
(2010) 07 P&H CK 0105
In the Punjab And Haryana At Chandigarh

Yash Pal and Another

APPELLANT

Vs

Sat Guru Rice Mills and Others

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 11, 151
Constitution of India, 1950 — Article 227

Citation : (2010) 07 P&H CK 0105

Hon'ble Judges : L.N. Mittal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

L.N. Mittal, J.—Defendants No. 2 and 3 have filed the instant revision petition under Article 227 of the Constitution of India challenging order dated 08.04.2010 (Annexure P-3), passed by learned Civil Judge (Senior Division), Kaithal, thereby dismissing application Annexure P-2 moved by the petitioners under Order 7 Rules 10 and 11 read with Section 151 of the CPC for directing the plaintiffs/respondents No. 1 to 3 to pay separate ad valorem court fee on the two reliefs claimed in the suit and on failure to do so, to reject the plaint or to dismiss the suit if it is bad for misjoinder of the cause of action.

2. Plaintiffs' case is that the defendants orally agreed to sell a plot for Rs. 15,00,000/- to the plaintiffs and plaintiffs paid Rs. 13,00,000/- to the defendants as earnest money towards part sale consideration. The plaintiffs separately advanced Rs. 8,00,000/- as loan to the defendants. The plaintiffs have sought specific performance of the agreement and recovery of balance amount and in the alternative, recovery of Rs. 31,48,025/- being the total amount including earnest money and interest. The plaintiffs have paid ad valorem court fee on the said amount of Rs. 31,48,025/-.

3. Defendants No. 2 and 3, in their application Annexure P-2, alleged that the plaintiffs should pay court fee on the amount of Rs. 15,00,000/- separately for the relief of specific performance, in addition to ad valorem court fee already

paid on the alternative relief of recovery of Rs. 31,48,025/-. The said application has been dismissed by learned trial court vide impugned order.

4. I have heard learned Counsel for the petitioners and perused the case file.

5. Learned Counsel for the petitioners, relying on a judgment of Madras High Court in the case of Ramaswami Gupta v. Pasuparthi Krishnayya reported as AIR 1949 Mad 125, contended that separate court fee is payable by the plaintiffs for relief of specific performance and for relief of recovery of amount. The contention cannot be accepted because judgment in the case of Ramaswami Gupta (supra) is not applicable. In that case, the entire amount sought to be recovered was pronote amount and interest thereon. Agreement to sell was a separate transaction, but part of the pronote amount was to be adjusted towards sale price. In this situation, it was held that separate court fee was payable for both the reliefs. In the instant case, however, earnest money allegedly paid by the plaintiffs to the defendants is separate transaction from the loan amount of Rs. 8,00,000/- allegedly paid by the plaintiffs to the defendants. The total amount sought to be recovered by the plaintiffs includes loan amount and the earnest money amount and interest thereon. The plaintiffs have paid ad valorem court fee on the said total amount. This amount includes the sale consideration for the sale transaction as well. When the plaintiffs have already paid ad valorem court fee on the higher value of the reliefs claimed by them, the plaintiffs cannot be directed to pay separate court fee on the relief of specific performance, when the amount thereof is included in the amount sought to be recovered by the plaintiffs, on which court fee has been paid. There is no illegality in the impugned order of the trial court. The revision petition is without any merit and is accordingly dismissed in limine.