2023 INSC 657

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal No. of 2023
(@ SLP (C) No.5812 of 2020)

B.P. Naagar & Ors. .... Appellant(s)

Versus

Raj Pal Sharma ...Respondent(s)

J U D G M E N T

C.T. RAVIKUMAR, J.

Leave granted.

1. This appeal by special leave is directed against the final order dated 02.12.2019 passed by the High Court of Delhi, whereby it allowed C.M. (M) No.686 of 2019 and C.M. (App.) No.20889 of 2019 and set aside the orders dated 01.07.2017 and 02.03.2019 passed by the Court of Additional District Judge, II, Central Tis Hazari Courts,

New Delhi. The Defendant Nos. 5 to 9 in the suit are the appellants herein and the plaintiff therein is the respondent herein. It is to be noted that Annexure P-14, Memorandum of Writ Petition, which culminated in the impugned order, would reveal that it was filed under Article 227 of the Constitution of India read with Section 115 of the Code of Civil Procedure, 1908 (for short, 'CPC'), challenging the orders dated 01.07.2017 and 02.03.2019. Considering the rival contentions, it is only apposite to refer to the orders dated 01.07.2017 and 02.03.2019 passed by the Trial Court to know their nature for an appropriate disposal of this appeal.

2. Order dated 01.07.2017 passed by the Trial Court in CS(OS) No.612960/2016, exhibited as Annexure P-7 in the captioned appeal, would reveal that it was an order passed in an application filed under Order VII Rule 11 CPC, moved on behalf of defendant No.5/ the second appellant in the captioned appeal. In fact, the suit was

originally filed by the respondent herein before the High Court viz., CS(OS) No.809/2011 for declaration and cancellation of the gift deed dated 27.04.2010 and sale deed dated 10.01.2011 and also for mandatory injunction and permanent injunction. Originally prayers (a) to (e) were sought for in the plaint. However, vide order dated 20.05.2015, the plaintiff/the respondent herein was permitted by the High Court to abandon prayers (c) and (d) made in the plaint and thus, the suit was pursued qua prayers in (a), (b) and (e) only. Later, it was transferred to the Court of Additional District Judge-II, Central, Tis Hazari Court, New Delhi pursuant to the enhancement of the pecuniary jurisdiction of the Civil Courts. In the context of the contentions and the nature of the order impugned, it is profitable to refer to prayers (a), (b) and (e) in the plaint and they read thus:-

> *"(a) pass a decree of declaration and cancellation thereby declaring and cancelling the gift deed dated*

27.04.2010 which was registered as document no. 3890, entered in Additional Book No.1, Volume No. 3311 at pages 66 to 73 on 06.05.2010 in the office of Sub-Registrar -I, Delhi executed by the defendant no. 1 in favour of the defendants no. 2 to 4 being illegal, void, ineffective/inoperative and of no consequences.

(b) pass a decree of declaration and cancellation thereby declaring and cancelling the sale deed dated 10.01.2011 which was registered as document No. 158 entered in Additional Book No. I, Volume No. 3671 at pages 109 to 121 on 10.01.2011 in the office of Sub-Registrar I, Delhi by the defendant: no. 2 to 4 in favour of the defendants no. 5 to 9 being illegal, void, ineffective/inoperative and of no consequences.

(e) pass a decree for permanent and mandatory injunction in favour of the plaintiffs and against the defendants jointly and severally including against their heirs, agents, employees assignees, representatives, successors etc. thereby restraining them from dispossessing the plaintiffs from their respective front and rear portions at second & third floors of the property No. E 173, Kamla Nagar, Delhi more particularly shown in red colour in the side plan filed with the plaint."

3. In the application filed under Order VII Rule 11, CPC, praying for rejection of the plaint before the Trial Court it was contended by the 5th defendant/the second appellant herein that the suit was not properly valued for the purposes of Court fee and proper Court fee was not paid. It was further contended therein that since the plaintiff/the respondent herein had valued the suit, as is evident from the plaint, at Rs.1 Crore he was required to pay *ad valorem* Court fee on the said amount. Obviously, the plaintiff/the respondent herein resisted the prayer for rejection of the plaint and after a detailed consideration based on the rival contentions raised, the Trial Court passed order dated 01.07.2017 as under: -

> *"11. Since the suit has not been properly valued and proper court fee has not been paid, therefore the plaint deserves to be rejected in terms of Order 7 Rule 11 CPC.*
>
> *12. Accordingly, the application under Order 7 Rule 11 CPC deserves to be allowed. However time is granted to the plaintiff till next date of hearing to*

properly value the suit and make the payment of deficient court fee.

