

Before Amol Rattan Singh, J.

PREM WATI—Petitioner

versus

JULE KHAN AND OTHERS—Respondents

CR No.1686 of 2018

April 04, 2019

Court Fee Act—1870—S. 7(iv)(c)— Challenge to sale deed by executant, plaint rejected as Court fee not paid—Executant obliged to pay ad valorem court fee.

Held that however, in the opinion of this Court, with the plaintiff standing in the shoes of the attorney, on that ground she has to be treated to be the executant of the sale-deed, and as regards the allegation of a fraud having been perpetuated, it would be very easy for every plaintiff, challenging, or seeking a cancellation of, a sale-deed to plead fraud and thereby avoid payment of court fee *ad valorem*.

(Para 9)

Further held that would seem to be the reason why in *Suhrid Singh at Sardool Singhs'* case also, their Lordships did not carve out such an exception in the case of an executant of a deed seeking cancellation thereof, it having been held that simply for any relief of cancellation sought, court fee *ad valorem* has to be paid by a executant, whereas in the case of a non-executant, he is to pay court fee *ad valorem* only if he seeks a consequential relief of possession, other than a declaration in his favour.

(Para 13)

Ashish Gupta, Advocate
for the petitioner.

Junaid Singh, Advocate for
Aditya Jain, Advocate, for respondent no.1.
Munfaid Khan, Advocate, for respondent no.2.

AMOL RATTAN SINGH, J ORAL

(1) By this petition, the petitioner challenges the order dated 21.02.2018 (Annexure P-4), passed by the learned Civil Judge (Jr. Divn.), Hathin, by which her application under Order 7 Rule 11 of the CPC has been dismissed.

(2) Vide the said application, the petitioner (defendant no.1 in the suit) had sought rejection of the plaint on the ground that despite the sale deed dated 09.11.2015 having been challenged, (it having been sought to be declared null and void and not binding on the respondent-plaintiff), court fee *ad valorem* had not been paid on the sale consideration shown in the said sale-deed.

(3) The learned Civil Judge, after considering the matter held that since an allegation of fraud had been made by the plaintiff, to the effect that the instrument of general power of attorney on the basis of which the sale deed was executed by the attorney, was obtained by a fraud committed upon the plaintiff, court fee *ad valorem* was not required to be paid.

(4) Learned counsel for the petitioner relies upon a judgment of the Supreme Court in ***Suhrid Singh @ Sardool Singh*** versus ***Randhir Singh and others***¹ from which he points to the fact that it has been specifically held therein that where the executant of a sale-deed seeks annulment thereof, such executant has to actually seek cancellation of the sale-deed, and in such a situation court fee *ad valorem* would be required to be paid, calculated on the amount of sale consideration shown to have been paid, in the sale deed. On the other hand, if a non-executant of a sale-deed seeks annulment thereof, she/he simply is required to file a suit seeking a declaration to that effect, on which a fixed court fee in terms of Article 17(iii) of the 2nd Schedule to the Court Fee Act, 1870, needs to be paid, i.e. an amount of Rs.19.50 p.

(5) Hence the contention is that the sale deed having been shown to be executed by the attorney of the plaintiff, the plaintiff has to be taken to be an executant thereof, despite the allegation that the power of attorney itself was an instrument that was obtained by a fraud played on her.

(6) Learned counsel for the respondents on the other hand relies upon a judgment of a coordinate Bench of this Court in ***Teja Singh*** versus ***Smt. Amar Kaur and others***² wherein it was held that since the plaintiff in that case had not claimed possession as a consequential or substantive relief in the suit, court fee did not have to be paid *ad valorem*. He thereafter draws attention to the prayer made in the suit, (a copy of the plaint being Annexure P-1), wherein the prayer is to the effect:-

