

(2014) 11 CAL CK 0108
Calcutta High Court
Case No: C.O. 2920 of 2011

Kanai Lal Dutta

APPELLANT

Vs

Babu Das Bairagya

RESPONDENT

Date of Decision: Nov. 7, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 7 Rule 10, 151
- Constitution of India, 1950 - Article 227
- Specific Relief Act, 1963 - Section 34
- West Bengal Court Fees Act, 1970 - Section 7(iv)(b), 7(v)(b)

Citation: (2015) 1 CHN 121 : (2015) 1 WBLR 463

Hon'ble Judges: Subrata Talukdar, J

Bench: Single Bench

Advocate: K.J. Tewari, Y. Mondal and Shyamal Roy, Advocate for the Appellant; Biswaroop Biswas, Advocate for the Respondent

Judgement

Subrata Talukdar, J.

In this CO 2920 of 2011 the order impugned dated 26th August, 2011 passed by the Ld. 2nd Civil Court (Jr. Div.) at Krishnanagar in Title Suit No. 94 of 2009 is assailed.

2. The short facts of the case are as follows:-

a) That the present Opposite Party (for short OP) is the Plaintiff in Title Suit No. 94 of 2009. The Plaintiff filed the said Title Suit for declaration that the so called Deed of Gift dated 13th June, 2007 is fraudulent, collusive and therefore void ab initio. The Plaintiff also prayed for a declaration that the purported Deed of Gift is not binding on him.

b) The present petitioner/defendant states that he got 150 square feet shop room from the Opposite Party/Plaintiff by way of the said Deed of Gift herein being Deed No. 01185 of the year 2008. The said Deed of Gift was registered before the ARA-II,

Kolkata. Upon obtaining the said Deed of Gift the Petitioner/Defendant is in possession of the suit property.

c) The Petitioner/Defendant has further contended that after entering appearance in the said suit he has contested the same by filing written statement. Denying the material allegations in the plaint the petitioner has also pointed out that in connection with the said suit an application was filed by him under Section 151 of the Civil Procedure Code, inter alia, praying of holding enquiry in respect of the valuation of the suit property, court fees paid and the pecuniary jurisdiction of the Ld. Trial Court to hear the suit. The contention of the petitioner/defendant is that the said suit is for cancellation of the Deed of Gift of which the present Opposite Party/Plaintiff is the donor. The said Deed of Gift is valued at Rs. 1 lakh. Therefore, to decide the said suit its valuation for the purpose of fixing the pecuniary jurisdiction of the court must be Rs. 1 lakh and the present Opposite Party/Plaintiff be directed to pay ad valorem court fees on the said valuation. In view of such valuation at Rs. 1 lakh, the Ld. 2nd Civil Court (Jr. Div.) does not have the pecuniary jurisdiction to hear the suit.

d) The Opposite Party/Plaintiff filed his written objection to the said application under Section 151 CPC. In the said written objection the OP/Plaintiff took the plea that the said suit is for declaration and injunction. Hence, for the purpose of valuation the present suit falls within the purview of Section 7(iv)(b) of the West Bengal Court Fees Act, 1870.

The OP/Plaintiff has also contended that the principal relief in the suit is one for declaration of title and injunction prayed for as a consequential relief. Therefore the suit has to be correctly valued under Section 7(iv)(b) of the West Bengal Court Fees Act, 1970 and the Plaintiff has correctly paid the valuation at the time of filing the suit.

e) It is also the case of the OP/Plaintiff that the execution of the purported Deed of Gift is not admitted. According to the Plaintiff merely by appending his signature to the Gift Deed does not amount to executing the same. The Plaintiff has further alleged that the Deed of Gift has been executed by practicing fraud. When such fraud is alleged there is no requirement to pay ad valorem court fees on the valuation of the Deed as argued by the present Petitioner/Plaintiff. Therefore in all respects the Ld. 2nd Civil Court (Jr. Div.), Krishnanagar is competent to try the said suit.

