
(2006) 08 P&H CK 0314
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 3356 of 2005

Raj Kumar and others

APPELLANT

Vs

Dadu Dayal Trust and others

RESPONDENT

Date of Decision : 23-08-2006

Acts Referred:

Citation : (2007) 2 ICC 73 : (2007) 2 LLR 699 : (2007) 1 PLR 584 : (2007) 1 RCR(Civil) 173

Hon'ble Judges : Vinod K.Sharma, J

Advocate : For the Petitioners : Mr. P.R. Yadav, Advocate.For the Respondent Nos. 4, 6, 9, 10, 28, 30, 36 to 39, 46, 53 and 54 : Mr. Jaswant Jain, Advocate.For the Respondent Nos. 8 and 25 : Mr. Jaivir Yadav, Advocate.For the Respondent Nos. 41 and 42 : Mr. R.S. Mittal, Sr. Advocate with Mr. Atul Gaur, Advocate., Advocates for appearing Parties

Judgement

Vinod K. Sharma, J.

1. This revision petition has been filed against the order passed by the learned Civil Judge (Senior Division), Narnaul directing the petitioners to pay ad valorem court fee on the sale consideration of the sale deeds.

2. The petitioner/plaintiffs had brought a suit in the representative capacity seeking a declaration to the effect that Mandir Dadu Ji Maharaj (for short 'Mandir') was owner of the suit property on the basis of jamabandi for the years 1989-90 and that the change in mutation bearing No. 575 dated 12.12.1963 was based on fraud and by misrepresentation of facts and therefore, was not binding upon the right of the Mandir.

3. The plaintiffs had also challenged the order dated 27.3.1971 passed by Shri V.K. Aggarwal, District Magistrate, Gurgaon to be illegal, null and void and not binding upon the rights of the Mandir. It was further claimed that sale deeds bearing Nos. 259, 791, 266, 265, 264, 794, 792, 790, 795, 788, 789, 793 and 794 in favour of defendant Nos. 5 to 56 were illegal, null and void and not binding upon the rights of the religious trust. Further consequential relief of

injunction was prayed restraining the defendants from alienating, mortgaging, gifting or leasing the property in question to anyone in any manner.

4. The suit was contested by the defendants and by way of preliminary objections it was claimed that the suit was bad for want of ad valorem court fee. Learned trial Court came to the conclusion that the plaintiffs have sought the relief of declaration and consequential relief of permanent injunction and without cancellation of sale deeds, it cannot be said that the Mandir was owner of the property in question. Therefore, the learned trial Court held that the plaintiffs have sought the substantive relief regarding cancellation of saledeeds by declaring the same to be illegal and not binding upon the rights of the Mandir, therefore, the authorities cited on behalf of the plaintiffs were not applicable to the facts of the case and consequentially held that ad valorem fee was payable on the sale consideration.

5. On 31.1.2006 in order to resolve the controversy the parties had agreed that the petitioners herein would make an application before the trial Court to sue as forma pauperis and a statement was made by the learned counsel for the respondents that they would have no objection to this process being adopted. The order passed on 31.1.2006 reads as under :

"Counsel for the respondents states that the respondents shall make a statement before the Court below that the application filed by the petitioners to allow them to sue as in forma pauperis be allowed.

On request, adjourned to 24.2.2006."

However, as no decision was taken on the application the matter was heard on merits.

6. Mr. P.R. Yadav, learned counsel for the petitioners contended that the property in dispute was under the ownership of temple known as Mandir Dadu Ji Maharaj and in order to grab the property of the temple a trust under the name and style of Shri Dadu Dayal Trust was created and a trust deed No. 197 dated 31.1.1963 was executed. On the basis of above trust deed, the property of the temple was got mutated by way of mutation No. 575 in the name of the trust. It was further the case of the petitioners that mutation No. 575 was set aside by the learned Collector vide order dated 18.5.1964. Learned counsel for the petitioners further submitted that vide order dated 27.3.1971 a permission was sought from the court of learned District Magistrate, Gurgaon for selling the property of the temple by the trust by concealing the fact that mutation No. 575 had been set aside by the learned Collector, Narnaul. It was further the case of the petitioners that the permission was kept secret for 30 years and it was in the year 200102 that the disputed property was sold by way of different saledeeds. The learned counsel for the petitioners contended that in the plaint, the petitioners had sought cancellation of trustdeed dated 31.1.1963 and mutation No. 575 vide which the property was shown in the ownership of trust as well as the order dated 27.3.1971 vide which permission was obtained to sell the property.

