

(2017) 03 AP CK 0012

ANDHRA PRADESH HIGH COURT

Case No: 4467 of 2014

Gomatiprasad and
another

APPELLANT

Vs

Mahesh Singh and
others

RESPONDENT

Date of Decision: March 20, 2017

Acts Referred:

- Constitution of India, Article 227 - Power of superintendence over all courts by the High Court
- Code of Civil Procedure, 1908, Order 7 Rule 11 -
- Succ

Hon'ble Judges: Anand Pathak

Bench: SINGLE BENCH

Advocate: P.C. Chandil, Pawan Vijayvargiya, Kamal Jain

Final Decision: Allowed

Judgement

1. The present petition under Article 227 of the Constitution of India has been preferred by the petitioners challenging the order dated 19/06/2014 passed by the Additional District Judge-Ambah whereby the trial Court has directed the petitioners/plaintiffs to pay Ad Valorem Court Fee instead of Fixed Court Fee.

2. According to counsel for the petitioners, petitioners/plaintiffs are real brother and sister (son and daughter of respondent No.4/defendant No.4), and respondent No.5 is the real brother of the petitioners. Respondent No.4 who happens to be the father of petitioners as well as respondent No.5 executed a sale deed in favour of present respondents No.1 to 3, and sold the suit property to respondents No.1 to 3 representing himself as the sole owner and possessor of the suit property.

3. Petitioners/plaintiffs have preferred a Civil Suit for declaration and permanent injunction and contended that the suit property has been disposed of by respondent No.4 in favour of respondents No.1 to 3 without any authority because the property was ancestral in nature and therefore, present petitioners/plaintiffs are also holders of ? shares of the suit property and their shares could not be disposed of by respondents No.4 to other respondents. Consent of petitioners/plaintiffs was not taken before execution of the sale deed. Learned counsel for the petitioners further submits that it is settled in law that when any suit for annulment of the sale deed or for declaration in respect of sale deed as not binding over plaintiffs in which plaintiffs are not the party, then it entails Fixed Court Fee and not Ad Valorem Court Fee. He relied upon the judgment rendered by the Full Bench of this Court in the matter of Sunil s/o Dev Kumar Radhelia and Others v. Awadh Narayan and Others, 2010 (4) MPLJ 431 as well as the Coordinate Bench of this Court in the matter of Harinarayan v. Gulabchandra, 2011 (4) MPLJ, 447.

4. Further submission of learned counsel for the petitioners is that while deciding the case of Court Fee or an application under Order 7, Rule 11 CPC, only plaint averments are to be seen. According to him, no consequential relief has been sought by the petitioners/plaintiffs, therefore, Fixed Court Fee is to be paid rather than Ad Valorem Court Fee.

5. Per contra, learned counsel for respondents/defendants submits that petitioners are legally bound to pay Ad Valorem Court Fee because in the plaint averments it has been specifically pleaded by them that their father was the Karta of the Hindu United Family (for brevity "H.U.F.") and therefore, being Karta (Manager), he has disposed of the property, therefore, they are bound to pay Court Fee because the same is binding on the other members of the family even they are not parties to it. He relied upon the judgment rendered by the Hon"ble Apex Court in the matter of Shamsheer Singh v. Rajinder Prashad, AIR 1973 SC, 2384 as well as judgment of this Court in the matter of Rajaram v. Sharad Kumar, 1994 (II) MPWN 253. Therefore, he prayed for dismissal of the writ petition.

6. Heard learned counsel for the parties at length and perused the record.

7. From the pleadings, it appears that the present petition raises following questions of law for determination.

(1) Whether the petitioners/plaintiffs who are seeking relief of declaration simpliciter that three sale deeds dated 22/03/2014 executed in favour of respondents No.1, 2 and 3 by respondent No.4 are void and illegal and are not binding over the petitioners/plaintiffs or seeking annulment/cancellation of sale deeds dated 22/03/2014 ?

(2) Whether in the given facts and circumstances of the case, present suit at the instance of sons and daughter (petitioners/plaintiffs herein) of the executant (father/respondent No.4) of sale deed dated 22/03/2014 can attract Ad valorem Court Fee because sons and daughters are bound by the sale deed executed by their father and their suit amounts to annulment of the decree and therefore, they are liable to pay Ad Valorem Court Fee?

(3) Whether petitioners/plaintiffs have sought consequential relief so as to attract Ad Valorem Court Fee?

8. This Court proceeds, step by step to reach to the logical conclusion and to answer the questions involved in the controversy. It is settled in law that if petitioner/plaintiff is not executant in the sale deed then he is not required to pay Ad Valorem Court Fee and only Fixed Court Fee is payable. The Hon"ble Apex Court in the matter of Suhrid Singh @ Sardool Singh and Others v. Randhir Singh and Others, AIR 2010 SC 2807, this Court in the matter of Baldeo Singh Raghuraj Singh v. Gopal Singh Raghuraj Singh and Others, AIR 1967 MP 221 as well as Full Bench of this Court in the matter of Santoshchandra and Others v. Smt. Gyansundarbai, 1970 (15) MPLJ, 363 and in the matter Sunil s/o Dev Kumar Radhelia and Others v. Awadh Narayan and Others, 2010 (4) MPLJ 431 has categorically held that when the documents were alleged to be illegal and void and executant has not signed the documents, then it is not necessary to pay Ad Valorem Court Fee in a suit for permanent injunction and declaration. On the basis of previous dictum of this Court it is already settled. Therefore, this point is no longer res integra.

