

Before Amol Rattan Singh, J.

SUCHA SINGH AND ANOTHER—Petitioner

versus

GURJANT SINGH AND ANOTHER—Respondent

CR No. 8217 of 2019

February 13, 2020

Constitution of India, 1950 – Art. 227 – Code of Civil Procedure, 1908 – O.7 RL. 11 – Court Fees Act, 1870 – S.7 – Advalorem Court Fee – Suit for declaration and possession – Suit for declaration that exchange deed, mutation result of fraud – Illegal – Possession of one of the suit properties sought – Ad Valorem Court fee payable on value of property, possession of which sought.

Held that, it would not be both the properties in question that would be subject matter of court fee ad valorem, but only the property the possession of which has been sought by the petitioner-plaintiffs.

(Para 22)

Further held that, the question therefore would be as to whether it would be sub-clause (c) of Clause (iv) of Section 7 of the Act that would be applicable, or sub-clause (e) of Clause (v) of the said provision.

(Para 23)

Further held that, in my opinion, it would actually be the latter and not the former, because sub-clause (c) lays down a general proposition of court fee payable in case a declaratory decree with consequential relief is prayed for, whereas sub-clause (e) of clause (v) is specific to a case where the possession of a house or a garden is sought.

(Para 24)

Karan Garg, Advocate,
for the petitioners.

Anumpam Singla,
Advocate
for the respondents.

AMOL RATTAN SINGH, J. (oral)

(1) By this petition, the petitioners challenge the order of the

learned Civil Judge (Jr. Divn.), Patiala, dated 05.12.2019, by which an application filed by the respondent (defendant in the suit) under the provisions of Order 7 Rule 11 of the Code of Civil Procedure, has been allowed, with the petitioner directed to pay court fee *ad valorem* on the value of the suit properties, one of which was stated to be of a value of more than Rs.1 crore as per the petitioners-plaintiff himself, and the other for more than Rs.30 lacs.

(2) The petitioners' suit is one seeking a decree of declaration to the effect that a registered exchange deed executed on 07.05.2018 between the parties, culminated into a mutation being entered, be declared to be illegal, null and void and the result of a fraud, with the petitioner also seeking possession of one of the suit properties, i.e. the one described as Kothi no.1, Walia Enclave, Opposite Punjabi University, Patiala. (The other house is stated to be already in possession of the petitioners-plaintiff, as submitted on query by learned counsel to this court).

(3) The contention of the respondent-defendant therefore was that the suit one being seeking a declaration to the aforesaid effect, with a consequential relief of possession also sought at least qua one of the suit properties, court fee *ad valorem* was necessarily payable.

(4) The stand of the petitioner in reply to the application of the respondent-defendant, was simply to the effect that the written statement still not having been filed at that stage and the document in question stated to be a fraudulently executed one, proper court fee had already been affixed.

(5) The learned trial court noticed that as per the exchange deed, the value of the property was Rs.6,93,000/-, with however, the value of one property shown to be "more than Rs.1 crore" and the other, i.e. House no.121, shown to be "not more than Rs.30 lacs." (It is to be noticed that at one place the impugned order states "not more than Rs.30 lacs", whereas at the other places the phrase used is "more than Rs.30 lacs". In fact, during the course of arguments before this court, both learned counsel referred to the property as having been referred to in the plaint as worth "more than Rs.30 lacs").

(6) It was noticed that counsel for the petitioners-plaintiff had produced before that court a Jamabandi for the year 1992-93, in which the land revenue was assessed qua 'Kothi no.1' to be Rs.5.18 pc. and therefore it was contended by the plaintiff that the court fee was only to be affixed 10 times the land revenue.

(7) However, it was also found that in the said Jamabandi, the other house bearing no.121 had not found any mention.

