

Omprakash and ors. Vs. Suratram and ors.

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Court : Madhya Pradesh

Decided On : Feb-12-1993

Reported in : 1994(0)MPLJ291

Judge : R.C. Lahoti, J.

Acts : [Court Fees Act, 1870](#) - Sections 7 - Schedule - Article 17

Appeal No. : Civil Rev. No. 164 of 1992

Appellant : Omprakash and ors.

Respondent : Suratram and ors.

Advocate for Def. : U.K. Jain, Adv. for Respondent Nos. 1 and 3 to 11

Advocate for Pet/Ap. : R.K. Dixit, Adv.

Disposition : Revision allowed

Judgement :

ORDER

R.C. Lahoti, J.

1. Petitioners have come up in revision feeling aggrieved by order dated 1-5-1992 of the trial Court disposing of a preliminary issue holding the plaint liable to ad valorem court-fees under Section 7(iv)(c) of the [Court Fees Act, 1870](#) and

consequently insufficiently stamped at present.

2. The suit property is an agricultural holding wherein the plaintiffs have a share along with the defendant No. 2 and others. On 4-7-1989, the defendant No. 2 has executed a deed of sale in favour of defendant No. 1 alienating the entire interest in the suit property. It appears that in executing the sale-deed and presenting it for registration, the defendant No. 2 has purported to act on his own behalf as also in the capacity of power of attorney holder of the plaintiffs- The sale-deed has been challenged by the plaintiffs on three grounds : firstly, that the defendant No. 2 was never appointed an attorney by the plaintiffs and hence could not have acted on their behalf; secondly, that pursuant to the registered agreement dated 5-7-1978, the interest of Prabhudayal, the predecessor-in-interest of the defendant No. 2, was agreed to be transferred to the plaintiffs for a consideration of Rs. 5000/-, the possession whereunder was also delivered to the plaintiffs and in defiance of the said agreement the defendant No. 2 could not have sold the suit property; and, thirdly, that the plaintiffs having been in adverse possession of the suit property for over 12 years prior to the institution of the suit they had perfected their title in the suit property, leaving nothing with the defendant No. 2 to be alienated.

3. The defendants in their written statement denied all the material plaint averments and submitted that the defendant No. 2 was a duly appointed power of attorney holder of the plaintiffs on 15-5-1989 and under that deed had competently executed the deed of sale alienating the plaintiffs' interest as well. It was submitted inter alia that the plaintiffs were obliged to value the suit at Rs. 59000/- being the price stated in the deed of sale and pay ad valorem court fees thereon under Section 7(iv)(c) of the [Court Fees Act, 1870](#).

4. The plaintiffs have valued the suit at Rs. 59000/- but paid a fixed court-fee of Rs. 30/- for declaration. They have also valued the suit for the purpose of injunction at Rs. 200/- and paid court-fee of Rs. 20/- thereon.

5. In the opinion of this Court, the trial Court has committed a jurisdictional error in requiring the plaintiffs to pay ad valorem court-fees on the plaint as framed. It is well settled that the question of court-fee has to be determined on the plaint as framed and not on the plaint as it ought to have been framed, unless by

astuteness in drafting plaint the plaintiff conceals outwardly the substantive relief asked for by him.

6. In *Sathappa Chetdar v. Ramanathan Chettiar*, AIR 1958 SC 245, their Lordships of the Supreme Court held:

'The question of court-fees must be considered in the light of the allegations made in the plaint and its decision cannot be influenced either by the pleas in the written statement or by the final decision of the suit on the merits.'

In *Shamsher Singh v. Rajinder Prashad and Ors.*, AIR 1973 SC 2384, their Lordships said:

'The Court in deciding the question of court-fee should look into the allegations in the plaint to see what is the substantive relief that is asked for. Mere astuteness in drafting the plaint will not be allowed to stand in the way of the court looking at the substance of the relief asked for.'

In *Girrao v. Shrikrishna and Ors.*, 1956 NLJ 447 = AIR 1957 Nag. 53-D.B., it is held :

'It is true that the question of court-fees has to be considered with reference to the allegations as laid in the plaint and not with reference to the case as ought to have been put forward by the plaintiffs. But at the same time it is well-settled that one must look to the substance and nature of the claim and not to the mere form in which the relief claimed is cast. That will necessarily depend on the allegations made in each case.'

