
(2009) 07 AHC CK 0338
In the Allahabad High Court

Rakesh Pratap Singh

APPELLANT

Vs

Royal Shiksha Sansthan and Another

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 7

Citation : (2010) 2 AWC 1893 : (2010) 4 CivCC 410

Hon'ble Judges : Satish Chandra, J; Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma and Satish Chandra, JJ.—Heard Mr. A.P. Singh Gaur, learned Counsel for the appellant and Mr. Prashant Chandra, senior advocate assisted by Mr. Jaspreet Singh, learned Counsel for the respondent No. 1.

2. It has been stated by the counsel for the appellant that the land comprised in Khasra Plot No. 648Kha, measuring 4.0469 hectares is situated in Village Kankaha, pargana Nigohan, thesil Mohanlgalganj, district Lucknow. The appellant executed a sale deed in the name of respondent No. 1 on 15.12.2005, which is recorded in the name of the appellant as bhumidhar with transferable rights. Counsel for the appellant submits that the appellant came to know that an application dated 1.12.2006 has been moved in the name of Royal Shiksha Sansthan (respondent) before the All India Council for Technical Education for grant of approval for establishing an institution in the name and style of Lucknow College of Technology and Management (Hotel Management Wing) over the suit property.

3. Counsel for the appellant further submitted that the Society (respondent No. 1) fraudulently and deceitfully applied for and obtained recognition on the basis of false information and forged documents including the fact that instead of showing the building, which could belong or constructed over the property in suit, the building and the property situated on the adjoining land of the appellant

was claimed to have been owned by the society. In these circumstances, the appellant lodged a complaint with the respondent No. 2 vide letter dated. 25.4.2009 for de-recognition of the society and cancellation of affiliation of the institute. When no action was taken on the complaint of the appellant, a Writ Petition No. 4746 (MB) of 2006, Shivgarh Resort Limited u. Union of India and Ors., was filed before this Court. A Division Bench of this Court directed the respondent No. 2 to decide the complaint of the appellant by 3rd week of July.

4. Counsel for the appellant has further submitted that when the appellant show that extensive construction works are under way on the property in question, he also filed a suit for declaration, permanent and mandatory injunction before the trial court on 27.5.2009 which was registered as Regular Suit (No. 158 of 2009) with the title Rakesh Pratap Singh v. Royal Shiksha Sansthan and Anr., alongwith application under Order XXXIX, Rules 1 and 2 for interim injunction and another application under Order XXXIX, Rule 7 of the CPC for appointment of an Advocate Commissioner which were numbered as C-6 and C-10 respectively.

5. In the said suit, the Munsarim has reported the deficiency of court fee and required the appellant to make good the deficiency as the valuation of the property in question has been declared as Rs. 61,75,000. The Munsarim was of the opinion that the requisite fee has not been paid. Objections to the said report of Munsarim was filed by the appellant-plaintiff which was numbered as C-16. The objections alongwith an application under Order XXXIX, Rules 1 and 2 as well as the application under Order XXXIX, Rule 7 were taken up for disposal on 9.7.2009. By means of the orders passed separately, the application (C-6) under Order XXXIX, Rules 1 and 2 was rejected inter alia on the ground that the requisite court fee has not been paid. As regard the appointment of Advocate Commissioner, the application (C-10) was allowed, but the objections. (C-16) to the report of Munsarim were rejected by the order dated 9.7.2009 which is impugned in the instant appeal. By this" order, the trial court has directed the appellant-plaintiff to pay the Court fee as provided u/s 7 (iv-A) by 17.7.2009.

6. A preliminary objection has been raised by Mr. Prashant Chandra, senior advocate appearing for the respondents-defendants that the appropriate court fee as required was not paid, so u/s 6A(2) of the Court Fee Act all the interim orders have been discharged. Mr. A.P.S. Gaur, learned Counsel for the appellant stated that he has complied with the order.

7. Today, a supplementary-affidavit has been filed by the appellant, wherein it has been stated that as per provision of Section 7 (iv-a), the deemed value of the property is thirty times of the annual revenue record. Accordingly, for the purposes of ad valorem court fees under that provision, value of the land comes to Rs. 3,345 and the requisite court fee of Rs. 465.50 has been paid, but in spite of that, the deficiency has wrongly been reported by the Munsarim, to which objections were filed, but the same were rejected by means of the impugned order dated 9.7.2009 and the Court has directed for making the deficiency in the Court fees.

