
(2010) 11 AHC CK 0402
In the Allahabad High Court
Case No : C.M.W.P. No. 67987 of 2010

Khem Chand

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Court Fees Act, 1870 — Section 7

Citation : (2011) 112 RD 108

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Tandon, J.—This writ petition is directed against the order of the Re-visional Court dated 19.8.2010 where under the revision filed by the Defendant to the suit against the order of the Trial Court deciding issues No. 4 and 5 has been partly allowed. Under the impugned order, the Revisional Court has maintained the Order in so far as valuation of the suit property has been determined by the Trial Court under issue No. 4. In respect of issue No. 5, it has been held that the Court fee paid by the Plaintiff was not sufficient and the Plaintiff has been directed to pay the Court fee in accordance with Section 7(iv-a) of the Court Fees Act on the valuation of the property subject matter of the suit, ad valorem.

2. The order is being challenged on the ground that in the revision the prayer made was that the matter be remanded to the Trial Court to decide the issues afresh, after affording opportunity of hearing to the parties concerned. Therefore, the Revisional Court could not have determined as to whether Court fee is to be paid in accordance with Section 7(iv-a) as amended in the State of U.P. or not. Secondly it is contended that in the facts of the case, since declaration qua a sale deed being void was prayed, the Court fee to be paid has to be determined in accordance with the provisions of Article 17 Schedule 2 of the Court Fee Act. For the purposes reliance has been placed upon the judgment of the Hon"ble

Supreme Court in the case of State of Uttar Pradesh Vs. Ramkrishan Burman (Dead) by L. Rs. and Others, and a Division Bench judgment of this Court in the case of Smt. Shefali Roy Vs. Hero Jaswant Dass and others,

3. I have heard learned Counsel for the parties and have gone through the records of the present writ petition.

4. It is no doubt true that the Hon"ble Supreme Court in the case of State of U.P. v. Ramkrishan (supra) and the Division Bench of this Court in the case of Shefali Roy (supra) have held that where mere declaration is asked for in respect of an alleged sale deed being null and void, provisions of Section 7(iv-a) of the Court Fees Act as amended in the State of U.P. shall not be attracted. However, on examination of the plaint which has been enclosed as Annexure-2 to the present petition, this Court finds that not only the Petitioner has prayed for declaration of the sale deed dated 26.7.2000 as null and void, he has also prayed for permanent prohibitory injunction restraining the Defendant from interfering in the use and occupation of the suit property by dispossessing the Plaintiff and their relative in any manner. It is, therefore, clear that in the facts of the case not only declaration that the sale deed was null and void has been asked for, a consequential relief has also been prayed namely permanent prohibitory injunction.

5. In the opinion of the Court the case of the Petitioner is covered by Clause (iv) (a) which provides for declaratory decree with consequential relief. Therefore, the Court below has rightly held that the Petitioner is liable to pay Court fee in accordance with Section 7(iv-a), which provides that valuation of the suit shall be valued as per the consequential relief and if such relief is incapable of valuation then the Court fees shall be computed accordingly.

6. Section 7(iv) along with Proviso reads as follows:

7. Computation of fees payable in certain suits for money.--The amount of fee payable under this Act in the suit next hereinafter mentioned shall be computed as follows:

For declaratory decree with consequential relief.--(iv) In suits -(a) to obtain a declaratory decree or order, where consequential relief other than reliefs specified in Sub-section (iv-A) is prayed; and

For accounts.--(b) For accounts according to the amount at which the relief sought is valued in the plaint or memorandum of appeal:

Provided that in suits falling under Clause (a), where the relief sought is with reference to any immovable property, such amount shall be the value of the consequential relief and if such relief is incapable of valuation, then the value of the immovable property computed in accordance with Sub-section (v), (v-A) or (v-B) of this section as the case may be:

[Provided further that in all suits falling under Clause (a), such amount shall be no

case be less than Rs. 300/-]:

Provides [also], that in suits falling under Clause (b), such amount shall be the approximate sum due to the Plaintiff and the said sum shall form the basis for calculating (or determining) the valuation of the an appeal from a preliminary decree passed in the suit.?

7. In view of the aforesaid, the Court below appears to be justified in asking the Petitioner to pay the Court fee ad valorem on the valuation of the property covered by the sale deed, declaration whereof was prayed along with a consequential injunction restraining the Defendant from interfering in possession.

8. There is no illegality in the order of the Revisional Court which may warrant any interference under Article 226 of the Constitution of India.

9. Writ petition is dismissed.