(2002) 08 MP CK 0090

In the Madhya Pradesh High Court

Case No : Civil Revision No. 337 of 1998

Rameshchandra Rathi and others APPELLANT

Vs

Jayendra Singh Rajput and others RESPONDENT

Date of Decision : 08-08-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (2003) 1 MPLJ 379

Hon'ble Judges : A.K. Gohil, J

Bench : Single Bench

Advocate : S.R. Kochatta, for the Appellant; T.N. Sinh, for the Respondent

Judgement

A.K. Gohil, J.

This order shall also govern the disposal of connected Civil Revision No. 334 of 1998 M/s Pragati Griha Nirman Sahakari Samiti Limited, Ratlam vs. Jayendrasingh s/o Mansingh Rajput and others; and Civil Revision No. 399 of 1998 Ajit Singh s/o Onkarsingh Rajput and another vs. Jayendra Singh s/o Mansingh Rajput and others as common questions about payment of Court-fees are involved in these civil revisions.

The applicants/defendants have filed this Civil Revision u/s 115 of the CPC against the order dated 21-1-1998 passed by Third Additional District Judge, Ratlam in Civil Original Suit No. 35-A/96, whereby decided preliminary issue No. 8 whether the valuation of the suit is proper?

Brief facts of the case are as follows:-

Non-applicants/plaintiffs have filed suit for declaration against applicants/ defendants No. 1, 2 and 3 that the property which has been transferred by them be declared void. The plaintiffs have mentioned the value of the suit property as around rupees one crore and same has been mentioned as open land and it has been mentioned that over the open land the plaintiffs are in possession and it has been further mentioned that the land on which houses have been constructed are valued to Rs. 6,69,696-00 and on those houses on which they want possession have paid ad valorem Court-fees of Rs. 30,680.00 and for rest of the open land they have valued the suit on the basis of declaration and have paid fixed Court-fees. The applicants/defendants raised objections regarding valuation of the suit. Their submission was that the market value of the entire land is around rupees two crores and since the plaintiffs want a decree for cancellation of the aforesaid sale-deeds, therefore, the plaintiffs have to pay ad valorem Court-fees on the value of the sale-deeds. On the pleadings, the trial Court framed following two preliminary issues; viz. issue No. 8 - Whether the valuation of the suit is proper; and issue No. 9 - Whether the plaintiffs are entitled to exemption from payment of Court-fees being a public utility institution. For issue No. 9, the trial Court has held that there is no such rule to grant any exemption to such institution from payment of Court-fees and answered the same accordingly.

So far as Issue No. 8 is concerned, the trial Court has held that the plaintiffs have properly valued the suit and have paid proper Court-fees thereon. In the plaint it is the submissions of the plaintiffs that they are the founder trustees of the trust and the other trustees who have executed sale-deeds, had no right to execute the same, therefore, those sale-deeds are void and not binding on the plaintiffs trust and plaintiffs have rightly valued the suit and have paid proper Court-fees under Article 17 of Schedule-II on declaration because for getting a relief of declaration, there is no necessity for payment of ad valorem Court-fees on the value of the sale-deeds. The Court further observed that plaintiffs have sought the relief of declaration and not for cancellation of those sale-deeds and found that the suit has been properly valued and proper Court-fees have been paid. Being aggrieved by the said order, the applicants have filed this revision.

I have heard Shri S.R. Kochatta, learned counsel for applicants; Shri T.N. Sinh, learned counsel for Non applicants; and perused the record.