(8) The argument of the learned counsel for the petitioners before that court, was that in any case the value of the property could not be taken to be more than Rs.6,93,000/- as that was the value mentioned in the exchange deed, which argument was rejected by that court, holding that since the plaintiffs' own contention in his suit, was that one the properties was of a value of more than Rs.1 crore and the other for more than Rs.30 lacs, that would be the value that would need to be taken to arrive at a calculation of the court fee. The judgment of the Supreme Court relied upon, in *Suhrid Singh @ Sardool Singh versus Randhir Singh and others*¹ was referred to, to hold that the court fee would be payable *ad valorem* in terms of Section 7(iv) (c) of the Court Fees Act, 1870.

(9) The reliance by the petitioners-plaintiff on a judgment of the Delhi High Court in *Kulwant Singh and others Suhrid Singh @ Sardool Singh* versus *Maharani Bagh Residents Welfare and others*² was found to be misconceived, in view of the fact that the petitioner in the present case, had also sought possession of the suit property.

(10) Similarly, a judgment of this court in *Niranjan Kaur* versus *Nirbigan Kaur*³ was in fact found to be operating against the petitioners, as this court had held that the substantive relief asked for by the plaintiff, needs to be looked at.

(11) Hence, holding that since the value of one of the properties was more than Rs.1 crores and the other more than Rs.30 lacs, the court fee would be payable *ad valorem* accordingly.

(12) Before this court, learned counsel for the petitioners has reiterated the arguments made before the trial court, to the effect that, firstly, the suit being one seeking effectively cancellation of the exchange deed in question, the court fee was only payable in terms of Section 7(v)(a) of the Court Fees Act, 1870 (in short "the Act of 1870") which reads as follows:-

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

¹ AIR 2010 (2) SC 2803

² 2016 (1) CCC 683 Delhi

³ AIR 1981 (PB) 368

(v) **for possession of land, houses and gardens**-In suits for the possession of land, houses and gardens-according to the value of the subject matter; and such value shall be deemed to be-

where the subject matter is land, and-

(a) where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government,

or forms part of such an estate and is recorded in the Collectors' register as separately assessed with such revenue;

and such revenue is permanently settled --- ten times the revenue so payable;

xxx xxx xxx”

(13) His next contention was that in any case even if this court comes to a conclusion that court fee is to be paid ad valorem on the value of the property, such value can only be taken to be as given in the exchange deed, i.e. Rs.6,93,000/-, and not Rs.1 crore.

(14) His next contention was that the value so calculated would also be only qua the suit property that the petitioner was seeking possession of and not qua the other property in respect of which he only sought a declaration, with no consequential relief of possession.

(15) Learned counsel next relied upon a judgment of a coordinate Bench of this court in **Gurjit Singh** versus **Baljeet Singh and others** (CR no.3564 of 2018, decided on 19.09.2019), to submit that the principle laid down by the Supreme Court in the case of **Suhrid Singhs'** case (supra), would only be applicable where the consideration is mentioned in the deed sought to be cancelled by the executant of the deed, i.e. *ad valorem* court fee would be payable by the plaintiff if he was the executant of the sale deed that he sought to cancel, with such ad valorem court fee to be calculated in terms of the consideration shown to have been paid as per the deed in question.

(16) He pointed to paragraph 6 of the judgment in **Suhrid Singhs'** case to support his contention that at best it can only be the value given in the deed in question, on which the court fee needs to be paid.

(17) Per contra, learned counsel for the respondent-defendant has pointed to the statutory provisions contained in Section 7 (iv) (c) and 7(v) (e) which read as under:-

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

xxx xxx xxx

(iv) In suits-

xxx xxxx xxx

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

xxx xxxx xxx”

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

xxx xxx xxx

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

xxx xxxx xxx

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

(v) **for possession of land, houses and gardens**-In suits for the possession of land, houses and garden according to the value of the subject matter; and such value shall be deemed to be-

Where the subject matter is land and-

xxx xxxx xxx

(e) for houses and gardens-where the subject matter is a house or garden according to the market value of the house or garden.”