13. Put up for further proceedings on 13.07.2017."

4. Thus, obviously, even after holding that the suit deserves to be rejected, as per the order dated 01.07.2017 the suit was ordered to be put up on 13.07.2017 for further proceedings. In the meanwhile, the plaintiff/the first respondent herein moved four applications under Order VI Rule 17, CPC, which are exhibited in this appeal as Annexures P-8 to P-11, for amending the plaint. Out of the said four applications, two were disposed of based on the statement made on behalf of the plaintiff. Later, applications dated 14.08.2017 and 28.02.2019, exhibited as Annexures P-10 and P-11 in this appeal, were taken up and were rejected as per order dated 02.03.2019 (Annexure P-13 in this appeal). After dismissing those applications filed under Order VI Rule 17, read with Section 151, CPC for

amendment of the plaint as per Annexure P-12, a separate order was passed on 02.03.2019 itself rejecting the plaint by allowing the application filed by defendant No.5/the second appellant herein, under Order VII Rule 11, CPC.

5. It is feeling aggrieved by the aforementioned orders dated 01.07.2017 and 02.03.2019 that the respondent herein filed C.M. (M) No.686 of 2019 before the High Court which was disposed of as per the impugned order dated 02.12.2019. C.M. (App.) No. 20889 of 2019 is an application filed therein seeking permission to amend the plaint. A bare perusal of the impugned order would reveal that after taking note of the fact that the application filed by the petitioner therein/the respondent herein under Order VI Rule 17, CPC for amendment of the plaint, was dismissed and thereafter, the suit was rejected under Order VII Rule 11, CPC. The High Court observed that the main question

emanating for consideration in the said petition filed under Article 227 of the Constitution is whether the suit was to be valued and requisite Court fee was liable to be paid or not. The High Court then, went on to observe thus:- *"The question as to whether ad valorem Court fees required to be paid would be a question which is a mix question of fact and law, inasmuch as if the plaintiff is a party to the gift deed and sale deed, then Court fee is liable to be paid but if the Plaintiff is not a party, no Court fee would be liable to be paid." After observing thus, it was further held:- "Considering that factual evidence would be required in this matter, it is directed that the Trial Court shall frame an issue in respect of valuation of the suit, which shall be adjudicated at the final stage. The observations in the impugned order are accordingly set aside. The plaintiff is directed to amend the suit, and the suit shall proceed further.*"

6. We have referred to the orders dated 01.07.2017 and 02.03.2019 only to bring to light the nature of the issues that fell for consideration of the High Court, in exercise of the power under Article 227 of the Constitution of India and ultimately culminated in the order impugned and also the complexity of the legal conundrum involved in the case. We will consider appropriately, such issues a little later after referring to the rival contentions and referring to the relevant provisions of law.

7. The origin of the subject suit, as narrated by the appellants, is adverted to hereunder for fitness of things. The suit property i.e., House No.173, E. Block, Kamla Nagar, New Delhi (225 Sq. yards) was originally owned by Shri G.D. Mal and he, vide Will dated 18.06.1971 bequeathed the suit property in favour of his wife Pritam Devi. After the death of Shri G. D. Mal his wife Smt. Pritam Devi executed a registered gift deed dated

