

**Rajkumar Jain Vs. Savitri Devi and ors.**

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**Court :** Madhya Pradesh

**Decided On :** Dec-18-2009

**Reported in :** 2010(1)MPHT121

**Judge :** R.S. Garg, Actg. C.J. and ;Indrani Datta, J.

**Appellant :** Rajkumar Jain

**Respondent :** Savitri Devi and ors.

**Advocate for Def. :** Shri. Bhargava

**Disposition :** Petition allowed

**Judgement :**

ORDER

R.S. Garg, Actg. C.J.

1. Undisputedly, present petitioner had filed civil suit for declaration of title, cancellation/avoidance of the document and permanent injunction submitting inter alia that the suit document under which, the plaintiff is said to have received a sum of Rs. 1,11,600/- in fact would not bind his interest because, the same was got executed after playing fraud upon the plaintiff. It appears that during pendency of the suit an objection came to be raised by defendant No. 1 that in accordance with the guideline framed by the Collector of Stamps, the property was valued for a sum of Rs. 4,94,500/- and the purchaser was required to pay additional stamp

duty and additional registration charges, therefore, the value of the property would be Rs. 4,94,500/-. On the basis of pleading of the parties issue No. 5 was cast by learned Trial Court to the effect that whether the plaintiff had valued the suit properly and had paid appropriate Court fee. After hearing learned Counsel for the parties, learned Court below came to the conclusion that the plaintiff was required to value the suit for a sum of Rs. 4,94,500/- and was obliged to pay Court fee accordingly. Placing reliance upon a judgment of our own High Court in the matter of Ashok Kumar v. Harishankar 1987 (2) MPWN 33, the Court observed that the stamp duty would be payable on the sale price and as in the present matter, the market value of the property was Rs. 4,94,500/-, the plaintiff was obliged to pay Court fee on the said amount.

2. Learned Counsel for the petitioner submitted that a fair understanding of the judgment in the matter of Ashok Kumar (supra), would show that the Court fee is required to be paid on the sale price and not on the market value. It is also submitted by him that for the purpose of Section 7(iv)(c) of the Court Fees Act, the plaintiff would be required to pay fixed Court fee if he is not a party to the suit document and on the basis of value of the document if he is a party to the document. His submission is that the Court below could not properly appreciate the distinction between sale price and the market value.

3. Shri Bhargava, learned Counsel for the respondents on the other hand submitted that if the property was registered for a sum of Rs. 4,94,500/-, then that should be taken to be the face value of the document and the plaintiff was rightly called upon to pay Court fee on the said document.

4. After hearing learned Counsel for the parties, we are of the considered opinion that the Court below has not appreciated the law in its proper perspective. In a matter of declaration that a document does not bind the executant of the document or a party to the document, a person is required to challenge the document. If such challenge is thrown to the document then he has to value the suit to the extent of the amount which is shown to have been paid under the document. Such amount would always be called the price/sale price. There is always a distinction between sale price and market price. A person may or may not sell the property on the

offered price, however, a vendor would sell the property on the agreed price, which may be less or more than the market price. The alleged price would always depend upon number of consideration. Necessity or urgency to sell or purchase would always affect the sale price. Sometime looking to the compelling reason or the exigencies of life, a person may agree to purchase or sell property for lesser value or for a price less than the market price, if such is the case then the consideration fixed for transfer of property would be the sale price so fixed between parties which may or may not be the market price.

5. True it is, for the purposes of registration, the market value should be determined so that the loss of revenue is not suffered by the State. Assuming in a case, a person who is in immediate need of sum of Rs. 2 crores may sell his property worth Rs. 5 crores for the said amount of Rs. 2 crores. Sale price would be two crores but for the purpose of registration, the value of the document would be 5 crores being the market value. Determination of the market value would depend upon the market condition and guideline but the sale price would be determined on the basis of the mutual consent and the agreement of the parties.

6. In the present case, if the parties agreed that the sale consideration or sale price would be Rs. 1,19,600/-, then that would be the value of the document between the parties and not the sum of Rs. 4,94,500/- which was taken to be the market value for the purpose of registration. It is also not the case of the defendant that he actually paid Rs. 4,94,500/- as sale consideration and the document was undervalued. In the matter of Ashok Kumar (supra), the High Court had clearly observed that the Court fee is required to be paid on the sale price. Without appreciating the said order, the Court below even without understanding the distinction between the sale price and market price observed that the market price would be the sale price.

7. In our opinion, the learned Court below conducted itself illegally and passed the order without appreciating legal position. The order passed by learned Court below deserves to be and is accordingly set aside. Issue No. 5 cast by learned Court below, is decided in favour of the plaintiff holding that the suit has been properly valued and the Court fee also has been accordingly paid.

8. The petition is allowed. There shall be no order as to the cost.

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