

(1968) 11 DEL CK 0011

In the Delhi High Court

Case No : Civil Revision Appeal No. 472D of 1961

Union of India

APPELLANT

Vs

Sobha Singh and Sons (P) Ltd.

RESPONDENT

Date of Decision : 21-11-1968

Acts Referred:

Citation : (1969) 5 DLT 464 : (1969) ILR Delhi 120

Hon'ble Judges : Om Prakash, J

Bench : Single Bench

Advocate : S.S. Chadha and Anoop Singh, for the Appellant;

Judgement

Om Parkash, J.

(1) This revision-petition, by the defendant, is directed against an order of the learned Subordinate Judge. The defendant. Union of India, had executed an agreement on the 8th October, 1945, in favor of the plaintiff, to grant the plaintiff perpetual lease of a plot of land on certain terms and conditions. The plaintiff filed a suit against the defendant, claiming the for

"1. It be declared that all the buildings constructed on the plot of land mentioned in paragraph 4 of this plaint were and are in accordance with the agreement to Lease dated the 8/10/1945, the there has been no departure or contravention of the terms of said agreement of lease; that the plaintiff had fully complied with the covenants of the said agreement and that the buildings were complete in all respects on the 8th October, when the agreement to lease was executed by the defendant; that the said agreement related to the buildings as they existed on the site on the date of its execution, and Therefore, it precluded the defendant from contending that the terms of the agreement have not been complied with and that there has been no misuse of the premises or the buildings thereon.

2.A perpetual injunction be issued to the defendant restraining it from relying on or taking any action in respect of any alleged contraventions of lease dated the 8th October, 1945, or for alleged misuse of the premises or the buildings thereon

and from exercising the right of re-entry on such grounds. A decree for specific performance of the agreement to lease dated the 8th October, 1945 and for execution of a perpetual lease in terms of the draft annexed to the said agreement to lease and for registration thereof be passed in favor of the plaintiff."

(2) The suit was valued for purposes of jurisdiction in respect of the claim of declaration at Rs. 1,000.00, for purposes of injunction at Rs. 200.00 and for purpose of specific performance at Rs. 10,000.00. The plaintiff paid court-fee of Rs. 19.75 in respect of the claim of declaration, Rs. 20.00 in respect of the claim of injunction and Rs. 1,126.50 P. in respect of the claim of specific performance. The defendant contested the suit on various grounds. One of the objections raised was that the suit was not properly valued for purposes of court-fee and jurisdiction and that the plaintiff should have paid ad-valorem court-fee on the market value of the property in suit.

(3) The learned Subordinate Judge struck the following preliminary issue:-

"WHETHER the suit is properly valued for purposes of court-fee and jurisdiction ?" (4) The learned Subordinate Judge came to the conclusion that the suit was not properly valued. He held that court-fee should have been paid u/s 7(x)(c) of the Court-fees Act so far as the relief of specific performance is concerned. The amount of premium and the annual rent, according to the agreement dated the 8/10/1945, was Rs. 75,800.00 and Rs. 3,790.00 respectively. The learned Subordinate Judge directed the plaintiff to pay court-fee on Rs. 79,590.00 the aggregate amount of the premium and rent, with respect to claim of specific performance.

So far as the other two reliefs, regarding declaration and injunction were concerned, the learned Subordinate Judge was of the view that the relief of injunction directly followed from the relief, of declaration and was, as such, only a consequential relief. He, Therefore, held that the above two reliefs were covered by section 7(iv)(c) of the Court fees Act. The provisions of section 7(iv)(c), as amended by the State of Punjab, and also applicable to Delhi read :-

"TO obtain a declaratory decree or order, where consequential relief is prayed, Provided further that in suits coming under sub-clause (c), in cases where the relief sought is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of this section." (5) It was contended before the learned Subordinate Judge that the word "property" used in the above proviso meant, in the present case, the land in dispute and the court-fee was payable on its market value under clause (v). Relying on *Ram Kanwar and others v. Naurang Rai and others*, (1) the learned Subordinate Judge rejected the contention and held that the property involved was leasehold rights and that the plaintiff was liable to pay court- fee on the value of those rights. The learned Subordinate Judge assessed the value of the above rights at Rs. 79,590.00, the amount of premium and the annual ground rent.

(6) The defendant has come up in revision, against the order of the learned Subordinate Judge. The finding of the learned Subordinate Judge that the relief of specific performance fell u/s 7(x)(c) of the Court-fees Act and Court-fee was payable on Rs. 79,590.00 has not been challenged in revision. Further, it has not been challenged that the two reliefs of declaration and injunction fell within the ambit of section 7(iv)(c) of the Court- fees Act. The contention was that the learned Subordinate Judge erred in holding that according to the proviso, referred to above court-fee was payable only on the value of the leasehold rights. The argument was that the words "with reference to any property" in the proviso meant the property to which the claim related and not merely the claim made. Precisely, the same contention was raised in Ram Kanwar's case (supra), relied upon by the learned Subordinate Judge. The contention was rejected. The facts in that case were that a suit was filed for a declaration for cancellation of a lease deed and as a consequential relief a prayer had been made for injunction restraining the defendants from interfering with the property under lease. The defendants had objected to the valuation of the suit. The trial court had held that section 7(v) of the Court-fees Act applied and that the suit should have been valued at the market value of the property. In revision, by the plaintiffs, the High Court held that the court- fee was to be paid u/s 7(iv)(c). The Court observe thus, with respect to the interpretation of the word "property" used in the proviso :-