By the order impugned dated 21st June, 2011 the Ld. Trial Court was pleased to consider the rival pleadings and submissions of the parties as indicated above. The Ld. Trial Court observed that the present OP/Plaintiff has never admitted to execution of the purported Deed of Gift. The Plaintiff has applied for declaration and injunction and, therefore the Plaintiff is at liberty to pay court fees as per his own assessment. Since the Plaintiff claims to be already in possession of the suit

property there is no requirement to seek further declaratory relief.

The Ld. Trial Court also noticed the argument of the Defendant to the effect that the Plaintiff has actually sought a relief of cancellation of the Deed of Gift. The relief of declaring the Deed of Gift as void ab initio will only arise if the said Deed of Gift is cancelled. Till such cancellation is adjudicated by the competent court the Plaintiff is required to pay ad valorem court fees on the valuation of Rs. 1 lakh.

The Ld. Trial Court upon consideration of the legal authorities on the issue as well as the rival submissions of the parties was pleased to notice the provisions of Section 7(iv)(b) of the West Bengal Court Fees Act which reads as follows:-

"7. Computation of fees payable in certain suits. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:-

(iv) for movable property of no market value: In suits-

(b) for declaratory decree and consequential relief: to obtain a declaratory decree or order, where consequential relief is prayed,"

Taking note of the requirement of Section 7(iv)(b) (Supra) the Ld. Trial Court was pleased to conclude that the Plaintiff is required to determine the valuation of the suit which he has instituted. The Ld. Trial Court was of the view that while assessing the court fees payable it is essential to distinguish the subject matter of the suit with that of the subject matter in dispute. In this connection the Ld. Trial Court also noticed the prayer made in the plaint which is for declaration that the Deed in question is a void instrument. No prayer for cancellation of Deed is sought for by the Plaintiff and he has sought for a consequential relief of permanent injunction.

3. The Ld. Trial Court held that the Plaintiff is at liberty to value the suit according to his own choice and there is no requirement to deposit ad valorem court fees fixing the valuation at Rs. 1 lakh. Therefore, recognizing its own pecuniary jurisdiction to try the suit, the application under Section 151 CPC filed by the Defendant was rejected.

4. Sri K.J. Tewari, Ld. Counsel appearing for the Petitioner/Defendant has argued, inter alia, that the suit is essentially one for cancellation of Deed of Gift. The relief in the suit for declaration cannot be granted unless the Deed of Gift is cancelled. For cancellation of the Deed of Gift it is a requirement of law that the suit must be valued and the stamp payable on such value must be paid.

5. Applying the principle of Order 7 Rule 10 CPC Shri Tewari submits that the plaint must be returned for want of pecuniary jurisdiction. Drawing the attention of this Court to the written objection filed by the present OP/Plaintiff, Shri Tewari submits that it would be clear from the averments therein that the point of consequential relief has been taken in the said written objection. Shri Tewari further submits that such consequential relief can only be founded on the principal relief which is one for

cancellation of the Deed of Gift. In the event the Deed of Gift is not cancelled then there can be no question of any consequential relief either by way of declaration or by way of injunction. In such view of the matter the suit must be valued at Rs. 1 lakh as pleaded in the application of the Defendant before the Ld. Trial Court.

6. Shri Tewari, in support of his above noted contentions, relied on the judgment of the Hon''ble Apex Court reported in 2010 Volume 10 SCC Page 112.

7. Shri Tewari also relies upon the judgment of the Hon''ble Apex Court reported in [Shamsher Singh Vs. Rajinder Prashad and Others,](#) .

8. Shri Tewari further submits that the principle of law laid down in [Shamsher Singh Vs. Rajinder Prashad and Others,](#) has been affirmed in AIR 1977 Supreme Court Page 2477 and in Volume 14 Indian Civil Cases Page 257. Shri Tewari contends that stamp paper in connection with the said Deed of Gift has been purchased in the name of the present Petitioner/Defendant, Kanai Lal Dutta. The daughter, son and wife of the present Petitioner/Defendant/Donor have attested to the said Deed of Gift.