8. It has been argued that the application moved before the court below was u/s 6(3) of the Court Fees Act, 1870 where the jurisdiction of the trial court was permissible only when a report u/s 24 of the Court Fees Act is received. Further, a deed of sale is not an instrument or a decree, securing money, therefore, the trial court has vitiated the order by relying upon Section 7 (iv-A) of the Court Fees Act. To strengthen his arguments, he has relied upon the cases of Smt. Shefali Roy v. Hero Jaswant Dass 1992 (20) ALR 831 : 1992 (2) AWC 1000; Budha Lal v. Ram Chand 1992 (20) ALR 837 : 1992 (1) AWC 525 and Arun Kumar Tiwari Vs. Smt. Deepa Sharma and Others,

9. Rebutting the aforesaid submissions, the counsel for the opposite parties, Mr. Prashant Chandra, senior advocate submitted that the Court fees is to be paid on the market value and further, the appellant himself declared that the valuation of the suit is Rs. 61,75,000. This Court in the cases of Ajay Tiwari Vs. Hirday Ram Tiwari and Others, and Smt. Veena Bahl (deceased) and Others Vs. Vishnu Kumar and Others, has specifically held that the Court fees is to be paid as per Section 7 (iv-A) of the Court Fees Act and as such, the court below had not committed any illegality or infirmity in the impugned order.

10. In Ajay Tiwari's case (supra) this Court relying upon a Full Bench decision rendered in Smt. Bibbi and Another Vs. Shugan Chand and Others, observed as under in paragraph 12 of the report:

To conclude in view of Full Bench decision in the case of Smt. Bibbi and Another Vs. Shugan Chand and Others, a sale deed being a document securing other property within the meaning of Section 7 (iv-A) of the Act, a suit for declaration of the sale deed as null and void squarely falls within the four corners of Section 7(iv-A) and Article 17(iii) of the Schedule II which applies to suit not otherwise provided for in the Act does not come into play.

11. Section 7(iv-A) refers to a prayer for a declaratory decree and consequential relief. Where the plaintiff wants to claim an injunction which is a consequence of declaration or where without declaration of right or status the injunction cannot be granted, Section 7(iv)(a) would apply with full. Section 7(iv)(d) relates to the relief of the injunction. Article 17 of Schedule II of Court Fees Act refers to certain suits wherein the fixed court fee is to be paid. It relates to such reliefs where the plaintiff seeks to obtain declaratory decree where no consequential relief is prayed. In view of the aforesaid legal position emerging out from the discussion, the case laws relied upon by the appellant are of no avail to him.

12. A Division Bench of this Court dealing with identical question in the case of Smt. Veena Bahl (deceased) and Others Vs. Vishnu Kumar and Others, relying upon various case laws including the Full Bench decision rendered in the case of Chief Inspector of Stamps, U.P., Allahabad Vs. Mahanth Laxmi Narain and Others, held that a suit for declaratory decree in respect of the specified property alongwith a consequential relief of injunction falls u/s 7(iv)(a) of the Act and, therefore, Article 17(iii) of Schedule II is not attracted.

13. A perusal of the relief sought by the appellant in Regular Suit No. 158 of 2009 reveals that the appellant-plaintiff has prayed for declaration of sale deed dated 15.12.2005 executed by him in favour of the defendant No. 1 be declared void and a copy of the decree be sent to the Registering Authority for making an endorsement on the copy of the sale deed in his books. It may be pointed out that the appellant himself has declared the value of the property as Rs. 61,75,000 but agitated the matter with regard to payment of court fee. No doubt the plaintiff/appellant has not prayed for any consequential relief but in substance the suit is one for the cancellation of the sale deed and as such it is covered by Section 7 (iv-A) of the Act. No doubt, in the present suit no consequential relief has been claimed but the relief prayed squarely falls within the ambit of Section 7 (iv-A) and as such the trial court rightly directed the appellant to pay necessary court fee u/s 7 (iv-A) of the Court Fees Act.

14. For the reasons aforesaid, we do not find any infirmity or illegality in the impugned order dated 9.7.2009 passed by Civil Judge (Senior Division) Mohanlalganj in Regular Suit No. 158 of 2009.

15. Accordingly, the appeal is dismissed.

16. Before parting with, we would like to mention that during the course of arguments, counsel for the appellant has submitted that in the event this Court declines to entertain this appeal, the appellant may be granted a week's time to make good the deficiency in the Court fees. Therefore, liberty is granted to the appellant to make good the deficiency in court fee within a week from the date of receipt of certified copy of this order.