7. The contention of the learned counsel for the petitioners was that the substantive prayer in the suit was for declaring the above said trust and cancellation of saledeeds in pursuance to the mutation to be void ab initio and thus, was only an ancillary relief and therefore, the order passed by the learned court below was not sustainable. Learned counsel further contended that the payment of ad valorem fee would only be required if the cancellation of sale deeds is a substantive relief and that too in case of petitioners being party to the saledeeds but in the present case the petitioners were neither party to the saledeeds nor were claiming the substantive relief of cancellation of saledeeds. In support of this contention, learned counsel for the petitioners placed reliance on a judgment of this Court in Labh Singh and others v. Puran Singh (deceased), 1978 PLR 29 to contend that the plaintiff in the present case has sought a declaration on the ground that the saledeeds were the outcome of fraud and misrepresentation and did not affect the right of the Mandir and therefore, the court fee was to be paid in terms of Section 7(iv)(c) of the Court Fees Act and therefore, the order cannot be sustained.

8. Mr. P.R. Yadav, learned counsel for the petitioners thereafter placed reliance on a judgment of this Court in Ishwar v. Smt. Om Pati and others, 2006(2) RCR(Civil) 514 (P&H) : 2006(2) PLR 859 to contend that the petitioners were not party to the sale deeds and were challenging the execution of the sale deeds by the trust only to the extent that the property belonged to the Mandir and the trust had no jurisdiction to effect the sale deeds. The contention of the learned counsel for the petitioners was that the vendor had no right to sell the property as the very basis which authorised them to sell the land already stood cancelled and therefore, it was wrong on the part of the learned trial Court to direct the petitioners to pay ad valorem court fee. The petitioners also placed reliance on the judgment of this Court in Tara Singh and others v. Tarsem Singh and others, 1987 RRR 373 (P&H) : 1987 PLJ 172 and Ram Chander v. Rattan Lal, 2002(2) RCR(Civil) 157 (P&H) : 2002(1) PLJ 328.

9. Learned counsel for the respondents, on the other hand, submitted that no fault can be found with the order passed by the learned court below as the main relief sought by the petitioners was for cancellation of the sale deeds and for the said purpose they made reference to para No. 7 of the plaint which reads as under :

"7. That defendant No. 1, in the guise of above wrong, contrary to law and facts, obtained by fraud order dated 27.3.1971, sold the property in ownership and possession of the Mandir, without any legal necessity through different sale deeds which are being mentioned in the concluding portion of this para, in favour of defendant Nos. 4 to 56 and the same is not binding on the right of the Mandir. The Mandir is continuing owner in possession of the above said disputed land and sale deeds have been got executed by the defendants in the guise of wrong order and the same have no effect on the ownership of the Mandir. Otherwise also, the sale deeds have been executed against the intent of the order dated 27.3.1971

and on this score also, the above sale deeds have no effect on the ownership and possession of the Mandir. The plaintiff is entitled to get the decree of declaration as claimed in the title of the suit and prayer clause.

Description of Sale Deeds :

(a) Sale Deed No. 2259 by defendant Nos. 1 to 3 in favour of defendant Nos. 4 to 9 regarding 10 biswas of land out of total land of 16 bigha 16 biswa, registered on 9.11.2001.

(b) Sale Deed No. 791 by defendant Nos. 1 to 3 in favour of defendant Nos. 10 to 15 regarding 1 bigha of land out of total land of 16 bigha 16 biswa, registered on 14.6.2002.

(c) Sale Deed No. 266 by defendant Nos. 1 to 3 in favour of defendant Nos. 16 to 22 regarding 1 bigha of land out of total land of 16 bigha 16 biswa, registered on 29.4.2002.

