

Baljit Singh Vs. T. Ranjit Singh

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Court : Allahabad

Decided On : Jan-12-1973

Reported in : AIR1973All228

Judge : J.M. Lal, J.

Acts : Court-fees Act, 1870 - Schedule - Article 17

Appeal No. : F.C.A. No. 9 of 1969

Appellant : Baljit Singh

Respondent : T. Ranjit Singh

Advocate for Def. : Sridhar Misra, ;M.K. Seth, ;N.K. Seth and ;K.C. Seth, Advs.

Advocate for Pet/Ap. : Ramkrishan Srivastava, Adv.

Disposition : Reference rejected

Judgement :

ORDER

J.M. Lal, J.

1. This is a tax reference made by the Taxing Officer of this Court relating to payment of court-fee on the memo of appeal filed in First Appeal No. 9 of 1969.

2. The plaintiff filed a suit for specific performance of the contract which was decreed by the trial Court on payment of Rs. 2,55,000 as sale consideration and the defendant-respondent was required to execute a sale deed on the terms embodied in the draft sale deed submitted on behalf of the defendant. Some of these terms were opposed on behalf of the plaintiff who alleged that it was not necessary, nor was it legally permissible to incorporate those terms in the sale deed. The objection of the plaintiff was, however, overruled by the trial Court and the draft sale deed submitted by the defendant including the disputed clauses, was approved by that court.

3. Feeling aggrieved by that decree the plaintiff filed this appeal in which the relief claimed by him was that the decree passed by the trial Court be modified to this extent that from the draft sale deed the disputed clauses may be deleted, and the sale deed may be executed by the defendant on the simple draft as submitted on behalf of the plaintiff-appellant.

4. It was contended on behalf of the plaintiff-appellant that the subject-matter of this appeal was incapable of valuation and, as such he paid the fixed court-fee of Rs. 200 as prescribed by Article 17 (vii) (d) of Schedule II of Court-fees Act as amended in its application to this State. The Stamp Reporter and the Taxing Officer were however, of opinion that since the appeal arose out of a suit for specific performance of the contract the appeal should have been valued in the same manner in which the suit had been valued and ad valorem court-fee should have been paid on that valuation. It may be stated, for the purposes of jurisdiction the appellant has valued the appeal at Rs. 2,55,000 but the appellant disputes his liability to pay ad Valorem court-fee on this amount.

5. Learned counsel for the appellant contended that he has already obtained a decree in his favour for specific performance of the contract and he is seeking avoidance of that decree. What the appellant is objecting to is the incorporation of certain clauses in the draft sale deed which has been approved by the trial Court. Obviously such dispute is incapable of valuation and, as such, it would be governed by the residuary Article 17 (vii). A decision of the Madhya Pradesh High Court in *Bherodan v. Murlidhar*, AIR 1960 Madh Pra 292 has been cited on behalf

of the appellant. In that case the plaintiff's suit for redemption was decreed and a preliminary decree Was passed under which a Commissioner was appointed to take accounts. For the purposes of taking accounts and determining the price of redemption certain directions were given to the Commissioner for calculating rents and profits of the mortgaged security. The plaintiff filed an appeal objecting to those directions. It was held that the subject-matter of the appeal was incapable of valuation and the court-fee had to be paid under the residuary Article 17 (vii). I am in respectful agreement with this decision. In my opinion, the same principle applies to this case also in which certain clauses of the draft sale deed, which the defendant-respondent has to execute in favour of the plaintiff-appellant have been objected to by the appellant though otherwise the plaintiff accepts the decree passed in his favour by the trial Court.

6. It is, therefore, held that the court-fee paid is sufficient and the reference rejected.

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