"THE question arises whether in the present case the Court fee should be paid on the market value of the property in dispute as has been held by the trial Court or on the value of the lease rights involved in the suit. Now, section 7(v) lays down the principles of computation of value of lands, houses and gardens. On the basis of this clause it was argued by the learned counsel for the defendant-respondents that the market value of the immovable property, i.e., the factory, which is the subject-matter of the suit, should be considered to be the value of the suit for purposes of court-fee and jurisdiction. If this be so, then whether a plaintiff in any suit seeks relief against a lease, which may be for a very short duration, or a mortgage deed, which again may be for a small amount, or a sale deed, the Court-fee must be paid ad valorem on the full value of the property. It appears to me difficult to hold that this was the intention of the legislature. The legislature could not be imputed with the intention that court-fee should be paid on full market value of the immovable property irrespective of the nature of the right involved in the litigation. The word "property" is not a term of art and strictly speaking means only the right which a person has in relation to something. The word "property" ordinarily indicates and describes an interest which a person has in something. It is also frequently used to denote the thing itself in relation to which the right of property exists. The only proper way to construe the phrase "with reference to any property" in the proviso is to construe it as indicating and describing an interest which a person has in the thing. Moreover, clause (v) of section 7 does not deal with value of movable property but a suit relating to movable property can also be governed by section

7(v)(c) of the Court-fees Act. In such a case then the proviso does not lay down any test for computation of the value of the property. To hold that the word "property" in the Punjab Amendment relates only to immovable property and not to rights in movable or immovable property will be not only unjust but also inconvenient. I am, Therefore, of the opinion that the word "property" in this amendment is used in the sense of a right in the property involved in the case. In the present case lease rights are involved which admittedly are property and Therefore court-fee must be paid on these rights and not on the market value of the immovable property which is the subject of the lease." I am in respectful general agreement with the aforesaid observations. I may add that as was pointed out in *Sham Dass. Chawla, v. Delhi Development Authority* Court-fees Act is a fiscal enactment and in construing it construction must be placed, in case of ambiguity or doubt, in favor of the subject and not in favor of the Revenue because liability for a fee must be clearly provided by plain language of the statute. Even if there be any doubt regarding the meaning of the word "property" in the aforesaid proviso, it should be construed in view of the above principle that it meant the value of the right claimed. In the present case, only the lease-hold rights were claimed, title of the land admittedly vested in the defendant. The Court-fee was payable on the value of those rights and not on the value of land.

(7) The authorities, *Vibhuti Narain Singh v. Municipal Board, Allahabad*, (3) and *Ambalam S. Vaiyapwii Chetty and others v. P. K. Ramachandra Thevar* (4) relied upon by the learned counsel for the defendant, are distinguishable. In the Allahabad authority, it is not clear what were the terms of the proviso. In the Madras authority, the dispute related to title and the court-fee was, Therefore, paid on the value of the property. In the present case there is no dispute about the title of the land.

(8) Before parting with this point, it may be pointed out that the learned counsel for the plaintiff had attempted to argue that reliefs of declaration and injunction were only ancillary and followed from the relief of specific performance and that no separate court-fee was payable on those two reliefs. Alternatively, the learned counsel argued that the reliefs of declaration and injunction were two distinct reliefs and did not constitute a relief for declaration with consequential relief. The learned counsel was not permitted to raise the above arguments inasmuch as it amounted to challenging the finding of the learned Subordinate Judge that the two reliefs fell u/s 7(iv)(c) of the Court fees Act, without filling a revision.

(9) It was next contended by the learned counsel for the defendant that even if it be held that "property" in the present case meant only lease-hold rights, the learned Subordinate Judge did not properly determine the market value of those rights. Even if it be assumed that the learned Subordinate Judge committed error in determining the market value of the leasehold rights, it will be only an error of fact and will be no ground for interfering with the finding in revision. It was held in *Pandurang Dhondi Chougule and others v. Maruti Hari Jadhav and others*, (5):-

"THE High Court cannot while exercising its jurisdiction u/s 115, correct errors of

fact, however gross they may be, or even errors of law. It can only do so when the said errors have relation to the jurisdiction of the Court to try the dispute itself. It is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the revisional jurisdiction of the High Court can be properly invoked." (10) The learned Subordinate Judge had jurisdiction to decide the question of court-fee. He has not acted illegally or with material irregularity in the exercise of his jurisdiction in deciding the question. His decision cannot Therefore, be interfered with in revision even if it be assumed that the market value determined by him is erroneous.

(11) A preliminary objection against the maintainability of the revision was raised by the learned counsel for the plaintiff. The objection was that revision, by a defendant, on the point of court- fee does not lie. Reliance was placed on Sri Rathnavarmaria v. Smt. Vimla and Municipal Committee Jaitu v. Mathra Dass and others. Their Lordships of the Supreme Court have observed:-

"WHETHER proper court-fee is paid on a plaint is primarily question between the plaintiff and the State. The jurisdiction in revision exercised by High Court u/s 115 of the CPC is strictly conditioned by clauses (a) to (c) thereof. The defendant who may believe and even honestly, that proper court-fee has not been paid by the plaintiff 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." (12) The learned counsel for the defendant referred to the observations of their Lordships, made in the Supreme Court decision, that the court-fees Act was enacted to collect revenue for the State and contended that the clear inference from the above observations was that where the defendant is State, as in the present case, and its objection against the insufficiency of court fee is rejected, it can question the decision by way of revision as by doing so it will be protecting, the revenue of the State.

(13) As already discussed, the present revision petition is liable to be dismissed on merits. It is not necessary to decide the preliminary objection against its maintainability.

(14) For the reasons already stated, the revision petition is dismissed, with costs.