9. He points out that the endorsement in the said Deed of Gift is to the effect with the Donor/Plaintiff/present Opposite Party could not furnish his finger impression on the Deed of Gift because of his deformity. Such endorsement in the Deed of Gift shows that the Donor/Opposite Party/Plaintiff visited the Registry Office during registration of the said Deed of Gift by paying the correct valuation thereon but due to his physical deformity the said Donor could not give his finger impression.

10. On the basis of the above noted facts and circumstances, Shri Tewari submits that the said Deed of Gift has been validly executed and the plea of fraudulent execution must be rejected.

11. Per Contra Shri Biswaroop Biswas, Ld. Counsel appearing for the OP/Plaintiff has argued as follows:-

i) That the said Deed of Gift is void and when the Plaintiff has alleged that the Deed has been obtained by fraud, there is no liability to pay ad valorem court fees.

ii) It is doubtful whether the present petitioner/defendant can file an application alleging non-payment of sufficient court fees and questioning the pecuniary jurisdiction of the Ld. Trial Court.

Shri Biswas submits that the issue of valuation is between the Plaintiff and the State. Even the law according to him, has been settled that even when the Defendant wants to question the valuation with honest intention, his locus to do so does not exist. The schedule of valuation payable under the West Bengal Court Fees Act is a matter exclusively between the Plaintiff and the State. In this connection he relies upon the decision reported in (2009) 1 WBLR (Cal) 227.

iii) Shri Biswas asserts that the provisions of Section 7(iv)(b) of the West Bengal Court Fees Act enable a party to fix the valuation based on the nature of the declaratory relief claimed by such party in the suit. It is also the privilege of the Plaintiff to pray for his consequential reliefs on the principal declaratory reliefs.

iv) Drawing the attention of this Court to Section 181A of the Indian Contract Act, Shri Biswas argues that if any property is obtained through misrepresentation, there is no requirement to value the suit over and beyond the valuation specified under Section 7(iv)(b) of the West Bengal Court Fees Act, 1970. In support of the above noted proposition Shri Biswas has relied upon the decision of the Hon"ble Apex Court in [Sri Ratnavaramaraja Vs. Smt. Vimla](#), thereof. Further relying on 2006 Volume 1 WBLR (Cal) Page 374 (at para. 7, 9 & 10), Shri Biswas argues that for any consequential relief to be relevant it is important that the main relief shall stand the test of adjudication. The requirement is to pay stamp on the valuation the principal relief and, not on the consequential relief.

12. In this connection Shri Biswas relies upon the judgments of this Court reported in 2006 Volume 1 WBLR (Cal) 374 as also the judgment reported in 2008 Volume 2 CLJ Page 306. Refuting the submissions of Shri Tewari, Shri Biswas points out that the judgments cited by the Petitioner are per incuriam in the light of the decision reported in [Sri Ratnavaramaraja Vs. Smt. Vimla](#),. He submits that the decision in [Sri Ratnavaramaraja Vs. Smt. Vimla](#), is an established authority on this point.

Heard the parties. Considered the materials on record.

13. This Court notices that the judgment reported in (2006) 1 WBLR (Cal) 374 is apposite to the facts and circumstances of this case. Paras 9 & 10 of the said judgment read as follows:-

"9. The plaintiff claims that the defendant No. 1, who is his brother, has allegedly obtained a deed of gift from him fraudulently giving the plaintiff an impression that the plaintiff was executing a power of attorney in favour of the defendant No. 1 for protecting the boundary of the land of the plaintiff. This is a suit for declaration simplicitor and the relief of setting aside of the deed is consequential from the careful reading of the plaint, it is clear that the prayer for declaration that the defendant No. 1 obtained that deed of gift by practicing fraud on the plaintiff is the substance of the claim.

10. Whether proper Fees are paid on a plaint is primarily a question between the plaintiff and the State. The learned Judge in the lower appellate Court rightly held that the suit has been properly valued and proper Fees have been paid. The defendant, who may believe and even honestly, the proper Fees have not been paid by the plaintiff, has still no right to move the superior Court against the order adjudging payment of Fees payable on the plaint."

