

Civil Miscellaneous Nos. 2255-56-CII of 2015

(18) Appeal challenging award dated September 25, 2014 having been dismissed, these applications seeking stay of operation of the impugned award and for production of additional evidence are rendered infructuous and are disposed of accordingly.

S. Gupta

Before Dr. Bharat Bhushan Parsoon, J.

RAMBAI—Petitioner

versus

KAPOORI AND ANOTHER—Respondents

CR No. 2489 of 2012

August 4, 2014

Court Fees Act, 1870 - S. 7(iv)(c) and (v) - Code of Civil Procedure, 1908 - O. 7 R. 11 - Ad-valorem Court fee - Suit for declaration that sale deed is result of fraud, without consideration, illegal and void, and for permanent injunction - 100 year old illiterate woman alleged that she was to transfer land among her 5 sons from second husband - She was taken to the office of Sub-Registrar, but defrauded by respondent-vendee, one of the members of the family - No consideration passed before Sub-Registrar - Possession of land not disturbed - Relief of permanent injunction emanates from the cancellation - Does not become substantive relief by its own nature - No ad-valorem court fee payable.

Held, that 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.

Held further, that when possession of the land has not been disturbed and one of the members of the family has prima-facie duped and defrauded the petitioner for getting the sale deed executed in his and his wife's name and the only relief sought is declaration by the petitioner who is poor and helpless illiterate Parda Nashin old woman, considering substance of the pleadings of the plaintiff as also the attending circumstances for affixation of court fee, it is held that no ad-valorem court fee is payable.

[Paras 11 and 17]

Rajender Chhokar, Advocate, *for the petitioner*.

Chanderhas Yadav, Advocate, for the respondents.

DR. BHARAT BHUSHAN PARSOON, J.

(1) By way of this revision petition, order dated 10.4.2012 (Annexure P-1) whereby accepting application of the respondents-defendants (in the suit preferred by the petitioner-plaintiff challenging a sale deed) under Order VII Rule 11 CPC, the petitioner-plaintiff has been called upon by the lower court to make up deficiency in the court fee, is under challenge. It is claimed that since the impugned sale deed is result of fraud and misrepresentation at the hands of the respondents-defendants and no consideration had passed hands, no court fee is payable by the petitioner-plaintiff. It is also claimed that possession of the land is also undisturbed and no relief of possession has been claimed either.

(2) Stand of the respondents-defendants, on the other hand, is that the petitioner-plaintiff being vendor is a party to the sale deed wherein consideration of ₹13,50,000/- had been paid and thus ad-valorem court fee is payable.

(3) Counsel for the parties have been heard while going through the grounds of revision, impugned order as also material and circumstances on the paper book.

(4) The petitioner is executant of the sale deed impugned by her in the suit wherein she has sought declaration that it is null and void. Relief of permanent injunction for restraining the defendants against alienation of the suit in any manner has been sought. It is claimed that the

sale deed is result of fraud where neither sale was intended to be made nor any consideration had passed to her. It is, thus, urged that ad-valorem court fee is not payable.

(5) Counsel for the respondents, on the other hand, has urged that irrespective of nature of the document i.e. as to whether it is a sale-deed or gift deed or a Court decree, once relief of declaration of the document alleging the same as illegal, null and void etc., some consequential relief has been sought, it attracts affixation of ad-valorem Court fee. Counsel for the contesting respondents has sought support from judgment of a coordinate Bench of this Court titled **Gobind Kaur v. Pritam Singh(1)** wherein considering interplay of provisions of Sections 7 (iv)(c) & 7(v) & Schedule I Article I of the Court Fees Act, 1870 (hereinafter referred to as *the Act*), it was held that where suit for declaration that the impugned gift deed executed by the plaintiff in favour of the defendant was not operative qua the rights of the plaintiff as owner of the suit property and further relief for possession of the suit property was sought, ad-valorem Court fee was held to be payable on the plaint. Support has further been sought from yet another authority of a coordinate Bench of this Court reported as **Jagat Singh v. Avtar Singh and others(2)**, where possession was sought without getting the gift deed cancelled but it was held that the plaintiff had to get the alleged gift deed (to which he himself was a party) cancelled before he could seek possession of the land. The plaintiff was ordered to pay ad-valorem Court fee on the value of the property involved.

(6) In the present case, circumstances are different. There is nothing to show that payment, in fact, was made to the petitioner-vendor. Rather, suit of the petitioner-plaintiff that she was to transfer her property in favour of her five sons for which she was taken to the Sub-Registrar's office but was defrauded by the respondent-vendee, is pending adjudication.

(7) Concededly, the petitioner is more than 100 years old Parda Nashin lady. She was earlier married with one Tarif after whose death, she did Karewa marriage with one Ramphal from which marriage, two

(1) 1975 PLR 06

(2) 1970 CrI.Law Journal, 80

daughters, who are now married, were born to her. She is now residing in her parental house whereas land measuring 7 Kanal 4 Marlas is located in village Sikanderpur, Tehsil and District Jhajjar. This land had come to her from her earlier husband Tarif but was being cultivated by her subsequent husband Ramphal who had 5 sons out of whom, one named Ram Narain has died and is survived by his three sons.

