

FULL BENCH

Before Bal Raj Tuli, Prem Chand Jain and Bhopinder Singh Dhillon, JJ.

SURJIT KUMAR,—Petitioner.

versus.

JAI PAUL ETC.,—Respondents.

Civil Revision No. 197 of 1973

September 9, 1974.

Court Fees Act (VII of 1870)—Sections 7(v) (b) and 7(v) (d)—Scope of—Part of an estate—When can be valued for the purposes of Court fee under section 7(v) (b).

Held, that in order to determine the scope of the provisions made in section 7(v) (b) and section 7(v) (d) of the Court Fees Act, 1870, the former has to be read along with section 7(v) (a) thereof, because the word "afore-said" used in sub-clause (b) relates back to sub-clause (a). This sub-clause has been divided into two separate paragraphs. The first deals with an entire estate or a definite share of an estate paying annual revenue to Government; while the second deals with land which forms part of an estate paying annual revenue to Government and is recorded in the Collector's register as separately assessed to revenue. Sub-clause (b) also divides the subject in the same manner. Thus a distinction has to be drawn between the words 'share' and 'part'. The first portion of sub-clauses (a) and (b) covers those cases where the land forms an entire estate or is a definite share of an estate. The Legislature has purposely used the words 'share' and 'part' in sub-clauses (a) and (b); the word "share" used in these sub-clauses means one-fourth or three annas or 2/3/4 pies or any other fraction howsoever clumsy of an entire estate which pays annual revenue to Government, while 'part' of an estate means a specified area which may be described in Kanals, Bighas, Acres or Yards. Hence in order to bring the case of part of an estate within the four corners of sub-clause (b), it is to be shown further that the same forms part of an estate which is paying annual revenue to Government and that such part is recorded in the Collector's register as separately assessed with such revenue. (Para 5).

Case referred by Hon'ble Mr. Justice Prem Chand Pandit to a Larger Bench on 30th May, 1973 for decision of the important questions of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Bal Raj Tuli, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice Bhopinder Singh Dhillon finally decided the case on 9th September, 1974.

Surjit Kumar v. Jai Paul etc. (Jain, J.)

Petition under Section 115 of the Code of Civil Procedure for revision of the order of Shri O. P. Garg, Additional Sub Judge IIIrd Class, Bhatinda on 15th January, 1973 holding that the suit as framed fell within the provisions of Section 7(v) (d) and the court fee should have been paid advalorem on the market value of the land in suit and as such the suit is not properly valued for purposes of court fee and jurisdiction and directing the plaintiff to make up the deficiency in court fee up to 25th January, 1973.

Suraj Parkash Gupta and Ram Lal Sharma, Advocates, for the petitioner.

Harbans Lal, Advocate, for the respondents.

JUDGMENT

P. C. JAIN, J.—This petition came up for hearing earlier before P. C. Pandit, J. (as he then was). On the basis of the judicial pronouncements cited on either side at the Bar, the learned Judge considering the importance of the point involved in the petition, thought it necessary to refer the same to be decided by a larger Bench. That is how the matter has been placed before us.

(2) Parkash Chand gifted a plot measuring 961 square yards, boundaries of which are given in the plaint, situated in Bhatinda to Jai Pal and two other sons of Jagraj Singh on 30th September, 1969. On 3rd October, 1972, Surjit Kumar brought a suit for possession of the plot in dispute on the ground that his father had no right to make a gift of the same as it formed part of the joint Hindu family property. It was also alleged that the entire holding measuring 18 Bighas 9 Biswas bearing Khasra Nos. 2506/1 and 2506/2 of which the plot in dispute formed part, was also the joint Hindu family property.

(3) On the preliminary objection raised by the defendants that the suit had not been properly valued for purposes of Court-fee and jurisdiction, the trial Court held that the suit as framed was governed by the provisions of section 7(v) (d) and not Section 7(v) (b) of the Court-fees Act, 1870 (hereinafter referred to as the Act). Hence the present revision was filed by the plaintiff and, as earlier observed the same was referred by P. C. Pandit, J., for decision by a larger Bench.

(4) The only question involved in this petition is whether the present case is governed by section 7(v) (b) or by Section 7(v) (d) of

the Act. The relevant provisions of the Act with which we are concerned read as under:—

“7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

(i) * * *

(v) In suits for the possession of land, houses and gardens— according to the value of the subject-matter; and such value shall be deemed to be—

(a) Where the land forms an entire estate or a definite share of an estate, paying annual revenue to Government, or forms part of such an estate and is recorded in the Collector's register as separately assessed with such revenue, and such revenue is permanently settled—ten times the revenue so payable.