¹ AIR 2010 SC 2807

² 2007 (57) RCR (Civil) 193

“13. That the plaintiff, therefore, prays that a decree of declaration to the effect that the plaintiff is the owner of in possession of the property in dispute detailed in para no.1 of the plaint and the defendants have got no right, title or interest whatsoever in the suit property detailed in para no.1 of the plaint and the impugned sale deed dated 09.11.2015 bearing its vasika/document no.2868 in favour of the defendant no.1 qua the suit property detailed in para no.1 of the plaint and its subsequent mutation no.872 dated 04.12.2015 and the impugned General Power of Attorney dated 29.10.2015 bearing vasika/document no.31 in favour of defendant no.3/Jakir Hussain on behalf of the plaintiff are sham, bogus, illegal, null and void documents, ineffective and not binding upon the rights of the plaintiff qua the suit property detailed in para no.1 of the plaint and are liable to be set aside and a decree of permanent injunction restraining the defendant no.1 from alienating the suit property detailed in para no.1 of the plaint to a stranger and from creating any charge upon the said property illegally and unlawfully and restraining the defendants from dispossessing the plaintiff from the suit property illegally and by show of force, may kindly be passed in favour of the plaintiff and against the defendants with costs of the suit. And/or any other relief which this Hon'ble Court deems fit and property may also be granted.”

(7) The contention is that since the consequential prayer after seeking a declaration is only one of permanent injunction restraining the defendants in the suit from interfering in the suit property, with the plaintiff-(respondent herein) being in possession thereof, court fee is not required to be paid *ad valorem*.

(8) Having considered the matter, though if the respondent-plaintiff is not to be treated to be an executant of the sale-deed on the ground that it was actually executed by an attorney who (as per the plaintiff), had obtained the instrument of power of attorney by way of a fraud, the contention of the learned counsel would be acceptable.

(9) However, in the opinion of this Court, with the plaintiff standing in the shoes of the attorney, on that ground she has to be treated to be the executant of the sale-deed, and as regards the allegation of a fraud having been perpetuated, it would be very easy for

every plaintiff, challenging, or seeking a cancellation of, a sale-deed to plead fraud and thereby avoid payment of court fee *ad valorem*.

(10) Of course, it cannot be loss sight of that in some cases (may be even in a larger number of cases), the allegation may actually eventually be found to be true upon evidence led to that effect before the trial court; and in such a case, naturally, the plaintiff would be entitled to recover her/his costs from the defendant concerned; however, at a stage when the contention is only an allegation that is still to be proved, it cannot be held that on a prayer made for the cancellation of a sale-deed by a person shown to be the executant thereof, in person or through an attorney, she/he would be exempted from affixing court fee *ad valorem*, even as per the ratio of the judgment in *Suhrid Singhs'* case (supra).

(11) It further needs to be stated that though, in the present case, the respondent-plaintiff has not sought the relief of possession of the suit property as is obvious from a perusal of the copy of the plaint annexed with the petition, yet, sub-clause (c) of clause (iv) of Section 7 of the Court Fee Act, 1870, stipulates that as regards suits in which a declaratory relief is sought along with a consequential relief, the plaintiff would state the amount the relief sought is valued at, with the amount of fee payable to be accordingly applicable.

(12) Thus, the declaration sought by the plaintiff in her suit being that she is owner in possession of the property in dispute, but the consequential relief sought being that the impugned sale deed dated 09.11.2015 be declared to be a document that is illegal, null and void, the contention raised in that regard by learned counsel for the respondents would not be acceptable in my opinion, because a consequential relief does not necessarily meant that it is only a relief seeking possession of a suit property.

(13) That would seem to be the reason why in *Suhrid Singh @ Sardool Singhs'* case also, their Lordships did not carve out such an exception in the case of an executant of a deed seeking cancellation thereof, it having been held that simply for any relief of cancellation sought, court fee *ad valorem* has to be paid by a executant, whereas in the case of a non-executant, he is to pay court fee *ad valorem* only if he seeks a consequential relief of possession, other than a declaration in his favour.

(14) Consequently, this petition is allowed and the impugned order is set aside, with the trial court directed to proceed with the case

only after the respondent-plaintiff affixes court fee *ad valorem*, calculated as per the consideration shown to be paid in the sale-deed in question.

(15) However, it is made absolutely clear that this Court has not made any comments at all with regard to the merits of the contention raised by the parties in the suit, either on the question of any fraud having been played upon the respondent-plaintiff, or otherwise, which would naturally be considered by the trial court wholly on the basis of the evidence led before it.

Ritambhra Rishi