So is the view taken in *Paikansingh Sheoramsingh and Ors. v. Maniksing Mohtabsing*, AIR 1949 Nag. 97.

7. The plaintiffs have averred the impugned sale having been made by a person not authorised to alienate their interest in the suit property. It is not that they admit the defendant No. 2 to be their power of attorney holder and then seek avoidance of the sale. On the plaint, as it stands, the defendant No. 2 was not the attorney of the plaintiffs and hence was incompetent to alienate the interest of the plaintiffs. In

other words, the plaintiffs alleged that they have not sold their interest in the suit property, still the deed has come into existence purporting to alienate their interest to defendant No. 1. The plaintiffs did not admit to be parties to the impugned deed of sale directly or indirectly. A bare declaration would, therefore, suffice without the necessity of seeking the relief of having the sale set aside. It is different that the plaintiffs would fail if the defendant No. 1 might succeed in proving authority by the plaintiffs given to the defendant No. 2 to alienate the plaintiffs' interest in the suit property, on the present set of pleadings by the plaintiffs.

8. A number of authorities were cited at the Bar throwing light on the principles governing valuation of suits and payment of court-fees when the document under challenge was void or voidable. It is not necessary to refer to those authorities for the simple reason that the plaintiffs do not allege the impugned document having been executed by them or by any one on their behalf.

9. In *Baldeosingh v. Gopalsingh*, 1967 MPLJ 242 = 1967 J LJ 350, on difference of opinion between the two learned Judges of this Court the matter was referred to a third Judge holding :

'Further where the plaintiff is not bound either by a deed or a decree to which he is co-nominee not a party, then his claim for declaration with reference to his title to the property, alleged to be in possession, will not be taken to involve a claim for a consequential relief.'

It was held that the court-fees in such a case was payable under Schedule II, Article 17 and not under Section 7(iv)(c) of the Court Fees Act.

So is the view taken in *Pannalal v. Smt. Muliyabai*, 1986-II MPWN 5.

10. The learned counsel for the non-petitioner No. 1 placed reliance on *Kuntidevi v. Roshanal*, 1987 MPLJ 25, which case is clearly distinguishable because there the suit was filed by the plaintiff who was a party to the sale deed, *prima facie* bound by it. In the case at hand, the plaint averments do not say so.

11. In view of what has been stated hereinabove, the revision deserves to be allowed setting aside the impugned order. However, this court cannot resist

observing on para 12 of the plaint which is a valuation and court-fees clause. Admittedly the suit property is an agricultural holding assessed to land revenue. The plaintiffs have themselves stated that they were entitled to value the suit at twenty times the land revenue assessed on the holding yet they were valuing the suit at Rs. 59000/-, the consideration stated in the impugned sale, for the relief of declaration and separately at Rs. 200/- for the relief of injunction. Suffice it to reproduce the law laid down by the Hon'ble Supreme Court in Sathappa Chettiar's case (supra) :-

'The effect of the provisions of Section 8 is to make the value for the purpose of jurisdiction dependent upon the value as determinable for computation of court-fees. The computation of court fees in suits falling under Section 7(iv)(c) of the Court-Fees Act depends upon the valuation that the plaintiff makes in respect of his claim. Once the plaintiff exercises his option and values his claim for the purpose of court-fees, that determines the value for jurisdiction. The value for court-fees and the value for jurisdiction must no doubt be the same in such cases; but it is the value for court-fees stated by the plaintiff that is of primary importance. It is from this value that the value for jurisdiction must be determined. The result is that it is the amount at which the plaintiff has valued the relief sought for the purpose of court-fees that determines the value for jurisdiction in the suit and not vice versa.'

12. It is difficult to appreciate why the plaintiffs have chosen to put deliberately a higher value so as to usurp the jurisdiction of a higher court. If only correctly valued, the suit might have been capable of trial by a court of Civil Judge.

13. Subject to the abovesaid observations, the revision is allowed. The impugned order is set aside. It is held that the suit valued by the plaintiff is liable to payment of court-fees under Schedule II, Article 17 and not under Section 7(iv)(c) of the Court-Fees Act, 1870. No order as to the costs.