

(1993) 03 AHC CK 0035

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 1736 of 1987

Smt. Saroj Gupta and others

APPELLANT

Vs

IVth Additional Dist. Judge, Etah and others

RESPONDENT

Date of Decision : 29-03-1993

Acts Referred:

Citation : AIR 1994 All 22 : (1993) AWC 1611

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : Sri. A. Kumar Singh, for the Appellant;

Final Decision : Allowed

Judgement

1. This writ petition is directed against the order dated 17th December, 1986, passed by IVth Additional District Judge Etah, deciding the question of valuation of the suit.

2. The brief facts of the case are that one Suraj Pal Gupta entered into an agreement on 26-6-1980 with respondents for sale of the shop in question for a sum of Rs. 30,000/-. The respondents thereafter executed a sale deed regarding half portion of the said shop in favour of his wife Smt. Vidya Devi for a consideration of Rs. 24,500/-. The respondents did not execute sale deed with regard to the remaining half portion of the said shop. Suraj Pal Gupta filed suit No. 559 of 1992, for specific performance of agreement dated 26th June, 1980. In the suit he claimed the relief for specific performance of contract of sale regarding half portion of the shop which was not sold by the respondents. In the plaint it was alleged by him that half portion was already sold for Rs.24,500/- and remaining portion was to be sold only for Rs. 5,500/- and amount of Rs. 2,000/- paid as earnest money was to be adjusted and thus he was liable to pay sum of Rs. 3,300/- as sale consideration in accordance with the terms of the agreement. He valued the suit at Rs. 5,500/- for the purpose of payment of court-fee and valuation of suit.

3. The respondents filed written statement and contested the suit inter alia on the plea that suit was under valued and the court-fee paid was insufficient. According to the respondents the suit should have been valued at Rs. 30,000/-, the amount of sale consideration as mentioned in the agreement and the court-fee should have been paid accordingly. The trial court framed issue No. 3 regarding the valuation and court-fee and decided the issue as preliminary issue holding that the plaintiff had rightly valued the suit and court-fee paid was sufficient according to relief claimed by him. Respondent No. 1 in revision did not agree with the view taken by the trial court and held that suit should have been valued at Rs. 30,000/- the amount of sale consideration as mentioned in the agreement.

4. The sole question to be determined is as to what should be the value of the suit for the purpose of payment of court-fee and for determining the jurisdiction of the court to try the suit.

5. The suit was filed for specific performance of contract of sale entered into between the parties on 26th June, 1980. The agreement was for sale of entire shop of Rs. 30,000/-. The plaintiff alleged that half of the shop had already been sold by the defendants in the name of his wife and only remaining half portion of the said shop was to be sold and the amount payable for such portion was Rs.5,500/- only as Rs.24,500/- had been paid for the other portion of the shop in question.

6. The valuation of the suit for specific performance of the contract has to be determined in accordance with Section 7(x)(a) of the Court-fees Act. The relevant provision is as under:--

7(x). For specific performance -- In suit for specific performance--

(a) of a contract of sale according to the amount of the consideration.

7. The valuation of the suit has to be made according to the amount of the consideration as mentioned in the agreement irrespective of the fact that any amount of sale consideration might have been paid to the vendor. This question has been considered by a Division Bench of this Court in S.P. Gupta Vs. Abdul Rahman, . It was held that for the purpose of the valuation of the suit the amount of sale consideration as disclosed in the agreement should be taken for the purpose of valuation of suit. The fact that such plaintiff claims to have already paid any amount towards the sale consideration shall not be taken into account for the purpose of valuing the suit because the words used in Clause (X) of Section 7 of the Court-fees Act means consideration payable in respect of the contract and not the amount of the consideration which according to the plaintiff is payable at the time the suit is decreed.

8. The reason was obvious that in suit for specific performance of contract of sale plaintiff may avoid payment of court-fee on the allegation that he has already paid substantial amount to the defendant prior to the filing of the suit. The words

"amount of consideration" was interpreted as the amount which has been indicated as consideration in a contract of sale.

9. This decision is not applicable in a case where the plaintiff does not claim relief in respect of the entire property which is subject matter of the contract of sale. He has confined his relief to the portion of the property and accordingly he has valued the suit on the basis of valuation of such property.

10. It is a different matter which may be decided ultimately in the suit as to whether such relief can be granted when the contract is not divisible or other circumstances which does not justify granting relief of specific performance of contract for part of the property covered under the agreement. In that circumstance the court will have to consider whether there was an alteration of contract by mutual consent expressly or impliedly and whether relief can be granted in respect of part of the property which is the subject matter of the contract of sale. There is, however, no bar for a plaintiff confining his relief to a part of the property which is subject matter of specific performance and value such property.

11. The words "the amount of the consideration" used in clause (X) of Section 7 of the Court-fees Act contemplates the consideration of the property which is subject matter of sale under the agreement. The consideration is correlated with the property. The contract relates to property and the mount of the consideration relates for such property.

12. In case where the agreement of sale consists of various properties separately indicating value of each of the properties separately and the plaintiff chooses to file suit regarding some of the properties covered under the original agreement on the basis that there was subsequent arrangement between the parties, there is no bar valuing the suit on the basis of value of such part of the property under the agreement. It will be the amount of consideration for sale relating to the property mentioned in the agreement.

13. Reliance has been placed upon the decision in the case of Gudia Dullabho Sahu Vs. Cinni Adinarayana and Others, . In that case plaintiff had filed suit for recovery of certain property on the allegation that there was certain arrangement between plaintiff and the defendants where the defendants agreed to transfer the interest in the property for a sum of Rs.6088/-. Subsequently transfer of some of the properties under the agreement was made by subsequent arrangement between plaintiff and defendant No. 2 and the suit was filed for recovery of remaining property. The Court held that the allegation contained in the suit and the relief claimed in the suit was for specific performance of the contract and the court-fee was liable to be paid according to Clause (X) of Section 7 of the Court-fees Act. The Court was of the opinion that suit had to be valued on the basis of the amount of consideration as mentioned in the agreement because suit could be decreed only for enforcing of that contract and unless that contract is affirmed the plaintiff could not get any relief in respect of

whole or any part of the property covered under the said arrangement.

14. The question as to what should be the consideration regarding the valuation of the property for which relief was claimed in the suit was not taken into consideration. The amount of consideration as disclosed in the agreement relating to the property has to be taken into consideration for the purpose of valuation of suit and payment of court-fee.

15. In the present case the plaintiff has claimed the relief that the suit may be decreed with regard to half portion of the property which is subject matter of the agreement. According to him half portion of the property has been sold in the name of his wife under the mutual agreement with the defendant and remaining half portion is to be sold. He valued half portion of property at Rs. 5,500/-. He stated that southern half portion was already sold for Rs. 24,500/- and the remaining half portion was to be sold for Rs. 5,500/-. He, however, did not disclose any basis for valuing half portion of the property. The fact that another half portion was sold for Rs. 24,500/- does not reduce the value of half of portion of the shop in question. The plaintiff may establish in the suit as to how much amount he is liable to pay for remaining half portion of the shop but for the purpose of the valuation of the suit and payment of court-fee the valuation of half portion of the shop in question is to be taken at Rs. 15,000/-.

16. The writ petition is allowed and the order passed by respondent No. 1 on 17th December, 1986, is quashed and the order of respondent No. 2 is modified to the extent that the valuation of the shop in question be taken at Rs. 15,000/- for the purpose of valuation of suit and payment of court-fee.

17. The parties shall bear their own costs.

18. Petition allowed.