The submission of Shri S.R. Kochatta, learned counsel for applicants/defendants was that the plaintiffs have filed a suit for declaration, possession and for cancellation of various sale-deeds executed in favour of the applicants and defendants Nos. 4 to 33 alleging that these transfers were effected by defendant Nos. 1 to 3 unauthorisedly and illegally for the reasons and grounds stated in the plaint. His submission was that the trial Court has not considered the provisions of the Suits Valuation Act and has not properly considered the plaint allegations and has completely overlooked the relief claimed in the suit and cited various decisions reported in the case of Kapoori Bai vs. Bhagwan Singh, 2000(1) MPWN 65; in the case of Subhash Chand Jain Vs. The Chairman, M.P. Electricity Board and Others, , that real money value should be ascertained from the plaint and ad valorem Court-fees has to be paid on the specific amount claimed by the plaintiff. He further relied on a decision in the case of S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, , that for the purposes of Court-fees and jurisdiction of Court valuation should be same. He further relied on the decision in the case of Ram Saran and Another Vs. Smt. Ganga Devi, for the purposes that a suit for mere declaration of title without claiming relief of possession is not maintainable. He further relied on the decision in the case of Nainsukh Kishandas and Others Vs. Smt. Manish Choudhari and Others, on the ground that if a person wants to avoid the document to which he himself is a party, then he has to pay ad valorem Court-fees. He also relied on the decision in the case of Mohammad Jameel Khan and Others Vs. Miththu Lal and Others, , that suit for declaration in substance for setting aside sale deeds, plaintiff is liable to pay ad valorem court-fee on value of sale-deeds u/s 7(iv)(c) of the Court Fees Act. He further relied on the decision in the case of Mangilal Jain vs. M.P. Electricity Board, Jabalpur and others, 1977(2) MPWN 480 in which it has been held that relief claimed for avoidance of liability, ad valorem Court-fee on the amount of liability sought to be avoided is payable u/s 7(iv)(c). In the case of Badrilal vs. State, 1963 JLJ 674 it has been held that relief sought has real money value which can be objectively ascertained. Where a plaintiff is sought to be made liable either under a deed or a decree for a specified amount and he seeks to avoid liability, that should be valued and ad valorem Court-fee should be paid. He also relied on the decision in the case of Arvind Kumar Sahu Vs. Smt. Ushakiran and Others, in which it has been held that the sale-deed desired to be avoided impliedly or expressly, consideration of sale is valuation of suit.

In reply, Shri T.N. Sinh, learned counsel for Non-applicants/plaintiffs supported the impugned order passed by the Court below and submitted that the suit has been properly valued and proper Court-fees has been paid.

Learned trial Court coming on a conclusion relied on decisions in the case of Smt. Kektibai vs. Ramlal, 1966 MPLJ SN 78; Laxminarayan vs. Dariyaobai, 1997(1) MPWN 72 and also Linmat (Smt.) and others vs. Purushottam and others, 1985 MPLJ 748 : 1985 JLJ 747 State of M.P. vs. Kailash Chandra Jain, 1982 MPWN 477 and also on S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, and has clearly opined that if a suit has been filed merely seeking declaratory relief and has not sought any consequential relief, then under Article 17 of Schedule II of the Court Fees Act the suit for declaration is maintainable on a fixed court-fees and ad valorem court-fees is not required to be paid on the market value of the suit. The trial Court has observed that in the suit the plaintiff has only claimed declaratory relief that the office bearer who have executed sale-deeds had no right to execute the sale-deeds and the same sale-deeds are not binding on the plaintiffs institution and has clearly held that court-fees is not payable as per the market value of the property or as per the value of the sale-deeds.

In the case of Sathappa Chettiar (supra), the Supreme Court has held as under:-

The question of court-fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on the merits.

If the scheme laid down for the computation of fees payable in suits covered by the several sub-sections of section 7 is considered, it would be clear that, in respect of suits falling under sub-section (iv), a departure has been made and liberty has been given to the plaintiff to value his claim for the purpose of court-fees. The theoretical basis of this provision appears to be that in cases in which the plaintiff is given the option to value his claim, it is really difficult to value the claim with any precision or definiteness.

The effect of the provisions of section 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court-fees. The computation of court-fees in suits falling u/s 7(iv) of the Court-fees Act depends upon the valuation that the plaintiff makes in respect of his claim. Once the plaintiff exercises his option and values his claim for the purpose of court-fees, that determines the value for jurisdiction. The value for court-fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court-fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purposes of court-fees that determines the value for jurisdiction in the suit and not vice versa.

In the case of Tara Devi Vs. Sri Thakur Radha Krishna Maharaj, through Sebaits Chandeshwar Prasad and Meshwar Prasad and Another, , it has been held by the Supreme Court that - "It is now well settled that in a suit for declaration with consequential relief falling under clause 7(iv)(c), the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court-fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same."

In the case of Shamsher Singh Vs. Rajinder Prashad and Others, it has been clearly held by the Supreme Court that - "While the Court-fee payable on a plaint is certainly to be decided on the basis of the allegations and the prayer in the plaint and the question whether the plaintiffs suit will have to fail for failure to ask for consequential relief is of no concern to the court at that stage, 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."

In view of the aforesaid view of the Supreme Court, this Court has to consider what is the relief which has been sought by the plaintiffs in the suit in hand. As per the plaint, the plaintiffs have sought the following reliefs:-

From the bate reading of the aforesaid reliefs, it is clear that the plaintiffs have sought only a declaratory relief that the sale-deeds be declared void and not binding on the plaintiffs and it be declared that the plaintiffs, being title holders, are in possession over the same and the plots on which defendants have raised construction, decree for possession over them be granted in favour of the plaintiffs.

From the aforesaid relief clause, it is clear that the plaintiffs have sought only a declaratory relief and they have not sought any relief about cancellation of those sale-deeds.

