
(33) For the reasons recorded above, this appeal is allowed. The conclusions No. 1 and 2 and consequent directions, as reproduced above, arrived at/issued by the learned Single Judge in the impugned judgment are set aside. The parties are, however, left to bear their own costs.

S.C.K.

Before Swatanter Kumar, J

ANIL RISHI,—*Petitioner*

versus

GURBAKSH SINGH,—*Respondent*

C. R. No. 2879 of 1997

26th March, 1998

Code of Civil Procedure, 1908—S. 115—Specific Relief Act, 1877—S. 7 (iv) (c), Article 1 of Schedule 1—Suit for declaration filed to the effect that registered sale deed is fake and fabricated & thus not enforceable—Relief cannot be granted unless Court holds that document is liable to be cancelled—If plaintiff's version is established that document is forged & fabricated, document will be cancelled—S. 7 (iv) (c) not applicable but article 1 schedule 1—Payment of Court fees to be judged on the basis of facts stated in plaint rather than on relief claimed—Plaintiff to pay ad valorem Court fee on consideration reflected in sale deed.

Held that, so far the question of payment of appropriate Court fee is concerned, the case of the plaintiff must be judged cumulatively on the basis of the facts stated in the plaint rather than the relief the plaintiff is claiming by cleverly wording the prayer clause.

(Para 4)

Futher held, that the registered sale deed reflects the consideration of Rs. 9 lacs and the plaintiff in unambiguous terms has claimed that the said document is void and ineffective for the reasons stated in the plaint. A plaintiff cannot be permitted to avoid payment of requisite and prescribed court fee in the garb of innocently worded prayer clause while in fact it would in spirit and substance and in law becomes inevitable for the Court to grant such a relief which has not been prayed for in the prayer clause explicitly.

(Para 4)

Rajinder Goyal, Advocate,—*for the Petitioner.*

JUDGMENT

(1) The challenge in this revision petition is to the order dated 5th April, 1997 passed by the learned Sub Judge 1st Class, Chandigarh, dismissing the application of the defendant praying for rejection of the plaint under the provisions of Order 7 Rule 11 of the Code of Civil Procedure for the reasons stating therein. In order to effectively determine the controversy arising in this revision, it is necessary to refer to the basic facts giving rise to this petition. The plaintiff had filed a suit for declaration to the effect that the registered sale deed dated 26th March, 1991 was forged, fabricated and fake document and is not enforceable in respect of the property in question i.e. house No. 86, Sector 18-A, Chandigarh. This suit was contested by the present petitioner. The submissions raised before the trial Court was that the suit as framed was hit by the provisions of Section 34 of the Specific Relief Act as no relief for declaration could be claimed without praying for a consequential relief therefrom. The main plank of the argument on behalf of the petitioner is that the present suit is not one for declaration simplicitor but infact and substantively is a suit for cancellation of a registered sale deed, as such, the plaintiff in the suit ought to have paid Court fee on the valuation reflected in the said document and the fixed Court fee of Rs. 20 was not payable. On this ground it is stated that the plaint of the plaintiff is liable to be rejected and suit be dismissed. The learned trial Court after some discussions rejected the application. The reasoning given by the learned trial Court is that the plaintiff alleges himself to be an absolute owner of the property in question and the ownership has not been challenged by the defendant and as such the suit was for simplicitor declaration on which the fixed Court fee could be paid.

(2) As is evident from the above facts and circumstances, the basic controversy related to the liability of the plaintiff to pay the appropriate Court fee in accordance with law. The suit is one for declaration which seeks a decree for declaring that a document is forged, fabricated and in-effective. As such the relief in law cannot be granted unless the court holds that the document is liable to be cancelled. Cancellation of the document in any event would be the basic and main relief which the Court would have to grant even if the version stated by the plaintiff is established as pleaded. It is a settled principle of law that it is not the title or wording of the prayer which would determine the Court fee payable on the relief claimed but it is the substance and manner of the plaint read together that would finally determine such an issue. The sale deed dated 26th March, 1991 is a registered document. According to the defendant the title of the property

