

PUNJAB AND HARYANA HIGH COURT

JUSTICE HEMANT GUPTA, JUSTICE VIJENDER SINGH MALIK

TARSEM SINGH V. VINOD KUMAR

Civil Revision No. 4753 of 2005

15.7.2011

Court Fee Act, 1870, Section 7 (iv)(c) - Ad valorem court fees -

i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.

ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.

Shri Sachin Mittal, for the appellants. Shri Sanjiv Gupta, for the respondents.

Hemant Gupta, J. - Learned Single Judge of this Court has found some contradiction in the judgments of this Court reported as *Smt. Beena and others v. Rajinder Kumar and others*, 2006(2) RCR (Civil) 449 and *Bijender Singh v. Chand Singh*, 2009(1) RCR (Civil) 270, wherein different views are purportedly taken on the question of payment of advalorem Court fee, on the suit for declaration in terms of Section 7 (iv)(c) of the Court Fee Act, 1870 (for short 'the Act').

2. After the learned Single Judge found contradiction in the aforesaid two judgments, the Hon'ble Supreme Court in *Suhrid Singh @ Sardool Singh v. Randhir Singh & Others*, (2010-2)158 PLR 707 (SC), , AIR 2010 SC 2807, has examined the question of payment of advalorem Court fee in a suit for declaration wherein the challenge is to a sale deed. The said judgment of the Hon'ble Supreme Court, also came up for consideration before a Division Bench of this Court in *Dara Singh v. Gurbachan Singh and others* (Civil Revision No. 22 of 2009 decided on 3.5.2010), in pursuance of the Reference to the Larger Bench by a Single Bench of this Court on 18.12.2009 when the contradictions between the judgments i.e. *Ravinder Kumar v. Narinder Kumar and others*, 2007 (2) PLR 577; Prince minor through his other and natural guardian *Smt. Rekha v. Suresh Kumar and others*, 2009(1) Civil Court Cases 186 and *Devasharay Singh v. Saroj Kumar @ Saroj Singh*, 2008(4) Civil Court Cases 523 (Patna) on one hand and *Himanshu v. Smt. Kailash Rani*, AIR 2004 Punjab 207; *Bagrawat v. Mehar Chand*, 2001 (4) RCR (Civil) 94 and *Ranjit Singh v. Balkar Singh* (Civil Revision No. 3079 of 1999 decided on 7.7.1999) on the other hand, was noticed. The question framed was as under:-

"Whether plaintiff in a suit challenging sale deed executed by his father or a third party is liable to pay ad valorem court fee on the sale consideration recited in the sale deed?"

3. The Division Bench has answered the question in terms of the judgment rendered by the Hon'ble Supreme Court in *Suhrid Singh's case* (supra). Though the issue stands concluded by the Hon'ble Supreme Court's judgment in the aforesaid case and the alleged contradictions in various judgments of learned Single Judge(s) stands resolved, but for a

facility of reference, we would like to refer the facts leading to the aforesaid view of the Hon'ble Supreme Court.

4. In *Suhrid Singh's case* (supra), the plaintiff challenged the alienation on the ground that the sale deed executed by his father, Rajinder Singh, in respect of the ancestral property is illegal and not binding on him and that as a coparcener, the plaintiff is entitled to joint possession thereof. In the said suit, the plaintiff had affixed a fixed Court fee on the relief of declaration; joint possession and for permanent injunction, but the learned trial Court returned a finding that advalorem Court fee is payable on the sale consideration as the plaintiff has sought cancellation of the sale deed in the aforesaid case. The Hon'ble Supreme Court has held to the following effect:-

"7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the co-parceners" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the Court fee was computable under Section 7(iv)(c) of the Act. The trial Court and the High Court were therefore, not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore, Court fee had to be paid on the sale consideration mentioned in the sale deeds."

5. In view of the said example given an example in para No. 6 of the judgment and the finding recorded in para No. 7, we hold as follows:-

i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay advalorem Court fee on the consideration stated in the said sale deed.

ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the advalorem Court fee as provided under Section 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.

6. In view of the aforesaid judgment of the Hon'ble Supreme Court, the issue leading to payment of the Court fee is decided in terms of the parameters laid down above. The single bench judgments rendered prior to the Supreme Court judgment mentioned above run counter to the aforesaid view and thus overruled. The Reference is answered accordingly. The Single Bench judgments rendered, so far as they run counter to the aforesaid view, are thus overruled.

7. The revision petition be listed for hearing before the learned Single Bench, as per Roster.

(Hemant Gupta) Judge (Vijender Singh Malik)

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Tarsem Singh And Others vs Vinod Kumar And Others on 4 January, 2012

CORAM:- HON'BLE MR.JUSTICE NAWAB SINGH

Present: Mr.Jai Singh Yadav, Advocate for Mr.Sachin Mittal, Advocate for the petitioners.

Mr.Sanjiv Gupta, Advocate for the respondents. NAWAB SINGH J.(ORAL) This plaintiffs' revision is directed against the order dated August 18th, 2005 passed by Civil Judge (Junior Division), Karnal, whereby, plaintiffs were directed to pay ad valorem court fee in a suit titled "Tarsem Singh and others vs. Vinod Kumar and others". The suit for declaration with consequential relief of permanent injunction was filed challenging the sale deed executed by their father after passing of the judgment and decree dated December 21st, 1987 in Civil Suit No.481/87, whereby, they were declared owners in possession of the suit land and to set aside the judgment and decree dated January 31st, 1991 passed in Civil Suit No.813

of 1990 by Civil Court, Karnal.

2. When this revision was listed before Ajay Tewari, J. on July 24th, 2009, he found some contradictions in the judgments earlier passed by this Court and the matter was referred to the Division Bench. The Division Bench vide order dated July 15th, 2011 framed the following question:-

“Whether plaintiff in a suit challenging sale-deed executed by his father or a third party is liable to pay ad valorem court fee on the sale consideration recited in the sale deed?”

3. After relying upon the judgment of the Hon'ble Supreme Court rendered in *Suhrid Singh @ Sardool Singh v. Randhir Singh and others*, (2010-2)158 PLR 707 (SC), AIR 2010 Sc 2807 and a judgment passed by a Division Bench of this Court in *Dara Singh v. Gurbachan Singh and others* (Civil Revision No.22 of 2009 decided on May 03rd, 2010), while commenting upon the provisions of the Court-Fees Act, 1870, held as under:-

“(i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay ad valorem Court fee on the consideration stated in the said sale deed.

(ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per Article 17(iii) of the Second Schedule of the Act.

(iii) But if the non-executant is not in possession and he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the ad valorem Court fee as provided under Section 7(iv)

(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act.”

4. Indisputably, in this case, plaintiffs were not the executants of the documents, which they sought to be annulled, nor they are seeking possession of the suit land and, as such, their case falls under paragraph No.(ii), quoted above.

5. The legal position has been fairly conceded by the counsel for the respondents - defendants.

6. In view of this, the plaintiffs - petitioners were not required to pay ad valorem court fee, but to affix court fee as per Article 17(iii) of the Second Schedule of the Court Fee Act, 1870.

7. This being so, revision is accepted. Order, under challenge is set aside. Consequently, the plaintiffs are not required to pay ad valorem court fee as directed by the Trial Court.