27.04.2010 in favour of her grandsons Shri Balraj Sharma, Shri Hemant Parashar and Shri Rahul Parashar. Though they were parties to this proceeding they were subsequently deleted from the array of parties herein, as per order dated 03.03.2021. Earlier, they executed sale deed dated 10.01.2011 in respect of suit property in favour of the appellants for a sale consideration of Rs.1 Crore. The further case is that respondent herein and Shri Ram Pal Sharma, who was originally arrayed as the second respondent and was deleted from the array of parties as per order dated 03.03.2021, are the sons of late Shri G.D. Mal and they filed a suit for declaration and permanent injunction before the Trial Court for declaring themselves as owners of the first and second floors of the suit property but the same was subsequently dismissed as withdrawn. The respondent herein and the said Ram Pal Sharma then filed the subject suit originally as C.S. (O.S.) No.809 of 2011, against the appellants

herein, seeking relief of permanent injunction/ declaration and cancellation of registered gift deed and sale deed before the High Court and valued the suit for the purposes of Court fee and jurisdiction. The appellants herein who were the defendants therein then moved an application under Order VII Rule 11, CPC for rejection of plaint on the ground of non-payment of deficient Court fee by the plaintiff in terms of the valuation of the suit made in the plaint, being, a sum of Rs.1 Crore.

8. The respondent-plaintiff and his co-plaintiff resisted the application contending that they being not parties to the sale deed/transaction are not liable to pay the Court fee for grant of relief of declaration. Later, they filed an application under Order XIII Rule 10 read with Section 151, CPC seeking permission to abandon prayers at clauses "c and d" and the same was allowed as per order dated 20.05.2015. It is at that stage that the

said suit, being C.S. (O.S.) No.809 of 2011 was transferred from the High Court and was re-numbered, as mentioned hereinbefore.

9. Now, the core contention raised by the appellants to assail the order dated 02.12.2019 passed by the High Court is that it was passed totally ignoring the legal effect and impact of the order dated 01.07.2017 passed by the Trial Court on the application of the fifth respondent/the second appellant for rejection of the plaint under Order VII Rule 11, CPC. As a matter of fact, it was allowed, though time was granted to the plaintiff to make appropriate valuation and to pay the Court fee, it was further contended. A scanning of the said order dated 01.07.2017 would reveal that after holding that the said application under Order VII Rule 11, CPC, deserves to be allowed, time was granted to the plaintiffs and it was posted to 13.07.2017 only for further proceedings. According to the appellants in the said circumstances, to

comply with the said order *ad valorem* Court fee at the valuation of the suit shown in the plaint by the plaintiffs themselves viz., Rs.1 Crore in terms of the provisions under Rule 7 (4) (c) of the Court Fees Act, 1870 ought to have been paid instead of filing applications, four in number, under Order VII Rule 17, CPC. Since two out of the four applications were disposed of pursuant to the submission made by the counsel for the plaintiffs and the other applications were also liable to be disposed of/dismissed on the same lines and that alone was done rightly by the Trial Court. Those applications were filed only to circumvent the order dated 01.07.2017, it was further contended. Dismissal of the said applications viz., Annexure P 10 dated 14.08.2017 and Annexure P 11 dated 28.02.2019 are legal and are not available to be challenged in view of the fact that as per order dated 01.07.2017 the plaint itself was virtually rejected, it was also contended. Above all, it was contended that

separate order dated 02.03.2019 was passed in respect of the application filed by the fifth defendant viz., the second appellant for rejection of the plaint, evidently taking note of the failure on the part of the plaintiffs to comply with the directions under order dated 01.07.2017 and to pay the balance Court fee. It was submitted that in terms of Section 2 (2), CPC defining the expression "decree", the said definition would take in rejection of plaint as well and, therefore, a substantive right to file an appeal against the said order of rejection of plaint is available under Section 96, CPC and when such a substantive right to file an appeal is available under Section 96, CPC, it is impermissible to avail the remedy of revision under Section 115 of the CPC. For the same reason, the right to invoke the supervisory jurisdiction of the High Court under Article 227 of the Constitution of India is also not available in such cases. It was also the contention that a careful scanning of Annexure R-14,

Memorandum of Writ Petition filed under Article 227 of the Constitution would reveal that there was no direct challenge against the separate order dated 02.03.2019 passed rejecting the plaint though the same was available to be challenged only by preferring a substantive appeal under Section 96, CPC. It was further contended that without a successful challenge against the orders dated 01.07.2017 and 02.03.2019, rejecting the plaint, the question of consideration of amendment would not arise in law. In short, the contention is that the impugned order dated 02.12.2019 passed by the High Court is unsustainable and liable to be reversed. To buttress the various contentions to assail the order dated 02.12.2019 of the High Court, learned counsel appearing for the appellants placed reliance on various decisions.