(18) His contention therefore is that where a declaratory decree seeking consequential relief of possession is sought, the fee is to be paid on the amount at which the relief sought is valued in the plaint, or alternatively, where the possession sought is of a house, it would be as per the market value of the house in terms of sub-clause (e) of clause (v) of Section 7 of the Act of 1870.

(19) He then pointed to what has been held in paragraph 5 of the judgment in *Suhridd Singhs'* case (supra), to the following effect:-

“The second proviso to Section 7(iv) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of the said section. Clause (v) provides that where the relief is in regard to agricultural lands, court fee should be reckoned with reference to the revenue payable under clauses (a) to (d) thereof; and where the relief is in regard to the houses, court fee shall be on the market value of the houses, under clause (e) thereof.”

(20) Learned counsel for the respondents therefore contended that thus it is actually the statutory provisions which naturally need to be followed and consequently, with the petitioner in his own plaint having given the value of the house that he is seeking possession of, to be “more than Rs.1 crore”, it would not be the amount of Rs.6,93,000/- that was mentioned as the value of the property in the exchange deed in question in the present case that would be applicable, but in fact in terms of Section 7 (iv) (c) of the Act of 1870, it would be the value of the property as given in the plaint that would apply.

(21) In rebuttal, learned counsel for the petitioners, while repeating what he had argued earlier submitted, further argued that if eventually this court agrees with the contention of the learned counsel for the respondents, it would not accept 'the indefinite value' given by the petitioners in the plaint, which obviously is an approximation, to order the court fee to be paid accordingly, (i.e. on the value of “more than Rs.1 crore”), and consequently it would actually be the value shown in the exchange deed itself that would need to be taken into consideration.

(22) Having considered the arguments, in my opinion, this petition cannot succeed except to the extent that it would not be both the properties in question that would be subject matter of court fee *ad valorem*, but only the property the possession of which has been sought by the petitioner- plaintiffs.

(23) The question therefore would be as to whether it would be sub- clause (c) of Clause (iv) of Section 7 of the Act that would be applicable, or sub-clause (e) of Clause (v) of the said provision.

(24) In my opinion, it would actually be the latter and not the former, because sub-clause (c) lays down a general proposition of court

fee payable in case a declaratory decree with consequential relief is prayed for, whereas sub-clause (e) of clause (v) is specific to a case where the possession of a house or a garden is sought.

(25) Obviously in the present case it being a house the possession of which is sought by the petitioner-plaintiffs in their suit, it would be the market value of the house that would govern payment of court fee *ad valorem*.

(26) Of course, the suit is also one seeking a declaratory decree with a consequential relief of possession of the suit property.

(27) Consequently, the petition in essence is dismissed, but with it held that court fee *ad valorem* would be payable only qua the house that the petitioner-plaintiffs seeks possession in the plaint, and not the house qua which simply a decree of declaration is sought.

(28) However, I do agree with the learned counsel for the petitioners that with no specific value of the suit property that he seeks possession of having been given in the plaint, other than stating that is is “more than Rs.1 crore”, it would be the market value as is assessed before the trial court that would determine the court fee to be paid, *ad valorem* on such value.

(29) As regards the contention of the learned counsel for the petitioners that it would be the value declared in the exchange deed that would apply, I cannot agree with that contention because the petitioner-plaintiffs themselves, in the plaint, have assessed the value of the property far more than what is shown in the exchange deed, the difference being of obviously at least Rs.93-94 lacs.

(30) Consequently, with sub-clause (e) of clause (v) of Section 7 of the Act of 1870 stipulating that it would be the market value of the property in question, on which court fee *ad valorem* would need to be calculated and paid, the trial court is directed to take evidence on that issue from both the parties, and to come to a conclusion as regards the market value of the property as on the date of the filing of the suit, and thereafter direct the petitioner-plaintiffs to pay court fee *ad valorem* on such value, within a specified period.

(31) The petition is disposed of as above.

Shubreet Kaur