14. This Court also notices the clear enunciation of law in the judgment reported in (2008) 2 CLJ (Cal). The Hon"ble Single Bench held at paras 27, 28 & 29 as follows:-

"27. The cause of action pleaded by the plaintiffs in the plaint as well as the reliefs claimed in the suit have already been mentioned above. On careful reading of the averments made in the plaint as well as the reliefs claimed therein, this Court holds with all certainty that the reliefs which were claimed by the plaintiffs in the suit either by way of injunction or by way of recovery of possession are dependent upon the relief for declaration of title. This Court also holds that the relief for declaration is not the only relief which is sufficient in the facts of the instant case and if declaration only, is sought in such case, the suit will be barred under Section 34 of the Specific Relief Act. In fact, the plaintiffs are entitled to diverse reliefs in the facts of the instant case but the reliefs by way of injunction and/or recovery of possession cannot be granted unless their title in the suit property is declared.

28. This is not a suit where the defendants were described as rank trespassers. The plaint averment shows that the defendants are in possession of the suit property on a show of title. The plaintiffs, no doubt, have challenged the legality of the defendants' title in the property on the strength of the settlement of the suit land given by the State of West Bengal in favour of the plaintiffs' predecessor-in-interest. This, in fact, for tracing the title of the real title holder, declaration of the plaintiffs' title was sought for, in the suit. If the said declaration is not granted then the other reliefs either by way of injunction or by way of recovery of possession cannot be granted independently in favour of the plaintiff. As such, this Court has no hesitation to hold that the relief by way of declaration is the principal relief in the suit and the relief for injunction and recovery of possession are incidental and consequential reliefs. As such, the plaintiffs are required to value the entire suit as per the provision contained in Section 7(iv)(b) of the West Bengal Court Fees Act, 1970 and not under Section 7(v)(b) of the said Act as contended by Mr. Dasgupta. The decisions which were cited by Mr. Mitra and Mr. Roy Chowdhury are squarely applicable in the facts of the instant case and thus, this Court has no hesitation to hold that the learned Trial Judge did not commit any illegality by rejecting the defendants' application for return of the plaint.

29. In my opinion the suit has been properly valued and the learned Trial Judge has jurisdiction to try the said suit."

15. In (2009) 1 WBLR (Cal) 227 (supra) the Hon"ble Single Bench held at Para. 11 as follows:-

"11. With regard to the judgments cited by the learned Advocate for the opposite parties, it appears upon perusing them that the consistent view of the Courts with regard to whether proper Court fees are paid on a plaint, is that the same is primarily a question between the plaintiff and the State. The defendant, who may believe and even honestly, that proper Court fees has not been paid by the plaintiff,

still has no right to move the superior Court of appeal or in revision against the order adjudging payment of Court fees payable on the plaint. In my view, there is no reason as to why I should digress and differ from the consistent view and the principles of law laid down for decades by our Courts. The order impugned speaks with clarity and there is no infirmity of reasoning whatsoever or any error of law, which would warrant interference of this Court in exercise of its jurisdiction under Article 227 of the Constitution of India."

16. In the light of the legal position as settled above this Court finds that the principal relief claimed by the petitioner in Title Suit No. 94 of 2009 is of declaration. The other relief of permanent injunction is consequential to the relief of declaration.

17. In such view of the matter the petitioner/plaintiff is entitled to value the suit on the basis of the principal relief claimed by him and the other reliefs are merely consequential or incidental to the principal relief.

18. This Court also notices the additional fact that the question of valuation is inter se the plaintiff and the State and the defendant, even with a bona fide intention, is precluded from challenging the same.

19. In the backdrop of the above discussion this Court finds that the Ld. Trial Court came to the correct finding that the plaintiff is at liberty to value the suit in accordance with the declaratory relief of his choice. Thus the order impugned dated 21st June, 2011 does not call for any interference.

CO 2920 of 2011 is dismissed.

20. There will be, however, no order as to costs.

21. Urgent certified photocopies of this judgment, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.