(d) Sale Deed No. 265 by defendant Nos. 1 to 3 in favour of defendant Nos. 4 to 23 to 28 regarding 1 bigha of land out of total land of 16 bigha 16 biswa, registered on 29.4.2002.

(e) Sale Deed No. 264 by defendant Nos. 1 to 3 in favour of defendant No. 29 regarding 07 biswa of land out of total land of 16 bigha 16 biswa, registered on 29.4.2002.

(f) Sale Deed No. 794 by defendant Nos. 1 to 3 in favour of defendant Nos. 23, 30 and 39 regarding 1 bigha of land out of total land of 16 bigha 16 biswa, registered on 14.6.2002.

(g) Sale Deed No. 792 by defendant Nos. 1 to 3 in favour of defendant Nos. 40 to 42 regarding 14 biswas of land out of total land of 16 bigha 16 biswa, registered on 14.6.2002.

(h) Sale Deed No. 790 by defendant Nos. 1 to 3 in favour of defendant No. 8 regarding 1 bigha of land out of total land of 16 bigha 16 biswa, registered on 14.6.2002.

(i) Sale Deed No. 795 by defendant Nos. 1 to 3 in favour of defendant No. 4 regarding 1 bigha of land out of total land of 16 bigha 16 biswa, registered on 14.6.2002.

(j) Sale Deed No. 788 by defendant Nos. 1 to 3 in favour of defendant Nos. 43 and 44 regarding 10 biswas of land out of total land of 16 bigha 16 biswa, registered on 14.6.2002.

(k) Sale Deed No. 789 by defendant Nos. 1 to 3 in favour of defendant Nos. 45 and 47 regarding 1 bigha of land out of total land of 16 bigha 16 biswa, registered on 14.6.2002.

(l) Sale Deed No. 793 by defendant Nos. 1 to 3 in favour of defendant No. 48

regarding 1 bigha of land out of total land of 16 bigha 16 biswa, registered on 14.6.2002.

(m) Sale Deed No. 994 by defendant Nos. 1 to 3 in favour of defendant Nos. 4, 6, 8, 9 and 49 to 56 regarding 1 bigha 2 biswa of land out of total land of 16 bigha 16 biswa, registered on 28.4.2002."

10. The contention of the learned counsel for the respondents was that as the main relief was for cancellation of the sale deeds, therefore, ad valorem court fee was required to be paid. In support of this contention the petitioners relied upon a judgment of Hon"ble Supreme Court in Shamsheer Singh v. Rajinder Prashad and others, AIR 1973 SC 2384, wherein it was held by Hon"ble Supreme Court :

"3. Before us a preliminary objection was raised based on the observations of this Court in Rathnavaramaraja v. Smt. Vimla, AIR 1961 SC 1299 that the present appeal is not competent. In the case this Court observed that whether proper court fee is paid on a plaint is primarily a question between the plaintiff and the State and that the defendants who may believe and even honestly that proper court fee has not been paid by the plaintiffs has still no right to move the superior courts by appeal or in revision against the order adjudging payment of court fee payable on the plaint. But the observations must be understood in the background of the facts of that case. This court was there dealing with an application for revision filed before the High Court under Section 115 of the Code of Civil Procedure and pointed out that the jurisdiction in revision exercised by the High Court is strictly conditioned by clauses (a) to (c) thereof and may be invoked on the ground of refusal to exercise jurisdiction vested in the Subordinate Court or assumption of jurisdiction which the court does not possess or on the ground that the Court has acted illegally or with material irregularity in the exercise of its jurisdiction, and the provisions of Sections 12 and 19 of the Madras Court Fees Act do not arm the defendant with a weapon of technicality to obstruct the progress of the suit by approaching the High Court in revision against an order determining the court fee payable. The ratio of that decision was that no revision on a question of court fee lay where no question of jurisdiction was involved. This decision was correctly interpreted by the Kerala High Court in Vasu v. Chakki Mani, AIR 1962 Ker. 84 where it was pointed out that no revision will lie against the decision on the question of adequacy of court fee at the instance of the defendant.... unless the question of court fee involves also the question of jurisdiction of the court. In the present case the plaint was rejected under Order 7, Rule 11 of the CPC. Such an order amounts to a decree under Section 2(2) and there is a right of appeal open to the plaintiff. Further, in a case in which this Court has granted special leave, the question whether an appeal lies or not does not arise. Even otherwise a second appeal would lie under Section 100 of the CPC on the ground that the decision of the Ist Appellate Court in the interpretation of Section 7(iv)(c) is a question of law. There is thus no merit in the preliminary objection."