10. Resisting the contentions raised on behalf of the appellants, learned counsel for the respondent contended that the order impugned passed by the High

Court is perfectly legal and it calls for no interference in exercise of power under Article 136 of the Constitution. The contention was that as per order dated 02.03.2019, the Trial Court had first dismissed the applications for amendment of the plaint and virtually, rejected it for non-compliance with the directions issued under the earlier order dated 01.07.2017 by not paying the *ad valorem* Court fee. It was contended that a perusal of the order dated 01.07.2017 would reveal that as per the same, the Trial Court had *inter alia* allowed the respondent/plaintiff to value the suit and to pay the requisite Court fee. It was further submitted that a scanning of the order dated 01.07.2017 would show that though it was observed that the application under Order VII Rule 11, CPC deserved to be allowed it was not actually allowed and at the same time, time was granted to the plaintiff till the next date of hearing to properly value the suit property and to make payment of deficient Court fee. It was further submitted

by the learned counsel for the respondent-plaintiff that as per the impugned order, the High Court had only allowed the amendment sought for by the respondent/plaintiff and directed the Trial Court to frame an issue in respect of valuation of the suit and to adjudicate the same at the final stage. It was also the contention of the respondent that the order dated 01.07.2017, rejecting the plaint under Order VII Rule 11, CPC is not a decree within the scope of Section 2 (2) of CPC as the twin ingredients to make the order rejecting the plaint a decree is absent in the said order in view of the lack of any conclusive determination of any of the rights of the parties and more importantly, in view of absence of order rejecting the plaint. The further contention of the respondent-plaintiff is that the order dated 02.03.2019 would reveal that the application for amendment of the plaint filed under Order VI Rule 17, CPC was dismissed by the Trial Court and dismissal of

application for amendment under Order VI Rule 17, CPC, would not be a decree and therefore, appealable under the provisions of Order XLIII, CPC. In such circumstances, since no other remedy was available to the respondent, the only remedy open to him was to approach the High Court by way of the petition under Article 227 of the Constitution. In short, the respondents would contend that the impugned order of the High Court dated 02.12.2019 is legal and, therefore, the appeal is liable to be dismissed.

11. A bare perusal of the impugned order of the High Court would reveal that the sole reason assigned therein is actually founded on the law regarding the requirement or otherwise to pay *ad valorem* Court fee by a non-party to a sale deed in respect of which a declaration is sought by him. In fact, there is no conflict in view between the courts below on that question. As a matter of fact, the Trial Court took note of the position in regard to the said

question settled by this Court in the decision in ***Suhrid Singh @ Sardool Singh v. Randhir Singh***[1] that a plaintiff seeking a declaration in respect of a sale deed, to which he is not a party, need not pay *ad valorem* fee on the consideration amount mentioned in the deed and he needs to pay only the fixed Court fee. However, even after taking into account the said position of law the Trial Court held the same inapplicable in the case on hand and applied the law laid down in ***Gobind Gopal & Ors. v. Banwari Lal***[2] and in ***Bharat Sanchar Nigam Ltd. v. All India Bharat Sanchar Nigam Executives' Association (Regd.) & Ors.***[3] to hold that as the plaintiff himself (respondent herein) valued the suit at Rs. 1 Crore under Section 8 of the Suits Valuation Act, 1887 the case of the plaintiff would not fall under any of the exceptions provided under Section 7 of the Court Fees Act, 1870.

[1] (2010) 12 SCC 112
[2] AIR 1983 Del 323
[3] (2006) 130 DLT 195

The Trial Court also took note of the fact that the plaintiff (respondent herein) claimed the reliefs of both 'declaration' and 'cancellation', as can be seen from paragraph 7 of the order dated 01.07.2017 of the Trial Court. After taking such aspects into consideration and applying the law laid down in ***Gobind Gopal's*** case (supra) and ***Bharat Sanchar Nigam Ltd.'s*** case (supra) and virtually, observing that the plaintiff was obliged to value the suit for the purpose of Court fee and jurisdiction identically except for Court Fees Act, 1870 the Trial Court held thus:-