(b) Where the land forms an entire estate, or a definite share of an estate, paying annual revenue to Government, or forms part of such estate and is recorded as aforesaid;

and such revenue is settled, but not permanently

ten times the revenue so payable:

(c) * * *

(d) Where the land forms part of an estate paying revenue to Government but is not a definite share of such estate and is not separately assessed as above-mentioned—the market value of the land:”

(5) To understand the true scope of the provisions made in section 7(v) (b) and 7(v) (d), section 7(v) (b) has to be read along with section 7(v) (a), as the word ‘aforesaid’ used in sub-clause (b) relates back to sub-clause (a). From the bare perusal of sub-clause (a), I find that the same has been divided into two separate paragraphs. The first paragraph deals with an entire estate or a definite share of an estate paying annual revenue to Government; while the

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second portion deals with land which forms part of such an estate (that is to say of an estate which pays annual revenue to Government) and is recorded in the Collector's register as separately assessed with such revenue. Sub-clause (b), as is apparent from its bare reading, also divides the subject in the same way. Thus from the aforesaid analysis I find that a distinction has to be drawn between the words 'share' and 'part'. The first part of sub-clauses (a) and (b) would cover the cases where the land forms an entire estate or is a definite share of an estate. Again the question would arise as to what is the meaning of the word 'share'. The Legislature has purposely used the words 'share' and 'part' in sub-clauses (a) and (b). In my view the word 'share' used in these sub-clauses would mean one-fourth or three annas or $2/3/4$ pies or any other fraction howsoever clumsy of an entire estate which pays annual revenue to the Government, while part of an estate would mean a specified area which may be described in Kanals, Bighas, acres or yards. But in the case of part of an estate, in order to bring the case within the four corners of sub-clause (b), it has further to be shown that the same forms part of an estate which is paying annual revenue to Government and that such part is recorded in the Collector's register as separately assessed with such revenue. The instant case, when judged in the light of what has been stated above, does not present any difficulty nor is it necessary to deal with the judicial decisions, cited at the Bar individually and can straightaway be decided on the allegations made in the plaint. In the plaint decree for possession of a specific part of land gifted has been prayed for, as is evident from the prayer clause, which reads as under :—

"It is, therefore, prayed through this petition of plaint that the plaintiff's suit for possession of 961 square yards of land bounded on the East-public lane-149 feet, on the West—Ganga Ram (In fact it is vacant site of the joint Hindu family constituted of the plaintiff and defendant No. 2) side measuring 150 feet 6 inches, on the North—Lekh Ram—side measuring 57 feet 10 inches, on the South—Thoroughfare—side measuring 57 feet 9 inches, out of Khasra No. 2506/2 situate in the area of Bhatinda which, being the joint Hindu family property, was gifted away by defendant No. 2 to defendant No. 1 without any reason and illegally on 30th September, 1969, may be decreed in favour of the plaintiff and against defendant No. 1, with costs and if the plaintiff is found entitled to

any other relief from the proved facts, the same may also be got paid with costs."

(6) Even from the allegations made in the body of the plaint, I find that a specific area has been gifted by the father of the plaintiff in favour of defendants Nos. 1 to 3 of which exclusive possession was claimed. Undoubtedly, this specific area does not form an entire estate, nor is it recorded in the Collector's register as separately assessed with annual revenue although it forms a part of an estate paying such revenue, so as to bring it within the purview of section 7(v) (b). In this view of the matter I have no hesitation in holding that the present suit falls under sub-clause (d) of section 7(v) of the Act and the view taken by the trial Court is perfectly legal and correct. This petition accordingly fails and is dismissed but without any order as to costs.

Tuli, J.—I agree and have nothing to add.

Dhillon, J.—I agree.

B.S.G.

FULL BENCH

Before R. S. Narula, C.J. Bal Raj Tuli and A. D. Koshal, JJ.

DURGA DASS ETC.—Appellants.

Versus

DHARAM VIR, ETC.—Respondents.

Letters Patent Appeal No. 716 of 1973

September 12, 1974.

Punjab Town Improvement Act (IV of 1922)—Sections 4, 6 and 8—Election of three trustees of an Improvement Trust by a Municipal Committee—Members of the Committee—Whether entitled to exercise votes for the election of each trustee separately—Such members—Whether can be divided in three groups for the election.

Held, that under sections 4, 6 and 8 of the Punjab Town Improvement Act, 1922, three seats of an Improvement Trust have to be filled by three