
S. Manjinder Singh Vs Smt. Krishna Bhat and Others

CS (OS) 1642 of 2007

Court: Delhi High Court

Date of Decision: Nov. 11, 2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 7 Rule 11, Order 7 Rule 11(b)#Court Fees Act, 1870 " Section 7, 7(iv)(c)

Citation: (2014) 4 AD 144 : (2014) 206 DLT 58

Hon'ble Judges: S. Muralidhar, J

Bench: Single Bench

Advocate: Rajender Agarwal, for the Appellant; R.K. Trakru, Advocate for D-2 to D-6, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S. Muralidhar, J.

IA Nos. 1256, 1257 and 1259 of 2012 (by D-2 to D-6 under O VII R. 11 CPC) and 19161 of 2012 (by Plaintiff)

1. These are applications under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) seeking rejection of the plaint on various

grounds. The Court proposes to take into consideration the grounds concerning the valuation of the suit for the purposes of the court fee.

2. Originally the suit was filed as one for specific performance of an agreement dated 10th October 2006 in relation to an agricultural plot of land

admeasuring 37 bigha and 10 biswas = 7.82125 acres situated in the revenue estate of Village Ghuman Hera, Najafgarh, New Delhi (hereafter

"the property in question") and for a permanent injunction. Para 13 of the plaint, as originally filed, read as under:

13. That for the purpose of court fee and jurisdiction, the suit for the relief of specific performance is valued at Rs. 3,20,31,250/- and for the relief

of permanent injunction, the suit is valued at Rs. 200/- on which the requisite court fee has been paid hereof.

3. In the written statements filed, it was disclosed that the property in question had been transferred to Defendants 2 to 7 by a registered Gift Deed

dated 1st June 2007. The Plaintiff thereafter sought, and was permitted by an order dated 12th August 2010, to amend the plaint and implead the

transferees as Defendants. Meanwhile on 14th January 2010, the interim order passed by the Court on 24th September 2007 was vacated. The

amended plaint filed thereafter was taken on record by an order dated 30th March 2011.

4. Defendants 2, 4 and 7 have filed IAs 1256, 1257 and 1259 of 2012 under Order VII Rule 11 CPC seeking rejection of the plaint. The Plaintiff

filed IA 19161 of 2012 seeking extension of time to pay the deficit court fee of Rs. 20.

5. The case of the Defendants is that in terms of the amended plaint, the reliefs now sought by way of the amended plaint have not been properly

valued for the purposes of court fee and jurisdiction. In particular, reference is made to para 13 of the amended plaint which reads as under:

13. That for the purpose of court fee and jurisdiction, the suit for the relief of specific performance is valued at Rs. 3,20,31,250/- and for the relief

of permanent injunction and declaration, the suit is valued at Rs. 200/- on which the requisite court fees on each (sic "each") relief has been paid

separately.

6. It is pointed out that the additional reliefs of permanent injunction and declaration have been valued only at Rs. 200 whereas the value of the

property as reflected in the registered gift deed is Rs. 1,37,37,500.

7. Mr. Rajender Agarwal, learned counsel for the Plaintiff, relied upon the decisions in *Suhrid Singh @ Sardool Singh Vs. Randhir Singh* and

Others, and Kasturi Lal Jain Vs. Inder Prakash Jain, to contend that the prayer in the amended plaint was only for a declaration that "the gift deed

dated 1.6.2007 executed by defendant no. 1 is illegal and void". According to the Plaintiff, the said gift deed was without any value whatsoever

and was a sham document and, therefore, not binding on the Plaintiff. According to learned counsel for the Plaintiff, there was no need for the

Plaintiff to seek cancellation of the gift deed. It is submitted that as long no cancellation was sought, there was no need to pay ad valorem court fee

on the relief in respect of the gift deed.

8. Mr. R.K. Trakru, learned counsel appearing for Defendants 2 to 6, on the other hand relied upon the decisions in *Sukh Lal and Others Vs. Devi*

Lal and Others, ; Anil Rishi Vs. Gurbaksh Singh, and Jagdish Vs. Jagat Pal and Others, and submitted that the plaint will have to be read as a

whole and if no effective relief could be granted to the Plaintiff without his seeking cancellation of the gift deed then the mere wording of the prayer

for declaration would not be sufficient for the purposes of determining whether the suit has been properly valued. Under Order VII Rule 11(b)

CPC, the plaint can be rejected where relief claimed is undervalued and the Plaintiff, on being required by the Court to correct the valuation and

pay the deficit court fee within the time fixed by the court, fails to do so.