9. The question which is of foremost importance in the present controversy is in respect of applicability of Section 7 (iv) (c) of the Act. In the present fact situation of the case wherein sons/plaintiffs of defendant No.4 (father) are seeking relief of declaration and permanent injunction against their father who had executed the sale deed in favour of other defendants (defendants No. 1 to 3). The present case pertains to land situate at District Morena and therefore, is driven by Mitakshara Law under The Hindu Succession Act, 1956. Normally power to alienate joint family property is subject to three exceptional conditions.

(1) Legal Necessity: (for the sake of family members);

(2) Benefit of Estate: (for the sake of family property) and;

(3) Acts of Indispensable Duties: (for the sake of purpose of Religious and Charitable Acts).

10. Here in the given fact situation of the case, from plaintiff allegations it appears that the sons/plaintiffs of defendant No.4 (father) filed a suit against their father and other co-defendants to whom their father alienated the property through sale deed dated 22/03/2014. Perusal of the sale deeds indicates that the father/defendant No.4 had alienated the suit property representing himself as the sole owner of the property without intimating existence of joint family property (or Hindu United Family). Similarly, he represented himself to be the Karta of the Hindu United Family. He also referred in the sale deed that he is legally entitled to alienate the suit property and in the recitals (sale deeds) he referred the land; of his ownership. Therefore, the judgment rendered by the Hon"ble Apex Court in the matter of Suhrid Singh (supra) applies here wherein the Hon"ble Apex court in the similar fact situation of the case has clarified the position. Relevant part is reproduced 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-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 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 advalorem 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-executatnt, 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 suit 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."

11. Learned counsel for the respondents/defendants has referred the judgment rendered by the Hon"ble Apex Court in the matter of Shamsheer Singh (supra). The said case was in respect of mortgage deed executed by the father as Karta of the Hindu United Family in the backdrop of Punjab. From perusal of facts of that case, it appears that in the said case, executant has represented himself as Karta (manager) of the Hindu United Family and therefore, in that fact situation; the Hon"ble Apex Court has held that the same is binding over the sons/plaintiffs of the executant and if plaintiffs seeks relief of declaration then it is virtually relief of annulment of mortgage deed. Therefore, plaintiffs has to pay Ad Valorem Court Fee as per the relevant provision of the Act. Here in the present case, executant Ramjilal-respondent No.4/defendant No.4 had executed the sale deed in favour of other respondents/defendants (respondents No. 1, 2 and 3) representing himself as the sole owner of the property without any whisper in respect of Joint Family Property. Therefore, the said case is distinguishable on facts.

12. In the sale deeds dated 22/03/2014 executant/respondent No.4 had nowhere categorically referred all exceptional circumstances under the Mitaksha Law for disposing of the property. Neither he referred the exceptional conditions prevailing for alienation, nor he referred any personal debts (that the debt is antecedent and had not been for unethical or immoral purpose). The sale deed does not contain any such elaborations.

13. The Coordinate Bench of this Court in the matter of Harinarayan (supra) has also taken the same view, therefore, it is clear that petitioners/plaintiffs who are seeking relief of "Declaration Simpliciter" wherein the sale deeds executed by their father/respondent No.4 are not binding over them and therefore, attracts Fixed Court Fee as per Article 17 Scheduled II of the Act and not as per Section 7 (iv)(c) of the Act.

14. Third question is in respect of consequential relief. In the Act, Section 7 (iv)(c) provides for payment of Ad Valorem Court Fee for a suit claiming a declaratory decree/order where consequential relief has prayed for. Full Bench of Allahabad High Court in the case of Murli Dhar v. Banshidhar and Others, AIR 1963 Allahabad 86 has laid down the meaning of expression "Consequential Relief" as used in this Section. It is as under:-

"In our opinion, the expression consequential relief " in Section 7 (iv) (c) 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 substantive relief. A consideration of all the Cls. (1) to (f), sub-section (4) Court-Fees Act leads to the same conclusion". This definition of the expression "consequential relief " was followed by a Division Bench of this Court in the case of Sri Krishna Chandraji v. Shyam Behari Lal, (s) AIR 1955 Allahabad 177 where an analysis of the definition the learned Judges found four essential ingredients to be necessary in order to constitute a consequential relief. Those ingredients were:

(I) That the relief should follow directly from the declaration given;

(II) that the valuation of the relief be not capable of being definitely ascertained;

(III) that the relief is not specifically provided for anywhere in the Act; and

(IV) that the relief cannot be claimed independently of a declaration as a substantial relief.

