
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Civil Revision No. 5203 of 2007

Date of decision: 27.2.2009

Pal Singh

...Petitioner

Versus

Ashok Kumar and another

...Respondents

CORAM: HON'BLE MR. JUSTICE S.D.ANAND.

Present: Mr. Sushil Bhardwaj, Advocate for the petitioner

Ms.Divya Sharma, Advocate for the respondent No.1.

Mr. Gaurav Singla, Advocate for the respondent No.2.

S.D.ANAND, J.

This petition is directed against the order dated 19.9.2007, vide which the learned Trial Court, while deciding upon a plea under Order 7 Rule 11 C.P.C. filed on behalf of defendants/respondents, directed the plaintiff-petitioner to pay ad-valorem court fees in the suit.

In support of the finding, the learned Trial Court drew sustenance from the fact that "the plaintiff has instituted a suit for declaration that the sale deed dated 27.5.2003 executed by him in favour of the defendant no.1 be set aside as it has been got fraudulently executed from him. He has also claimed that he is in possession of the suit property. The defendant claimed that the plaintiff had willingly executed the sale deed in his favour and thereafter, the defendant no.1 had further exchanged the property with defendant no.2, who was not in actual cultivating possession. The claim has also been corroborated by the defendant no.2 and is also born out from records. In these circumstances,

it is prima facie apparent that the claim made by the plaintiff cannot be granted to him without the cancellation of the sale deed executed by the plaintiff.”

Learned counsel, appearing on behalf of the plaintiff-petitioner, argued that the impugned order deserves outright invalidation in view of the law laid down by this Court in **Civil Revision No.6585 of 2001 (Partap Singh Vs. Kuldip Singh and others)** decided on 12.8.2003 and **Civil Revision No.4265 of 2005 (Dr. Ashok Kumar Goyal Vs. Arya Mittar and others)** decided on 15.12.2006.

The plea advocated on behalf of the plaintiff-petitioner is resisted on behalf of the defendants-respondents by placing reliance upon the view taken by this Court in **Shakuntla Vs. Rohtas Singh and others 2008 (3) P.L.R. 480** and **Lakhpur Vs. Smt. Chander Kanta and another 1989 (1) PLR 103.**

Qua the judicial pronouncements relied upon on behalf of the plaintiff-petitioner, it is argued that those are inapplicable to the facts and circumstances of the case.

The plea advocated on behalf of the plaintiff-petitioner is denuded of merit. The reasons therefor are as under:-

It is common ground otherwise that no part of the factual premise noticed in the impugned order is incorrect. It follows therefrom that the impugned sale deed dated 27.5.03 had been executed by the plaintiff-petitioner himself and he has presently filed a suit to obtain invalidation of that sale deed on a plea of fraud. He claimed to be in possession of that property. The plea of fraud was denied by the defendant/respondent no.1 who proceeded to further aver that he had exchanged that property with the defendant no.2/respondent no.2 who is presently in actual cultivating

possession thereof. The learned Trial Court had noticed, on point of fact, that the claim (on the point of actual cultivating possession) “has also been corroborated by the defendant no.2 and is also born out from records”. It has, thus, to be inferred that the plea raised by the plaintiff-petitioner for his being in possession of that land is not in accord with the revenue record which (revenue record) is supportive of the averment made by the defendant no.1/respondent no.1 that it is respondent no.2 who is in actual cultivating possession thereof on the basis of exchange.

This Court was dealing with a similar eventuality in Shakuntla's case (supra). The challenge therein was to a sale deed on a plea of it being forged. Though the plaintiff therein had only asked for a declaration with regard to the invalidation of the sale deed under challenge therein, this Court held that the ad-valorem court fees would be payable as liability in that behalf could not be evaded by the plaintiff therein merely by terming the plaint to be a suit for declaration. The following are the observations recorded by this Court in that case:-

“The copy of the plaint has also been placed on record and would show that the challenge is to the sale deed No. 2370 dated 28.8.1991, which is stated to be a forged sale deed. Merely by terming the plaint to be a suit for declaration, the petitioner cannot be permitted to avoid affixing the *ad valorem* court fees. I am, thus, not inclined to interfere in the impugned order in exercise of revision jurisdiction.”

In Lakhapat's case (supra), the following observation having relevant bearing on the point in issue, were made by this Court:-

“I am of the considered view that in the instant suit the substantive relief claimed is that of the cancellation of the sale

deed. The petitioner, himself being a party to the sale deed, could not sue for a mere declaration that the sale deed was fraudulent and that respondent no.1 has not acquired any title thereunder. The sale deed has to be cancelled. Otherwise, title in the land has already passed to respondent no.1 under it. The petitioner has to get the sale deed, to which he is a party, cancelled. I am bound by the judgment of the Full Bench in Niranjana Kaur's case (supra) and the view that I have taken is consistent with the law laid down therein”.

The reliance placed by the learned counsel for the plaintiff-petitioner on Dr. Ashok Kumar Goyal's case (supra) is misconceived. The plaintiff therein had applied for the invalidation of the sale deed executed by his father who was Karta of the family. The averment made, in the context, was that the Karta could not have sold the property which was joint Hindu family property.

In the present case, the petitioner is purported executant of the (registered) sale deed under challenge and there is a revenue record-based observation that it is the beneficiary under the exchange who is recorded in the revenue record to be in actual cultivating possession of the land. In that view of things, it is prima facie illogical for the plaintiff-petitioner to have filed a suit for mere declaration, particularly when he has to compulsively apply for the grant of a decree of possession as well. If the petitioner could validly content with a mere declaration, things would have been different because, in that case, it was not necessary for him to apply for a decree for possession. Thus, it is evident that if the executant of a document applies for the invalidation of the registered document on plea of fraud, he has to compulsively pay ad-valorem court fees before the

learned Trial Court.

In the light thereof, the petition being devoid of force is ordered
to be dismissed.

February 27, 2009
Pka

(S.D.Anand)
Judge