
(2002) 03 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 6478 of 1999

Chhote Lal

APPELLANT

Vs

Ansal Housing and Estate Private Limited

RESPONDENT

Date of Decision : 01-03-2002

Acts Referred:

Court Fees Act, 1870 — Article 1, 7

Citation : AIR 2002 P&H 302 : (2002) 2 RCR(Civil) 574

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : C.B. Goel, for the Appellant; H.S. Mattewal, Senior Advocate and Sanjay Vij, for the Respondent

Final Decision : Allowed

Judgement

M.L. Singhal, J.—Chhote Lal has filed suit for declaration that he has become owner through adverse possession of land measuring 9 kanal 18 marla as detailed in para 1 of the plaint and that sale deed dated 26th July, 1990 in respect of this land executed by Sher Singh in favour of the defendant for a sum of Rs.79,25,000/- is null and void. By way of consequential relief, he has sought permanent injunction restraining the defendant from interfering in his possession of the land for dispossessing him therefrom.

2. It is alleged in the plaint that he is in peaceful possession of this land since the times of his ancestors for over 30 years. He is in actual and physical cultivating possession. His possession has throughout been adverse. Through adverse possession he has acquired title to this land. Through adverse possession, he has extinguished the title of the true owner and the title has become vested in him. Entries in the revenue record, showing Sher Singh etc as owner and in possession are void. Defendant resisted the suit of the plaintiff. It was urged inter alia that the plaintiff had not paid proper Court fee on the plaint. Plaintiff should have paid Court fee on the plaint on the valuation of the land entered in sale deed dated 26th July, 1990. On the pleadings of the parties, issues were

framed. During the pendency of the suit, the defendant made an application under Order 14 Rule 2 CPC praying that issue No.5 be treated as a preliminary issue. It was prayed that plaint be rejected for non payment of proper Court fee. On the prayer of the defendant, issue No.5 as to Court fee was treated as a preliminary issue.

3. Plaintiff has paid Rs.25/- as Court fee on the plaint. He has valued the plaint for purposes of Court fee and jurisdiction at Rs.200/-.

4. Issue No.5 was ordered to be treated as a preliminary issue. On this issue, Civil Judge (Senior Division), Gurgaon vide order dated 4th December, 1999 held that the plaintiffs case was covered by Article 1 Schedule 1 of the Court Fees Act and, therefore, he was required to pay the advalorem Court fee on the value of the property involved. Plaintiff was required to pay Court fee on the valuation of the property which was entered in the sale deed dated 26th July, 1990 as Rs. 79,25,000/-. He was thus required to pay Court fee on the amount of Rs. 79,25,000/-. He was given 20 days time to make up the deficiency in Court fee.

5. Aggrieved by this order dated 4th December, 1999, plaintiff has come up in revision to this Court.

6. I have heard Sh. C.B.Goel, Advocate representing the petitioner and Shri H.S.Mattewal, Senior Advocate assisted by Shri Sanjay Vij, Advocate representing the respondent and have gone through the record.

7. In Shamsheer Singh Vs. Rajinder Prashad and Others, the Hon'ble Supreme Court held as follows:-

"The Court in deciding the question of Court fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the Court looking at the substance of the relief asked for."

8. In this case, therefore, we have to discover what really is the relief which the plaintiff has asked for. Whether the plaintiff was essentially required to claim that the sale deed 26th July, 1990 executed by Sher Singh in favour of the defendant was null and void for claiming the relief that he has become owner by adverse possession or he could be given the relief of declaration that he has acquired title to this land through adverse possession for over 30 years and by way of consequential relief of permanent injunction restraining the defendant from interfering or dispossessing him from the land in suit without his asking for that the sale deed executed by Sher Singh in favour of the defendant dated 26th July, 1990 was null and void. In other words, Court is required to find out whether the relief of declaration with consequential relief of permanent injunction could be allowed to the plaintiff without advertting to sale deed dated 26th July, 1990 executed by Sher Singh for a sum of Rs. 79,25,000/- and whether the plaintiff was required essentially to ask for cancellation of sale deed dated 26th July, 1990 executed by Sher Singh in favour of the defendant or he was not required