> *"10. I am therefore of the opinion that the plaintiff has not properly valued the suit for the purposes of court fees. Either the plaintiff should have valued the suit qua the relief of declaration at Rs. One Crore for the purpose of both court fees and jurisdiction (and paid ad valorem court fees) or he should have valued it at Rs. 200/- (in case he claimed a bare declaration as per the judgment of Suhrid Singh @ Sardool Singh v. Randhir Singh) and filed the suit before the Ld. Civil Judge.*

11. Since the suit has not been properly valued and proper court fee has not been paid, therefore the plaint deserves to be rejected in terms of Order 7 Rule 11 CPC.

12. Accordingly, the application under Order 7 Rule 11 CPC deserves to be allowed. However time is granted to the plaintiff till next date of hearing to properly value the suit and make the payment of deficient court fee.

13. Put up for further proceedings on 13.07.2017."

(Underline supplied)

12. We have referred to the order of the Trial Court impugned before the High Court to point out that various aspects of the matter arising from the application for amendment of the plaint in view of the order dated 01.07.2017 were considered in detail by the Trial Court and at the same time, without going into the sustainability or otherwise such conclusions and findings, the High Court as per the impugned order set them aside and permitted the respondent to amend the plaint and

directed the Trial Court to frame an issue in respect of valuation of the suit and to adjudicate it at the final stage.

13. In the wake of factual situation obtained as above it is apposite to refer to certain relevant aspects. At the outset, it is to be noted that what exactly was the amendment sought for and permitted by the High Court is not discernible from the impugned order. The petition filed by the respondent herein/the plaintiff under Article 227 of the Constitution of India is available on record as Annexure P14 and it would reveal the main prayer (prayer 'a') made by the respondent-plaintiff as under:

> *"a) call for the records of the above-mentioned CS No. 12960/2016 titled as Sh. Raj Pal Sharma & Anr. Vs. Smt. Pritam Devi & Ors. which was pending in the Ld. Court of Sh. Manish Yaduvanshi, ADJ-11, Central District, Tis Hazari Courts, Delhi and examine the impugned orders dated 01.07.2017 and 02.03.2019 and accept the present petition, and restore the suit of plaintiff/ petitioner by allowing the application under Order VI Rule 17 read with Section 151 CPC for amendment of para 33 of plaint*

qua court fee & jurisdiction and for deleting the words 'cancellation' & 'cancelling' from prayer 'A' & 'B'. Accordingly the application under Order VII Rule 11 of CPC filed by the respondent No. 5, be dismissed;"

14. Thus, obviously, the respondent herein, as petitioner, prayed before the High Court to allow the application under Order VI Rule 17 read with Section 151, CPC for amendment of para 33 of plaint qua Court fee and jurisdiction and for deleting the words 'cancellation' and 'cancelling' from prayer paras 'A' and 'B' and accordingly, to dismiss the application filed by the 5th respondent the 2nd appellant herein under Order VII Rule 11, CPC. The application dated 14.08.2017 filed by the respondent herein/the plaintiff, produced as Annexure P10, under Order VI Rule 17, CPC would reveal the amendment sought for in paragraph 33 of the plaint, as hereunder:

"33. That the value of the suit for the purpose of Court Fee and jurisdiction for the relief of declaration Rs. 200/- and for the relief of permanent and mandatory injunction is Rs. 200/- and accordingly requisite court fee is paid thereupon."

15. Evidently, in the order of the Trial Court dated 01.07.2017 and in the subsequent order dated 02.03.2019 the decisions of the High Court of Delhi in ***Gobind Gopal's*** *case (supra) and* ***Bharat Sanchar Nigam Ltd.'s*** case (supra) were relied on /referred to and going by those decisions a plaintiff is obliged to value the suit for the purposes of Court fee and jurisdiction identically except for the exceptions provided under Section 7 of the Court Fees Act, 1870. Contextually, it is profitable to refer to the decision of this Court in ***S. RM. AR. S. SP. Sathappa Chettiar v. S. RM. AR. RM Ramanathan Chettiar***[4] whereunder this Court held that the question