(8) During the course of arguments, contention of counsel for the petitioner is that the petitioner is more than 100 years old and is moving from pillar to post seeking relief against fraud played upon her, when not even a penny has been paid to her. Though her claim has been contested, but age of the petitioner is not under question. It is also to be noticed that consideration shown in the sale deed is huge amount of ₹13,50,000/-. Her allegation is that this payment was not made to her and fraud was played. The suit is merely for declaration; restraint against the defendants against creation of third party rights by further alienation is also sought. No relief of possession has been sought.

(9) It is claimed that she wanted to distribute this land to 5 sons of Ramphal her husband and was brought to the office of Sub-Registrar for the said purpose by respondent Jai Bhagwan son of Ram Kishan. Thus, Ram Kishan is son of Ramphal from his earlier wife Smt. Malli. In short, respondent Jai Bhagwan being son of Ram Kishan son of Ramphal (husband of the petitioner) to the exclusion of his father, three uncles and sons of his 5th uncle Ram Narain appropriated the land to him and his wife without payment of any money by defrauding the petitioner.

(10) It is claimed that when she was moving from pillar to post for cancellation of the sale deed and did not find any support, an FIR was registered against respondent Jai Bhagwan etc. under Sections 420, 467, 468, 471 and 120-B IPC vide FIR No.455 dated 4.8.2011. It is a conceded fact that pre-arrest bail of respondent Jai Bhagwan was declined by this Court observing that sale consideration of the impugned sale deed had not been paid before the Sub-Registrar and regarding allegations that the sale consideration had been paid at home. Said Jai Bhagwan (respondent No.2 in the petition herein) had not been able to satisfy the court. Copy of order in the bail application was read over and was produced by the counsel for the petitioner during the course of arguments and when no

objection from the other side was taken, it was taken on record. It is evident that no sale consideration had been paid. Relevant portion of the bail order of 4.10.2011 passed in CRM-M-26979-2011 (O&M) is as under:

“According to the sale deed, the sale consideration was not paid before the Sub-Registrar, rather it was allegedly paid at home but on a pointed question put by this Court about the source of money which has been allegedly paid by the vendee/petitioner to the complainant, no plausible answer is given rather it is argued that the petitioner has been looking after the complainant from the last 30 years and has been regularly paying money to her which constitutes the sale consideration recited in the sale deed. However, there is no prima-facie proof that the sale consideration is paid to the complainant.”

(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 Vs. 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 *Niranjan Kaur v. Nirbigan Kaur(3)*, 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).

(13) Counsel for the petitioner seeking support from *Niranjan Kaur's case (supra)* has further urged that when the document is without any consideration and needs cancellation then no ad-valorem court fee is leviable as no relief of possession is sought. Support has also been sought from *Suhrid Singh @ Sardool Singh v. Randhir Singh and others(4)* and *Surjit Singh v. Karamjit Kaur(5)*.

(14) Counsel for the respondents, on the other hand, has urged that if sale deed is sought to be cancelled on the ground of fraud, ad-valorem court fee is payable. Counsel for the respondent has sought support from *Khajan v. J.S.R. Land Developer Pvt. Ltd. & others(6)* and *Boda Ram v. Beermati Devi and others(7)*.

(15) In the present case as well, notwithstanding the fact that relief of permanent injunction has also been claimed but this is only a surplusage and emerges from the main relief of declaration and she has not sought relief of possession.

(16) Limited question posing for answer is as to what court fee is to be affixed? The petitioner has claimed that when she has neither executed the sale deed nor has received the consideration nor had even been dispossessed nor she is claiming possession, she is not entitled to pay ad-valorem court fee.

(17) In the peculiar facts and circumstances of this case, when possession of the land has not been disturbed and one of the member of the family has prima-facie duped and defrauded the petitioner for getting the sale deed executed in his and his wife's name and the only relief

(4) 2010 AIR SC 2807

(5) Civil Court Cases 556 (P&H)

(6) 2011(3) PLR 364 (P&H)

(7) 2013(4) ICC 664 (P&H)

sought is declaration by the petitioner who is poor and helpless illiterate Parda Nashin old woman, considering substance of the pleadings of the plaintiff as also the attending circumstances for affixation of court fee, it is held that no ad-valorem court fee is payable.

(18) Keeping in view the totality of facts and circumstances, the impugned order calling upon the petitioner to pay ad-valorem court fee is not only wrong on facts but also in law. Consequently, setting aside the same, this petition is allowed. The parties are directed to appear before the lower court on 1.9.2014.

(19) Nothing observed above shall have any bearing on merits of the suit pending adjudication before the lower court.

(20) Keeping in view the peculiar circumstances of this case, before parting with the judgment, following directions are necessary:

- (i) This suit would be decided within 3 months by taking day to day proceedings, if necessary;
- (ii) Trial of FIR No.455 dated 4.8.2011 under Sections 420, 467, 468, 471 and 120-B IPC of Police Station, Jhajjar, District Jhajjar, if it is already not completed, would be completed within 3 months even by taking day to day proceedings, if found necessary; and,
- (iii) District Legal Services Authority, Jhajjar would be in touch with the petitioner herein and would ensure that legal services, if she needs any, are provided to her expeditiously.

(21) Copy of this order be sent for compliance to all concerned through the District & Sessions Judge, Jhajjar and Member Secretary, Haryana Service Legal Services, Authority, Chandigarh.

A. Aggr.