to ask for that sale deed dated 26th July, 1990 executed by Sher Singh was null and void and that his asking for that sale deed dated 26th July, 1990 executed by Sher Singh was a mere surplusage and whether the main relief is essentially that of cancellation of sale deed and declaration, if any, is a surplusage, is the question herein involved. If for claiming the relief of declaration, he had essentially to ask for the relief of cancellation, the case would fall under Article 1 Schedule 1 of the Court Fees Act and he would have to pay Court fee ad-valorem on the valuation of the land as entered in the sale deed. It was held in *Anil Rishi v. Gurbaksh Singh* 1998 2 P.L.R. 417 that where the plaintiff had filed a suit for declaration to the effect that the registered sale deed dated 26th March, 1991 was forged, fabricated and a fake document and is not enforceable in respect of the property in question i.e. House No. 86, Sector 18-A, Chandigarh, such a suit will be governed by Article 1 Schedule 1 of the Court Fees Act and the plaintiff shall have to pay advalorem Court fees. In case the main relief in the suit is that of cancellation of the sale deed, then the case is not covered by Section 7(iv)(c) and the only provision applicable is Article 1 Schedule 1 of the Act. In order to bring the case u/s 7(iv)(c) of the Act the main and substantive relief should be that a document is forged, fabricated and ineffective, the relief in law cannot be granted unless the Court holds that the document is liable to be cancelled. Cancellation of the document would be the basic and main relief, Advalorem Court fee is payable.

9. In this case, according to the defendant, the title of the property has already passed on to it by virtue of the registered sale deed and it is the only cancellation thereof, that could divest it in law of the rights accruing therefrom. As such, according to the defendant, the plaintiff cannot be granted the relief asked for till the sale deed dated 26th July, 1990 executed in its favour is cancelled. As per the defendant first of all the Court will have to dwell on the validity of the sale deed. It is only after the sale deed is cancelled that the Court will be able to grant declaration to the plaintiff that he has become owner through adverse possession.

10. It was held in *Harish Chander and Ors. v. Gurbachan Singh and Ors.* 2000 1 P.L.R. 212 that where the main relief is that of the cancellation of the deed and the declaration if any is only a surplusage, the case would not be covered u/s 7(iv)(c) of the Court Fees Act because in a suit under that clause, the main relief is that of a declaration and the consequential relief is just ancillary. Section 7(iv)(c) clearly contemplates suits to obtain declaratory decree or order, where consequential relief is only ancillary thereto. In *Niranjan Kaur v. Nirbigan Kaur (Minor)* 1981 Rev.L.R. 272 it was held that in case the main relief in the case is held to be that of cancellation of the sale deed, then the case is not covered by Section 7(iv)(c) and the only provision applicable is Article 1 Schedule 1 of the Court Fees Act. In order to bring the case u/s 7(iv)(c), the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. Moreover, if no consequential relief is claimed or could be claimed in the suit then Section 7(iv)(c) will not be attracted. To say in the plaint

that it be declared that the sale deed executed from her as a result of fraud was void and not binding on her does not convert the suit into one for a declaration with consequential relief of possession.

11. It was submitted by the learned counsel for the petitioner that in this case the mean relief which the plaintiff has asked for is that he had become owner of the land in suit through adverse possession and the moment the Court finds that he had become owner of the land in suit by adverse possession before 26th July, 1990, the Court will be able to give, him declaration. In that event, the necessary consequence will be that this prayer will die its own death and sale deed will not be required to be cancelled as plaintiff was not party to that sale deed and he was not required to obtain its cancellation.

12. In my opinion, the plaintiff had paid proper Court fee on the plaint as he was not required at all to ask for cancellation of the sale deed dated 26th July, 1990 executed by Sher Singh in favour of the defendant. This Civil Revision Petition is allowed and the impugned order passed by the learned trial Court is set aside.