[4] AIR 1958 SC 245

what could be the value for the purpose of jurisdiction of a suit of this nature had to be decided by reading Section 7(iv) of the Court Fees Act along with Section 8 of the Suits Valuation Act. Paragraph 15 therein reads thus:-

> *"What would be the value for the purpose of jurisdiction in such suits is another question which often arises for decision. This question has to be decided by reading Section 7 (iv) of the Act along with Section 8 of the Suits Valuation Act. This latter section provides that, where in any suits other than those referred to in Court Fees Act Section 7, paras 5, 6 and 9 and para 10 clause (d), court fees are payable ad valorem under the Act, the value determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same. In other words, so far as suits falling under Section 7, sub-section (iv) of the Act are concerned, Section 8 of the Suits Valuation Act provides that the value as determinable for the computation of court fees and the value for the purposes of jurisdiction shall be the same. There can be little doubt that 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 and that is natural enough. The computation of court fees in suits falling under Section 7 (iv) of the 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 purposes of court fees that determines the value for jurisdiction in the suit and not vice versa. Incidentally we may point out that according to the appellant it was really not necessary in the present case to mention Rs. 15,00,000 as the valuation for the purposes of jurisdiction since on plaints filed on the Original Side of the Madras High Court prior to 1953 there was no need to make any jurisdictional valuation."

16. But then in the petition filed before the High Court under Article 227 of the Constitution of India (Annexure P14) the respondent herein, who was the petitioner therein relied on the decision of the High Court of Punjab & Haryana in ***Bawa Bir Singh v. Ali Niwan Khan***[5] to canvass the position that in a suit falling under Section 7(iv)(c) of the Court Fees Act one value is given for the purpose of Court fee and another different value for the purpose of jurisdiction, then it is the value for purpose of Court fee which has to be taken for purpose of jurisdiction and different value mentioned for purpose of jurisdiction has to be ignored.

17. As noted earlier, Annexure P10 would reveal that the amendment sought for and going by the same, the values for the purposes of Court fee and jurisdiction are the same. It is relevant to note that as per order dated 01.07.2017, the Trial Court held that the case of the

[5] AIR 1964 Punjab 381

plaintiff/the respondent herein did not fall in any of the carved out exceptions in Section 7 of the Court Fees Act, and furthermore, it would reveal that the very contention of the plaintiff before the Trial Court was that the suit was valued in terms of Section 7 (vi) (d) read with entry 17(vi) of Schedule II of the Court Fees Act as applicable to Delhi and this contention was repelled.

18. It is to be noted that despite all the aforesaid circumstances and involvement of many questions of relevance and importance, without even referring to the amendment sought before the High Court, it only held that the petitioner is permitted to amend the plaint. If what was actually prayed by this plaintiff/respondent before the Trial Court by way of amendment was the one (referred to hereinbefore) which stands granted as per the impugned order of the High Court, then a question may crop up whether the question of *ad valorem* Court fee would survive for consideration thereafter. Needless

to say, another question may also crop up for consideration whether the Court of Additional District Judge-II, Central, Tis Hazari Courts, Delhi could proceed with the suit further when once the amendment is allowed as above and whether, the suit, thereafter, be presented before the lowest court having the jurisdiction. In other words, whether the court of Additional District Judge-II, Central, Tis Hazari Courts, Delhi could proceed to frame the issues and adjudicate them, thereafter.

19. A perusal of impugned order of the High Court would reveal that none of the above and other allied questions were considered by the High Court though such aspects were gone into by the Trial Court.

20. In the circumstances, we do not think it proper to consider all the said questions in this appeal and we think that it is an eminently fit case where we should remand the matter for fresh consideration by the High

Court. Ordered accordingly. To enable the High Court to do so, the impugned order is set aside and we leave liberty to both sides to take all legally available contentions before the High Court, for a proper decision in the matter.

21. Taking into account the fact that the suit is originally of the year 2011 we request the High Court to dispose of the matter expeditiously, preferably, within a period of six months. We make it clear that we have not made may observation on merits.

22. The appeal is accordingly disposed of. There is no order as to costs.

......, J.
(C.T. Ravikumar)

......, J.
(Sudhanshu Dhulia)

New Delhi;
July 28, 2023