

**SUPREME COURT OF INDIA**

Suhrid Singh @ Sardool Singh

Vs.

Randhir Singh

C.A.Nos.2811-2813 of 2010

(R.V.Raveendran and R.M.Lodha JJ.)

29.03.2010

**JUDGEMENT**

**R.V.Raveendran, J.**

Leave granted.

1. The appellant filed a suit (Case No.381/2007) on the file of the Civil Judge, Senior Division, Chandigarh for several reliefs. The plaint contains several elaborate prayers, summarizes below:

“(i) for a declaration that two houses and certain agricultural lands purchased by his father S. Rajinder Singh were co-parcenary properties as they were purchased from the sale proceeds of ancestral properties, and that he was entitled to joint possession thereof;

(ii) for a declaration that the will dated 14.7.1985 with the codicil dated 17.8.1988 made in favour of the third defendant, and gift deed dated 10.9.2003 made in favour of fourth defendant were void and non-est "qua the co-parcenary";

(iii) for a declaration that the sale deeds dated 20.4.2001, 24.4.2001 and 6.7.2001 executed by his father S. Rajinder Singh in favour of the first defendant and sale deed dated 27.9.2003 executed by the alleged power of attorney holder of S.Rajender Singh in favour of second defendant, in regard to certain agricultural lands (described in the prayer), are null and void qua the rights of the "co-parcenary", as they were not for legal necessity or for benefit of the family; and (iv) for consequential injunctions restraining defendants 1 to 4 from alienating the suit properties.”

2. The appellant claims to have paid a court fee of Rs.19.50 for the relief of declaration, Rs.117/- for the relief of joint possession, and Rs.42/- for the relief of permanent injunction, in all Rs.179/-. The learned Civil Judge heard the appellant-plaintiff on the question of court

fee and made an order dated 27.2.2007 holding that the prayers relating to the sale deeds amounted to seeking cancellation of the sale deeds and therefore ad valorem court fee was payable on the sale consideration in respect of the sale deeds.

3. Feeling aggrieved the appellant filed a revision contending that he had paid the court fee under section 7(iv)(c) of the Court-fees Act, 1870; and that the suit was not for cancellation of any sale deed and therefore the court fee paid by him was adequate and proper. The High Court by the impugned order dated 19.3.2007 dismissed the revision petition holding that if a decree is granted as sought by the plaintiff, it would amount to cancellation of the sale deeds and therefore, the order of the trial court did not call for interference. The application filed by the appellant for review was dismissed on 11.2.2008. The application for recalling the order dated 19.3.2007 was dismissed on 24.4.2008 and further application for recalling the order dated 24.4.2008 was dismissed on 16.5.2008. Feeling aggrieved, the appellant has filed these appeals by special leave.

4. The limited question that arises for consideration is what is the court fee payable in regard to the prayer for a declaration that the sale deeds were void and not 'binding on the coparcenary', and for the consequential relief of joint possession and injunction.

5. Court fee in the State of Punjab is governed by the Court Fees Act, 1870 as amended in Punjab ('Act' for short). Section 6 requires that no document of the kind specified as chargeable in the First and Second Schedules to the Act shall be filed in any court, unless the fee indicated 4 therein is paid. Entry 17(iii) of Second Schedule requires payment of a court fee of Rs.19/50 on plaints in suits to obtain a declaratory decree where no consequential relief is prayed for. But where the suit is for a declaration and consequential relief of possession and injunction, court fee thereon is governed by section 7(iv)(c) of the Act which provides :

“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."

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) 5 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.”

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 6 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 under Section 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.”

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "co-parceners" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under section 7(iv)(c) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds.

8. We accordingly allow these appeals, set aside the orders of the trial court and the High Court directing payment of court fee on the sale consideration under the sale deeds dated

20.4.2001, 24.4.2001, 6.7.2001 and 27.9.2003 and direct the trial court to calculate the court fee in accordance with Section 7(iv)(c) read with Section 7(v) of the Act, as indicated above, with reference to the plaint averments.