9. The above submissions have been considered. There is no doubt that in the amended plaint the Plaintiff has valued the additional relief of

declaration that the Gift Deed dated 1st June 2007 is null and void at Rs. 200. In IA 19161 of 2012, the Plaintiff has sought extension of time for

making payment of the deficit court fee of Rs. 20 on that basis. According to the Plaintiff, since he is only seeking a relief of declaration that the gift

deed is null and void, and particularly since he is not a party to the said gift deed, there is no need for him to seek its cancellation and pay the ad

valorem court fee on the value of the property as expressed in the gift deed. He adds that the Plaintiff is not seeking a further consequential relief of

possession.

10. Section 7(iv)(c) of the Court Fees Act, 1870 (Act) reads as under:

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) in suits - x x x x (c) for a declaratory decree and consequential relief.- to obtain a declaratory decree or order, where consequential relief is

prayed, x x x x x according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought:

Provided that minimum court-fee in each shall be thirteen rupees.

Provided further that in suits coming under Sub-clause (c), in cases where the relief sought 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 this section.

11. Entry 17(iii) of the Second Schedule requires payment of a court fee of Rs. 19.50 on plaints in suits for a declaratory decree where no

consequential relief is prayed for. However, in the present case, the relief of specific performance is the main relief and is in relation to an

immovable property which has allegedly been transferred to Defendants 2 to 7 by a registered gift deed. In para 6 of the decision in Suhrid Singh

v. Randhir Singh, the Supreme Court gave the following illustrations (AIR SC p. 2808-2809):

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 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.

(Emphasis supplied)

12. It must be noted that the facts in the aforementioned case were that reliefs were being sought in relation to a coparcenary property. And yet,

the highlighted portion of the decision explained that where the consequential relief was being sought, then ad valorem court fee would have to be

paid. In the instant case the principal relief is for specific performance of an agreement to sell an immoveable property. It is inconceivable that

where in defence to such a suit it is pleaded that the property in question stands transferred under a registered gift deed, any effective relief can be

granted to the Plaintiff without his seeking cancellation of such gift deed. In fact, the Plaintiff, if not already in possession, would also necessarily

have to seek such relief. As explained by the Punjab and Haryana High Court in Anil Rishi v. Gurbaksh Singh, ""if the sale deed which is a

registered document exists and is not directed to be cancelled and delivered the basic purpose of the plaintiff in instituting the present suit remains

unsatisfied and the Court may not be in a position to grant complete and effective relief to the plaintiff"". The decision in Jagdish v. Jagat Pal is also

to the same effect.

13. Under the garb of an innocently worded prayer clause, the Plaintiff cannot avoid payment of the appropriate court fee on the relief in relation to

the Gift Deed dated 1st June 2007. In the circumstances, while the value of the suit property for the purposes of specific performance is stated to

be Rs. 3,20,31,250 (which is the sale consideration under the Agreement to Sell dated 16th October 2006), the valuation of the relief of

declaration of the Gift Deed dated 1st June 2007 as null and void at Rs. 200 cannot be said to be correct.

14. The Court is of the view that the Plaintiff has to value the relief of declaration and consequent cancellation of the gift deed at the value of the

suit property as reflected in the registered gift deed i.e. Rs. 1,37,37,500. The Plaintiff has to pay court fee on that basis.

15. A direction is accordingly issued to the Plaintiff in terms of Order VII Rule 11(b) CPC to pay the deficit court fee by valuing the relief in

relation to the registered Gift Deed dated 1st June 2007 at Rs. 1,37,37,500 and to calculate and pay the deficit court fee on that basis within a

period of twelve weeks from today.

16. In the event that the Plaintiff fails to pay the deficit court fee within the time granted, the plaint is liable to be rejected. If the Plaintiff does make

good the deficit court fee then the other grounds urged in these applications under Order VII Rule 11 CPC will be taken up for consideration. List

on 28th March 2014.