defendants filed application under Order 7 Rule 11 CPC pleading that court fees of only Rs. 100/- had been paid whereas legally the suit should have been valued at the consideration amount of the sale deed which was Rs. 1,16,00,000/- and the plaintiff was required to pay ad valorem court fees on the value of sale deed in question.

5. The application was opposed by the present petitioners on the ground that there was no need to pay ad valorem court fees and that there was no proof of the consideration amount.

6. As noticed, the trial Court has allowed the application by placing reliance upon judgment of this Court in *Khajan vs. JSR Land Developer Pvt. Ltd. and others*, 2012 (5) RCR (Civil) 604 by noticing that though relief of possession has not been claimed but since the sale deed is sought to be cancelled, the plaintiffs are liable to fix the court fees.

7. The said issue is a vexed issue which has arisen several times before this Court. However, the judgment of the Apex Court now in [Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others](#), has settled the controversy since it has been specifically held that an executant of the deed would be required to pay the ad valorem court fees and also a person who seeks possession. The relevant observations read thus:-

❖6. 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 invalid, 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.◆

8. The said judgment has been further elucidated by a Division Bench of this Court in Tarsem Singh & others Vs. Vinod Kumar & others 2014 (1) ICC 1054 wherein two categories would be liable to pay ad valorem Court fee, one where an executant of a document wants a deed to be annulled and where the non-executant not in possession seeks for the relief of possession, he is required to pay ad valorem Court fees. In the case of a non-executant, seeking annulment of a deed to which he is not a party, he is only to pay fixed Court fees as per Article 17 (iii) of the Second Schedule of the Court Fee Act, 1870. Relevant observations read as under:

◆5. In view of the said example given an example in para No. 6 of the judgment and the finding recorded in para No. 7, we hold as follows:-

i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay ad valorem Court fee on the consideration stated in the said sale deed.

ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the ad valorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.

6. In view of the aforesaid judgment of the Hon"ble Supreme Court, the issue leading to payment of the Court fee is decided in terms of the parameters laid down above. The single bench judgments rendered prior to the Supreme Court judgment mentioned above run counter to the aforesaid view and thus overruled. The Reference is answered accordingly. The Single Bench judgments rendered, so far as they run counter to the aforesaid view, are thus overruled.◆

9. The Apex Court in [The Church of Christ Charitable Trust and Educational Charitable Society, represented by its Chairman Vs. Ponnamman Educational Trust represented by its Chairperson/Managing Trustee](#), discussed the effect of Power of

Attorney and how the agent derives the right to do things subject to the limitations in the authority given by placing reliance upon the earlier judgment of the Apex Court in [Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another](#), and it was, accordingly, held that Power of Attorney, executed under the Power of Attorney Act, 1882, gives the agent a right to use the name of the Principal, as per the terms and conditions and can convey title on behalf of the grantor, within the ambit of the deed.

10. As noticed above, in the present suit, the power of attorney was executed on 08.09.2009 in favour of defendant no. 1, on the basis of which, the sale deeds were executed by the plaintiffs which would go on to show that the plaintiffs themselves were executant through their attorney. In such circumstances, it would not lie in their mouth to say that they are not executants and not liable to pay the Court fees.

11. This view has also been taken by two other co-ordinate Bench in [Teku alias Sat Parkash Vs. Jai Bhagwan Etc.](#), and [Amar Chand and others Vs. Raj Gupta and others](#), wherein also, this Court had upheld the decision of the Trial Court for a direction to affix ad valorem Court fees on the sale deed which had been executed by a power of attorney allegedly by way of fraud. The plaintiffs had challenged the decision of the Trial Court directing them to pay ad valorem Court fees since the suit was for declaration, challenging the power of attorney and the sale deed on the ground of fraud. Accordingly, it was held that once the attorney had executed the sale deed, the plaintiffs would be considered as executant of the sale deed. Resultantly, placing reliance upon the Division Bench judgment rendered in Tarsem Singh's case (supra), the Coordinate Bench of this Court upheld the order directing payment of ad valorem Court fees on account of the fact that the petitioner was executant of the sale deed and sought cancellation thereof in Amar Chand's case (supra).

12. The Division Bench of the Madhya Pradesh High Court in [Ambika Prasad and Others Vs. Ram Shiromani alias Chandrika Prasad Dwivedi and Another](#), also has taken the same view wherein also, the issue in question was that where the executant challenges the sale deed, whether he is liable to pay ad valorem court fees. Placing reliance upon Suhrid Singh's case (supra), the Division Bench also held to the same effect. The relevant observations read thus:-

❖11. In the case at hand, plaintiff No. 1 was admittedly an executant of the sale deed sought to be declared as void. The sale deed also bears his thumb impression and the sale consideration is clearly mentioned therein. The plaintiffs in their suit for declaration have prayed that the sale deed be declared as void by alleging that it was executed by playing fraud and misrepresentation. The relief claimed implies a relief for cancellation of sale deed because plaintiff No. 1 (now dead) was an executant of the same. The sale deed, in our considered opinion, is voidable as the apparent state of affairs is a real state of affairs and the plaintiffs, who have alleged otherwise, are obliged to prove it as void. The plaintiffs, therefore, have to pay ad-valorem court-fee on the consideration stated in the sale deed. As held by the

Supreme Court in *Suhrid Singh* (supra), had plaintiff No. 1 been a non-executant the plaintiffs could have merely paid a fixed court-fee provided in Entry 17(iii) of Second Schedule of the Act.

12. It is true that in *Sunil Radhelia* (supra) the Full Bench has held that ad-valorem court-fee is not payable when the plaintiff makes an allegation that the instrument is void and not binding on him even if he be the executant of the document. But it is equally true that the decision of the Supreme Court in *Suhrid Singh* (supra) was not placed before the Full Bench and, therefore, it is not referred therein. Had the decision of *Suhrid Singh* been brought to the notice of the Judges of Full Bench, in all probability they too would have taken the same view which we have taken. ♦

13. The judgment in *Santosh Malhan's* case (supra) is not applicable since in the said case, firstly the binding precedent of the Division Bench was not brought to the notice of the learned Single Judge and secondly, perusal of the judgment would go on to show that the revision was filed by the defendants in that case since the trial Court has dismissed the application for affixation of court fees. This Court accordingly, in such circumstances, has held that there was no illegality as such in the order which would be challenged in the revisional jurisdiction.

14. In the present case, the trial Court has directed payment of the court fees and in view of the judgment of the Division Bench in *Tarsem Singh's* case (supra), this Court is of the opinion that no fault can be found in the reasoning given by the Court below. This Court also in C.R. No. 5833 of 2012, *Meenakshi Devi vs. Baksar Devi* and others decided on 26.11.2014 has taken a similar view and set aside an order where the trial Court had dismissed the application asking for a direction to the plaintiff to pay ad valorem court fees.

15. The submission of the counsel that the sale consideration was not paid is not an issue which is to be taken into consideration at the time of rejection of the plaint since it is a matter of evidence. As per the provisions of Order 7 Rule 11(c) CPC, a plaint is liable to be rejected where the relief claimed is not properly valued and the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court fails to do so.

16. In such circumstances, no fault can be found in the well reasoned order passed by the trial Court and the present revision petition is accordingly dismissed.

17. At this stage, counsel for the petitioners fairly submits that since the petitioners are residing abroad, it would take time to file the requisite stamp papers.

18. Accordingly, in such circumstances, the time given by the trial Court to fix the court fees is extended by 2 months from today.