The Full Bench of M.P. High Court in the case of Santoshchandra and Others Vs. Smt. Gyansundarbai and Others, , has clearly held that:-

Where it is necessary for a plaintiff to avoid an agreement or a decree or a liability imposed, it is necessary for him to avoid that and unless he seeks the relief of having that decree, agreement, document or liability set aside, he is not entitled to a declaration simpliciter. In such cases the question of Court-fees has to be determined u/s 7(iv)(c) of the Act. But, however, where a plaintiff is not a party to such a decree, agreement, instrument or liability and he cannot be deemed to be a representative in interest of the person who is bound by that decree, agreement, instrument or liability, he can sue for a declaration simpliciter, provided he is also in possession of the property. The matter may be different if he is not in possession of the property. In that event, the proviso to section 42 of the Specific Relief Act might be a bar to the tenability of a suit framed for the relief of declaration simpliciter. But that would be a different aspect. All the same, if the plaintiff is not bound by that decree or agreement or liability and if he is not required to have it set aside, he can claim to pay Court-fees under any of the sub-clauses of Article 17, Schedule II of the Court-fees Act.

Following the aforesaid law, a Single Bench of this Court in Partap and Another Vs. Smt. Puniya Bai and Others, , held:-

That where a person who is a party to an agreement or transaction and his allegation is that it is not binding on him because it was obtained by misrepresentation or fraud, it is necessary for him to seek the consequential relief of setting aside such agreement of transaction and as such the suit falls within the purview of section 7(iv)(c) of the Court Fees Act. But the question of avoiding an agreement or an instrument arises only where it is voidable. If it is wholly void a mere declaration that it is so, is sufficient and it is not necessary for the plaintiff to seek the relief of setting aside something which has no existence in law. ''This Court thus clearly stated that" it is not necessary to ask for relief of setting aside an agreement or an instrument which is wholly void. ''The aforesaid view seems to have been followed uniformly by this Court as would be clear from Thumaribai vs. Mankibai (1981)(1) MPWN, 63, Johanram vs. Dasmatbai, 1982 MPWN, 464 and Bisahin vs. Mehtar, 1983 MPLJ, 31. The aforesaid view of this Court is fully supported by the decision of the Supreme Court in Ningawwa Vs. Byrappa and Others, , where their Lordships have clarified the distinction between a contract which is voidable and remains valid until it is avoided and a contract which is void for which it is not necessary to seek any relief.

And further in the case of Linmat (Smt.) and others vs. Purushottam and others, 1985 MPLJ 748 : 1985 JLJ 747, it has been held by this High Court that:-

If the executor of the sale-deed was an old, sick and infirm person and was never told that the document being executed by him, was a sale-deed but was told that the document was required for ensuring proper management of his lands, then the fraudulent misrepresentation would be not merely as to the contents of the document but also its character.

The sale-deed would be wholly void and not merely voidable. In such circumstances, it would not be necessary for the applicants to seek the relief of setting-aside the sale-deed. In such a case it cannot be accepted that the consequential relief of setting-aside the sale-deed is implicit in the relief of the declaration and requires ad valorem Court-fees u/s 7(iv)(c) of the Court-fees Act.

Article 17(iii) of the Second Schedule to the Court Fees Act shall apply to such a case, Ningawwa Vs. Byrappa and Others, , discussed.

Again in the case of Durgasingh vs. Ramkali, 1982 JLJ SN 72 it has been held by the Supreme Court that "There is a distinction between fraudulent, misrepresentation as to character of a document and as to its contents as well as to character of the document, the transaction is wholly void. In such a case, it is not necessary for the plaintiff to seek a relief for setting aside the document and no consequential relief is implicit in the relief for declaration which may require ad valorem Court-fee u/s 7(iv)(c). The question of avoiding a document only arises where it is voidable, but where it is wholly void, a mere declaration, that it is so, is sufficient and it is not necessary for the plaintiff to seek relief of setting aside something which has no existence in law.

In the case of Kuntidevi vs. Roshanlal, 1987 MPLJ 25, this Court has held that - "Where the plaintiff is prima facie bound by the sale deed, she being a party thereto, the relief of declaration simpliciter is not available to her under the proviso to section 42 of the Specific Relief Act and the declaration claimed by her necessarily involves the prayer for consequential relief of cancellation of the sale deed. Therefore, it was held that she has to pay ad valorem court-fee on the value of the sale deed.

From the aforesaid discussion, it is clear that the law is demarcating a line between two kinds of transactions in which a person is a party and another in which he is not a party. Where the person who is seeking declaration is a party to a transaction, he is required to pay ad valorem court-fee where the agreement is voidable but where transaction in which he is not party and if he is party the same is wholly void, he can seek relief of declaration without getting the relief of cancellation and in that case he is required to pay only fixed Court-fees as per

Article 17 of Schedule II.