15. The true test to ascertain whether the consequential relief in fact flows from the declaratory relief is as to whether the said consequential relief can be claimed independently of the declaration as a substantial relief or not. Every injunction in a suit for injunction would not flow from the declaration in a case where the plaintiff is in possession of the property in his own rights; comes before this Court and seeks declaration that the property belongs to him and the other party cannot interfere with his possession then it cannot be said that the plaintiff is required Ad Valorem Court Fees because the relief of injunction is a consequential relief. As observed above the relief of injunction if can independently be claimed then in every case it would not be a consequential relief. It is settled law that if a person is in settled possession he cannot be evicted except in accordance with law. Such a person if claims a declaration of his title and injunction that the defendants be restrained from interfering with his possession then the relief of injunction is not a consequence of the declaration because even if the Court is of the opinion that the declaration cannot be made in favour of the plaintiff then too the Court will grant an injunction in favour of the person who is in settled possession. Such a person would be called upon to value both the reliefs separately and each of the relief would be independent of the other. In a suit of this nature the plaintiff is not seeking the

relief of injunction as consequential relief but is entitled to claim the same because of his settled possession. In such a case section 7(iv)(d) of the Court Fees Act would be applicable for valuing the relief of injunction and article 17 of Schedule II of the Act would provide the court fees for the said declaration. In the matter of Sanik Nagar durga G.H. Samiti v. Indore City Improvement Trust (1983 M.P. Weekly Note, Note No.56), in almost similar situation where the plaintiff sought for the relief of declaration and injunction to restrain the defendant from starting the construction over the suit land, this Court observed that in fact the plaintiff was claiming two distinct reliefs, one for declaration of the title and the other for preventive injunction. The relief of injunction in fact was not consequential to the relief of declaration because even without claiming the declaration relief, plaintiff could have brought the suit on the same pleadings seeking the relief for injunction only. These were two distinct and separate reliefs. The High Court further observed that the relief of injunction though related to question of plaintiff's title, was not consequential to the declaration.

16. In the instant case also the plaintiff has sought declaration of her title and has prayed for injunction. Each of the relief can be claimed separately. If it is found that the reliefs can be claimed separately then the relief of injunction would not be consequential reliefs to the relief of declaration. The said spirit is echoed in the case of Smt. Sabina Alias Farida v. Mohd. Abdul Wasit, 1997 (1) JLJ 107.

17. Here in the present case petitioners/plaintiffs have specifically pleaded in the plaint that they are in possession of the suit property, therefore, they are not claiming the relief of possession, they only sought relief of declaration and permanent injunction. Therefore, relief of permanent injunction can be independently sought by the petitioners/plaintiffs and is not the consequential to the relief of declaration. Relief of permanent injunction can be treated as "Substantial Relief" and not as Consequential Relief, therefore, from the fact situation of the case it is clear that the plaintiffs have not sought any consequential relief so as to attract the effect of Section 7 (iv)(c) of the Act.

18. As per the judgment rendered by the Full Bench of this Court in the matter of Sunil (supra) and judgment of Coordinate Bench in the matter of Harnarayan (supra) as well as the judgment of this Court in the matter of Sabina @ Farida (Smt.) v. Mohd. Abdul Wasit, 1997 (1) JLJ 105 and also Ashok Kumar Gehani and Another v. Ramhet Agrawal and Another, 2008 (1) MPLJ 116 as well as Parasram Phatey v. Union Bank Of India, 2008 (1) MPLJ 117, plaintiffs are not liable to pay Ad Valorem Court Fee. As far as the judgment relied upon by respondents in the matter of Sahmsheer Singh (supra) is concerned the said matter moves in different factual realm in a way wherein the case deals in respect of mortgage deed executed by the Karta of the Hindu United Family. When a sale or mortgage of joint family property is effected by a manager of a joint Hindu Family, the alienation is binding on the other members of the family (even if they are not parties to it) until and unless it is set aside. Here in the present case, the sale deed has not been executed by the Karta (manager) of the Hindu United Family. The recitals of the

sale deed do not indicates so, therefore, the case as relied upon by the respondents is distinguishable on facts.

19. Once the petitioners/plaintiffs were not party to the sale deed and once respondent No.4 has not disposed of the properties as Karta (manager) of the joint Hindu family then certainly rigors of Section 7(IV)(C) are not attracted and petitioners cannot be fastened with the liability of Ad Valorem Court Fee on the basis of tangential pleadings/recital.

20. The trial Court has erred in passing the impugned order directing the petitioners/plaintiffs to pay the Ad Valorem Court Fee. Petitioners/plaintiffs have rightly paid the Fixed Court Fee. The trial Court is directed to proceed with the trial from the stage where the proceedings of the trial Court has been stayed by the order dated 11/08/2014 of this Court.

21. Record of the trial Court be remitted back immediately.

22. Petition stands allowed. No costs.