in case the main relief in the suit is held to be that of cancellation of the sale deed, then the case is not covered by Section 7(iv) (c) and the only provision applicable is article 1, Schedule I of the Act. In order to bring the case under section 7(iv) (c) of the Act the main and substantive relief should be that of a declaration and the consequential relief should be ancillary thereto. Moreover, if no consequential relief is claimed or could be claimed in the suit, then section 7(iv) (c) will not be attracted. To say in the plaint, that it be declared that the sale deed, got executed from her as a result of the fraud was void and not binding on her, does not convert the suit into one for a declaration with the consequential relief of possession so as to fall within the provision of section 7(iv) (c) of the Act. To such a suit, the only article applicable is article 1, Schedule I. 1970 Cur.L.J. 80, 1974 Cur.L.J. 71 approved. (1975) 77 P.L.R. 372, (1978) 80 P.L.R. 29, (1978) 80 P.L.R. 622 over-ruled.”

(4) In the case of *Lakhpat v. Smt. Chander Kanta and others*(3), a Bench of this Court took a view that where the Court holds that on the heading of the plaint it is clear that substantive relief claimed is that of cancellation of the sale deed and the mere fact that the suit is for declaration would not help the plaintiff to avoid liability of appropriate Court fee under the provisions of that Act.

(5) The learned counsel for the respondent herein distinguishes the judgment of the learned Single Judge in the case of *Lakhpat*, supra, on the plea that the plaintiff in the present suit was not a party to the alleged sale deed. Obviously the sale deed was executed. The factor by itself cannot alter the position of law. It may be a relevant factor to be taken into consideration by the learned trial Court while deciding the merits of the case. So far the question of payment of appropriate Court fee is concerned, the case of the plaintiff must be judged cumulatively on the basis of the facts stated in the plaint rather than the relief the plaintiff is claiming by cleverly wording the prayer clause. The legislative intention is clear to vest a wide discretion with the Court to examine the matter in a greater depth to find out the real relief which the plaintiff would ultimately get on the bundle of facts stated in the plaint. The provisions of Section 31 of the Specific Relief Act clearly provides that where a document and a written instrument is void or voidable the party has a right to sue to have the same adjudged as void or voidable and if the Court so adjudges then it has the discretion to order the document to be cancelled. In other words, the prayer of the plaintiff that the document was void as a result of fraud and

(3) P.L.R. 1989 (1) 103.

mis-representation, the necessary consequence thereof would be that such document needs to be cancelled. If the sale deed which is a registered document exists and is not directed to be cancelled and delivered the basic purpose of the plaintiff in instituting the present suit remains unsatisfied and the Court may not be in a position to grant complete and effective relief to the plaintiff. The registered sale deed reflects the consideration of Rs. 9 lacs and the plaintiff in unambiguous terms has claimed that the said document is void and ineffective for the reasons stated in the plaint. A plaintiff cannot be permitted to avoid payment of requisite and prescribed court fee in the garb of innocently worded prayer clause while in fact it would in spirit and substance and in law becomes inevitable for the Court to grant such a relief which has not been prayed for in the prayer clause explicitly. In other words, the prayer clause essentially incorporates another relief.

(6) Having come to this conclusion that the plaintiff respondent herein is liable to pay the *ad valorem* Court fee, the necessary corollary thereof is whether the plaintiff would be entitled to pay the requisite Court fee or the plaint is liable to be rejected. It is a settled principle of law that wherever or whenever the Court comes to a conclusion that plaintiff is liable to pay Court fee larger than the Court fee affixed by the plaintiff, it must grant time to the plaintiff to make up deficiency in Court fee, rather than rejecting the plaint right at the threshold for payment of inadequate Court fee.

(7) Consequently, this petition is allowed. The impugned order, dated 5th April, 1997 is set aside. The plaintiff shall pay *ad-valorem* Court fee as aforesaid within a period of one month from today. Upon payment of Court fee the trial Court shall proceed with the suit in accordance with law.

J.S.T.

Before N. K. Agrawal, J
SURINDER SHARMA,—*Petitioner*

versus

SMT. ZENOBIA BHANOT,—*Respondent*

C. R. No. 3033 of 1997

24th September, 1998

Punjab Urban Rent Restriction Act, 1949, as amended by Punjab Act No. 2 of 1985—Ss. 2 (hh) & 13—A—Eviction—Leave to defend—Right of specified landlord to seek eviction of tenants created by