In the case of Nainsukh Kishandas (supra), again this Court has held as under:-

If a person wants to avoid the document to which he himself is a party, then he has to pay ad valorem court-fee, but in a case where he is not a party to the document and does not also claim from the person who is a party to the sale deed, by no stretch of imagination it can be said that he has to pay the ad valorem court-fee. Section 7(iv)(c) of the Court Fees Act applies to a case where the plaintiff is seeking a declaratory decree or order and where the consequential relief is prayed for.

Again in the case of Commercial Aviation and Travel Company and Others Vs. Vimla Pannalal, , the Court held:-

So far as the suits coming u/s 7(iv) of the Court-fees Act are concerned, the Legislature has left the question of valuation of the relief sought in the plaint or memorandum of appeal to the plaintiff. The reason is obvious. The suits which are mentioned u/s 7(iv) are of such nature that it is difficult to lay down any standard of valuation. Indeed, the Legislature has not laid down any standard of valuation in the Court-fees Act. u/s 9 of the Suits Valuation Act, the High Court may, with the previous sanction of the State Government, frame rules for the valuation of suits referred to in section 7(iv) of the Court-fees Act.

From the bare reading of the relief clause of the suit in hand, it is clear that the plaintiffs are claiming only relief of declaration on the ground that the document is wholly void and not binding on them, in this case the plaintiff is not avoiding any liability of a particular sum which requires payment of ad valorem court-fee u/s 7(iv)(c) of the Court Fees Act.

Section 7(iv)(c) of the Court Fees Act clearly says that to obtain a declaratory decree or order, where consequential relief is prayed, the only ad valorem court-fee is required to be payable u/s 7(iv)(c) of the Court Fees Act. It has been held in the case of Ram Singh Chhatriya and Another Vs. Shri Rajiv Lochan Trust, that in a suit where no consequential relief is claimed, the provisions of this clause does not apply. In this case rightly so for the open lands the plaintiffs claiming their own possession over the same and has not claimed any consequential relief. They have only claimed possession over the plots on which the defendants have raised construction and for that they have already valued their claim for a sum of Rs. 6,69,696-00 and have already paid court-fees of Rs, 30,680-00 and admittedly the plaintiffs are also not party to the transaction. Therefore, plainly in this case in nut shell they are claiming relief of declaration that they are not party to the sale deed and it be declared that the sale-deeds are void and not binding on them and also claimed in the plaint that they are in possession over all the plots in the shape of open land.

In view of these plaint allegations and also in view of the settled position under the law that when there is no consequential relief has been sought the claim is not required to be valued as per section 7(iv)(c) of the Court Fees Act and is also not required to pay ad valorem court-fee. The applicants/defendants here only cited decisions to the effect that real money value of the sale deed should be ascertained from the plaint and plaintiffs be directed to pay the ad valorem court-fee. When the plaintiffs are not party to the sale-deed and they are not claiming any relief of setting aside of those sale-deeds then in such a case the plaintiffs cannot be compelled to pay the ad valorem court-fee and as has been held in the catena of decisions cited supra, in a suit for declaration the plaintiffs are required to value as per Article 17 of Schedule II and pay fix court-fees for declaration.

Therefore, from the aforesaid discussions, it is clear that the Court has to consider whether the person was a party to the deed or the decree or not. If the Court comes to the conclusion that he was not party to the declaration, a mere declaration would be sufficient. In this case the trial Court has rightly found from the relief claimed in the plaint that prima facie according to the plaint allegations the documents sale-deeds are not binding on them as they were not party and they are not required to pay the court-fees as per section 7(iv)(c) and the plaintiffs have rightly valued the suit. It is also the settled proposition that if a person wants to avoid the document to which he himself is a party, then he has to pay as valorem court-fee unless the document is void for the other reasons as has been discussed in the case of Linmat (Smt.) (supra), but where he is not a party to the documents and does not also claim from the persons who is the party to the sale deed, it cannot be held that in such circumstances he is liable to pay ad valorem court-fee.

Considering the totality of the facts and circumstances of the case and also appreciating the legal position, I am of the view that the Court below was absolutely justified in observing that the plaintiffs have rightly valued the suit and have rightly paid the court-fees. Therefore, it is held that looking to the plaint allegations, valuation done by the plaintiffs is right and justified. The court-fees paid is also proper and the objections raised by the defendants has rightly been rejected by the Court below.

Consequently this revision and connected civil revisions fail and are hereby dismissed with costs to the respondents.