

**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE MILIND RAMESH PHADKE

MISC. PETITION No. 6624 of 2023

RAMCHARAN GOYAL

Versus

SMT. KAMLARANI VERMA & ORS.

Appearance:

Shri Jitendra Kumar Jain – learned counsel for the petitioner.

Shri Archit Jain – learned counsel for the respondents No.1 to

3.

Reserved on : 28.02.2025

Delivered on : 02.05.2025

ORDER

This petition under Article 227 of the Constitution is filed by the petitioner assailing the order dated 27.09.2023 passed in RCA no. 56/2021 by Second Civil Judge Senior Division District Shivpuri whereby application under Order 7 Rule 11 CPC r/w 151 CPC filed by the respondent No.1/defendant No.1 was allowed and petitioner/plaintiff was directed to pay court fees on the basis of valuation of Rs. 11,05,000/- mentioned in the agreement.

2. In brief, facts of the case are that the plaintiff had filed a suit for declaration and permanent injunction against the respondents alleging that defendant No.1 had rented out a shop situated near

State Bank of Indore to petitioner/plaintiff vide agreement dated 06.12.1997. After some time, defendants entered into an agreement to sell the disputed shop to plaintiff for a consideration of Rs. 11,05,000/- but in absence of mutation in favour of defendants, sale-deed could not be executed. Petitioner/plaintiff and respondents/defendants with their consent had executed an agreement dated 26.05.2007 in which Rs.8,55,000/- was paid to the petitioner/plaintiff and remaining amount of Rs.2,50,000/- was agreed to be paid after mutation at the time of execution of sale-deed. A case bearing civil suit No.15A/2013 was filed with regard to property dispute between the family members of the defendants wherein compromise was arrived at between them and the disputed property fell into the share of defendant No.1 but it was observed by the Court that only after registration of decree as per judgment of Hon'ble Apex Court in the case of **Bhoop Singh Vs. Ram Singh reported in ILR 1996 SC 196**, the order dated 2.03.2015 will come into effect. Against the said order, F.A. No.214/2015 was filed before this Court which is pending adjudication, according to which, defendant No.1 has not got her name mutated till date and due to which the petitioner could not get any right to get the sale deed executed as per the agreement. Since the defendants were trying to

sell the disputed shop, therefore, the plaintiff had filed a suit for declaration and permanent injunction in which the defendant No.1 had filed an application under Order 7 Rule 11 CPC wherein it was prayed that plaintiff be directed to pay court-fees on Rs. 11,05,000/-.

3. The plaintiff replied to the said application wherein it was averred that he has not filed a suit for enforcement of contract, only declaration and injunction was sought regarding not to sell the shop, therefore, it is not necessary to pay any court fees in the present matter, but the learned trial Court vide order dated 27.09.2023 allowed the application and directed the petitioner/plaintiff to pay court fees on the basis of valuation of Rs. 11,05,000/-. Hence, being aggrieved by the order dated 27.09.2023, the present petition has been filed.

4. Learned counsel for the petitioner submits that the order dated 27.09.2023 passed by the learned trial Court is liable to be quashed as it is contrary to the well established principles of law.

5. It is further submitted that the relief mentioned in the plaint is to the extent that defendants be directed not to alienate the disputed shop to any other person which as per agreement dated 26.05.2007 is in possession of the plaintiff and cognizance of such relief has not been taken while passing order of any kind of

adjudication.

6. It is further submitted that learned trial Court has accepted the suit as for specific performance of agreement and had directed the petitioner to pay court fees on it, however, the petitioner since had no right to file suit for specific performance of agreement, which had made the plaintiff to file a suit for declaration and permanent injunction, therefore, the order dated 27.03.2023 whereby direction has been issued to the plaintiff to pay court fees on the basis of valuation of Rs.11,05,000/- is unsustainable in the eyes of law.

7. On the other hand, learned counsel for the respondents No.1 to 3 submits that mere drafting of the plaint and words used in the plaint are not sufficient to decide the Court fee. The Court has to look into the relief sought for and the substance of the plaint. Allegations in the plaint including the substantive relief claimed must be the basis for settling the court-fees payable by the plaintiff. While supporting the order of the trial Court, he has also placed relied on the judgment of Full bench of this Court rendered in the case of **Subhash Chand Jain Vs. Chairman MPEB reported in AIR 2001 M.P. 88 (FB)**.

8. Heard counsel for the parties and perused the record.

9. The Full Bench of this Court in the case of **Subhash Chand Jain Vs. Chairman, MPEB and others AIR 2001 M.P. 88 (FB)**, has considered the question of valuation and court fees. Relevant paragraph No.7 of which is as under :-

“7. Settled legal position seems to be that plaint has to be read as a whole. Allegations in the plaint including the substantive relief claimed must be the basis for settling the court-fee payable by the plaintiff. Mere astuteness in drafting the plaint would not glaze the jurisdiction of court for looking at the substance of the relief asked for. The nature of suit under Section 7 (iv) is such where the Legislature could not lay down fixed standard thereby leaving it to the plaintiff to mention it. But where he attempts to under-value the plaint and the reliefs, Court has to intervene. While doing so, concept of real money value forms integral part of court enquiry where relief sought has real money value which can be objectively ascertained. Where a plaintiff has been made liable to pay specified amount and asked to pay the same and he claims to avoid it, obviously, he seeks relief to that effect and in case, he avoids payment of court-fee by drafting the plaint in such a way that results in under-valuation of the plaint and the relief, it will be a case of arbitrary and unreasonable under-valuation which Court is bound to correct.”

10. As per the law settled, the allegations in the plaint including the substantive relief claimed must be the basis for settling the Court fee payable by the plaintiff. But where the plaintiff attempts to under-value the plaint and reliefs, the Court has to intervene. In doing so, concept of real money value forms integral part of Court enquiry where relief sought has real money value, which can be objectively ascertained. In this connection, Sub-section (iv)(c) of Section 7 of the Act which relates to computation of court

fees payable in certain suits, envisages that "to obtain a declaratory decree or order, where consequential relief is prayed".

11. In the present case, petitioner-plaintiff has sought declaration for protection of possession on the basis of agreement to sell which itself is not the basis of any title. The relief for such declaration is an independent relief and connected with the relief of title, meaning thereby, the relief sought by the plaintiff on the basis of agreement automatically includes the question of title alongwith possession and for such independent relief, the petitioner will have to pay the court fee on the basis of amount of consideration mentioned in the agreement.

12. In view of above, this Court is of the opinion that the impugned order dated 27.09.2023 passed by Second Additional Civil Judge, Senior Division District Shivpuri does not suffer from material irregularity or illegality and same requires no interference by this Court.

13. Accordingly, the present petition deserves to be and is hereby **dismissed**.

(MILIND RAMESH PHADKE)
JUDGE