
(2011) 06 UK CK 0035
In the Uttarakhand High Court
Case No : A.O. No. 170 of 2010

Dayanand Shiksha Sansthan

APPELLANT

Vs

M/s. Ambe Associates and Others

RESPONDENT

Date of Decision : 24-06-2011

Acts Referred:

Court Fees Act, 1870 — Article 17, 6A , 7A

Citation : AIR 2011 Utt 73

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B. S. Verma, J.—This appeal is directed against the judgment and order dated 21-4-2010 passed by the Civil Judge (Senior Division) Dehradun u/s 6-A of the Court Fees Act, whereby the plaintiff-appellant was directed to pay court fee on the amount mentioned in the order within a period of ten days, i.e. Rs. 67,81,800/-.

2. Briefly stated, the facts giving rise to the present appeal, according to the appellant, are that the plaintiff-appellant is owner in possession of the suit property, which was acquired by the plaintiff-appellant through a duly registered gift deed executed by Thakur Pooran Singh S/O Late Sri Natthu Singh on 27-7-1911 and since then, the plaintiff-appellant is in possession of the same. The name of the plaintiff-appellant is entered in the revenue record as owner of the suit property.

The suit property was in the tenancy of one Beryl Price and after his death the tenancy devolved upon his legal heirs. The tenant or his successors had no authority, right, or title to transfer the suit property or to execute any sale deed in favour of any person. The tenant of the suit property executed the sale deed dated 20-12-1941 and another sale deed on 15-12-2004 and thereafter on 27-7-2006 in favour of the defendant-respondent Nos. 1 to 12. Thereafter, they

(defendant respondent Nos. 1 to 12) got the map sanctioned in their favour from the respondent No. 13 by order dated 27-7-2007.

3. Before the learned Civil Judge (Senior Division) Dehradun, the defendants moved an application under Order 7, Rule 11 C.P.C. for rejection of the plaint on the ground that the court fee paid is insufficient.

4. The learned Civil Judge (Senior Division) on the basis of the averments made in the plaint and the relief sought by the plaintiff-appellant came to the conclusion that the court fee is payable as per Section 7(iv)(a) of the Court Fees Act and direction was given accordingly.

5. Learned counsel for the appellant, Mr. M. C. Pande, Advocate, has placed reliance upon the Apex Court judgment in the case of State of Uttar Pradesh Vs. Ramkrishan Burman (Dead) by L. Rs. and Others, and the case of Smt. Shefali Roy Vs. Hero Jaswant Dass and others, .

6. The Apex Court in the case of 1971 ALJ SC 1 (supra) has held in paragraph No. 5 as under:

5. A decree for declaration of title to money or other property is not a decree for money or other property. In our judgment the expression "decree for money or other property" means only a decree for recovery of money or other property. It does not include a decree concerning title to money or other property.

7. A Division Bench of the Allahabad High Court in the case of Shefali Roy (supra) has observed in paragraph No. 22 as under:--

22. The payment of court-fee depends upon the averments of the plaint and the relief claimed and not on the averments of the written statement. A suit for mere declaration that the plaintiff is owner of the property in suit as claimed by the plaintiff in the instant case and incidentally claiming a declaration that the alleged sale deed be declared null and void, does not fall within the ambit of Section 7 iv-A (State of U.P. Amendment). See State of Uttar Pradesh Vs. Ramkrishan Burman (Dead) by L. Rs. and Others, , wherein considering this State of U.P. Amendment Their Lordships of the Apex Court ruled that in a suit for mere declaration that the plaintiff is owner of certain properties, this U.P. Amendment is not attracted for the purposes of payment of Court-fee. According to Their Lordships this U.P. Amendment relates to a decree for recovery of money or other property. It however does not include a decree concerning title to money or other property, and hence where mere declaration is involved, the payment of court-fee is governed under Art. 17, Schedule II of the Court-fees Act. In view of the decision in Ramkrishna Burman's case (supra), we are of the opinion that the plaintiff has paid proper court-fee.

8. Learned counsel for the respondents drew attention of this Court on the relief sought in the plaint and contended that Article 17 of Schedule II would be applicable in the case where there is no consequential relief. The first relief (A) sought by the plaintiff-appellant is for declaration of title in respect of suit

property and its consequential relief is relief (E) for injunction. Second relief (Aa) sought by the plaintiff is to declare two instruments/sale-deeds dated 20-12-1941 and the sale deed dated 27-7-2006 as null and ineffective. In my view the contention of the learned counsel for the respondents has force.

9. The learned counsel for the respondents has placed reliance upon a Division Bench judgment of the Allahabad High Court in the case of Kailash Chand Vs. Vth A.C.J., Meerut and others, wherein both the aforementioned case-laws have been considered and have been distinguished. It has been held by the Division Bench of the Allahabad High Court in Kailash Chand (supra) case that where the relief sought is for declaration of an instrument including a sale-deed to be void or voidable, then the court fee shall be chargeable u/s 7(iv-A) (U.P. Amendment) of the Court Fees Act.

10. In other judgments referred by the respondents, the same view has been taken.

11. In reply, the learned counsel for the plaintiff-appellant has submitted that the relief of injunction is an independent relief.

12. I have heard learned counsel for the parties and perused the record and have carefully gone through the case-law cited above. It is settled law that the injunction involves declaration of rights.

13. The plaintiff-petitioner filed Civil Suit No. 602 of 2009 against the defendant-respondents in the Court of Civil Judge (Senior Division) Dehradun. Relief A contains the prayer that the plaintiff be declared owner of the suit property. Relief " Aa" contains the prayer to declare the sale-deeds mentioned in relief clause "Aa" to be void and ineffective. Relief E contains the prayer for permanent injunction.

14. A perusal of the record reveals that in the case at hand, the plaintiff has sought relief of declaration of title and to declare the sale-deeds void and ineffective. The plaintiff, in addition, has sought the relief of permanent injunction as a consequential relief. In my view, the learned trial court has rightly held that the provisions of Section 7(iv-A) of the Court Fees Act are applicable and not the provisions of Article 17 of Second Schedule of the Court Fees Act. Accordingly, the learned trial court has rightly held that the court fee paid by the plaintiff-appellant is not sufficient and has rightly directed the plaintiff-appellant to make the deficiency of court-fee good with a time frame.

15. In view of the discussion above and the case-law referred to above, the contention of the appellant-plaintiff has rightly been rejected by the trial court and the impugned order directing the plaintiff to pay the court fee as per provisions of Section 7(iv-A) (U.P. Amendment) of the Court Fees Act does not call for interference in this appeal. Consequently, the appeal is liable to be dismissed in view of the legal proposition cited above.

16. The appeal is dismissed. The impugned order dated 21-4-2010 is upheld.

Costs easy. The plaintiff-appellant is directed to make the deficiency of court fees good within a period of four weeks before the trial court and comply with the direction of the trial court for amendment of valuation clause of the plaint.