11. Learned counsel further placed reliance on a judgment of this Court in Anil

Rishi v. Gurbaksh Singh, 1998(3) RCR(Civil) 135 (P&H) : 1998(2) PLR 417 to contend that in a suit for declaration seeking a decree for declaring a document as forged, fabricated and ineffective, a relief cannot be granted unless the court held that the document was liable to be cancelled. In that event the cancellation of document would be the basis of main relief and therefore, ad valorem court fee would be payable.

12. Learned counsel for the respondents further placed reliance on the following judgments : Om Parkash v. Inderawati and others, 2002(4) RCR(Civil) 186 (P&H) : 2002(3) Civil Court Cases 263; Mandir Thakar Dwara v. Mehar Singh, 2003(2) RCR(Civil) 494; Ranjit Singh v. Balkar Singh, 2001(1) RCR(Civil) 573 (P&H) : 2001(2) Civil Court Cases 45; Raj Kumari Amrit Kaur v. Maharani Deepinder Kaur, 2002(1) RCR(Civil) 284; Kamleshwar Kishore Singh v. Paras Nath Singh and others, 2002(1) PLJ 581 and Himanshu v. Smt. Kailash Rani, 2004(4) RCR(Civil) 582 to contend that as the main relief is for cancellation of sale deeds and therefore, the learned trial Court was right to hold that the petitioners should be directed to pay ad valorem court fee and accordingly prayed for dismissal of the petition.

13. I have considered the arguments raised by the learned counsel for the parties and find that the proposition of law canvassed by the learned counsel for the parties cannot be disputed. It is the settled law that the court fee has to be paid on the basis of substantive relief claimed by the parties. Mere drafting of a plaint in a particular manner cannot be made the basis of fixation of court fee yet it has to be seen as to what is the substantive relief claimed by the party, in a particular suit.

14. In the present case the petitioners have filed the suit in representative capacity and sought a decree for declaration to the effect that the land and property in dispute was in ownership and possession of Mandir as per jamabandi for the year 198990 and further Mutation No. 575 dated 12.12.1963 regarding change of ownership in favour of defendant No. 1 was contrary to law and facts and the outcome of fraud and therefore, was not binding on the rights of the Mandir. The learned counsel for the petitioners also challenged the order dated 27.3.1971 obtained by defendant No. 1 from the court of Shri V.K. Aggarwal, District Judge, Gurgaon to be the outcome of fraud and misrepresentation and consequential relief of cancellation of sale deeds was prayed for.

15. It may be noticed here that the petitioners were not party to the sale deeds. Neither the sale deeds were executed by the Mandir on whose behalf the suit has been filed in the representative capacity. The sale deeds were executed by defendant Nos. 1 to 3 in favour of other defendants on the basis of mutation sanctioned in their favour which according to the plaintiff was subsequently set aside. In these circumstances, it is held that defendant Nos. 1 to 3 had no right to deal with the property of the Mandir and the mutation was rightly set aside by the revenue authorities. The cancellation of the sale deeds would be by way of consequential relief and not a substantive relief.

16. The contention of the learned counsel for the respondents that cancellation of the sale deeds is a substantive relief in view of the averments made in para No. 7 cannot be accepted as para 7 only narrates the execution of the sale deeds in pursuance to the sanctioning of mutation and order of the learned District Judge, Gurgaon.

17. In view of what has been discussed above the impugned order passed by the learned trial Court cannot be sustained and it is accordingly set aside and the revision petition is allowed. The court fee payable, therefore, would be in terms of Section 7(iv)(c) of the Court Fee Act and ad valorem court fee would not be payable as directed.