

Writ Petition No.10734/2012

11.4.2017.

Shri Ashok Lalwani, learned counsel for petitioner.

None for respondents.

Petitioner/plaintiff takes exception to order-dated 14.5.2012 passed in Civil Suit No.204-A/2011 whereby, trial Court has directed the plaintiff to value the relief of injunction and pay the fixed Court fees thereon as per Section 7(iv)(d) of the Court Fees Act, 1870.

The suit is for specific performance of contract and for declaration of sale deed dated 10.2.2000 executed by respondent No.3 in favour of respondent No.2 as null and void and for permanent injunction for restraining the respondents from dispossessing the petitioner from suit property.

As to the relief for specific performance, petitioner valued the suit for Rs.5,50,000/- and paid ad-valorem Court fees of Rs.36,000/-. As to declaration for the sale deed dated 10.2.2010 to be null and void, as the petitioner is not the executant and is in possession of suit property, the trial Court is justified in not calling upon the petitioner to have paid the ad-valorem Court fees in view of the decision in **Suhrid Singh vs Randhir Singh (2010) 12 SCC 112.**

As regard to direction to value the suit for the relief of injunction. Since the petitioner seeks permanent injunction along

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with the specific performance of contract and the declaration, he ought to have valued the suit for the purpose of injunction because the relief for injunction is independent of the relief of specific performance.

The question, however, is whether the plaintiff is required to pay fixed Court fee on the relief of permanent injunction, when he has already paid the *ad valorem* Court fee for specific performance of contract. Petitioner relies upon the decision in **Mulla Maqbool Husain vs Seth Chandmal 1959 MPLJ 649**, wherein in respect of the suit for specific performance of a contract to lease and also delivery of possession of certain premises belonging to defendant No.1 therein and held by the defendants No.2 and 3 as lessees; it was in this factual background which gave rise to the verdict in paragraph 10 of said judgment that "... a suit for specific performance of a contract to sell where the plaintiff seeks to force the vendor to execute the sale deed and also hand over possession of the property should be stamped under Section 7(x)(a) of the Act". On the same reasoning, a suit for specific performance of the demised premises would fall under sub-clause (c) of clause (x).

Present, however, is not the case wherein possession is sought. Rather with the decree for specific performance of contract, the plaintiff seeks declaration and permanent injunction

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that his possession over suit property be not interfered, which attracts the provisions of Section 7(iv)(d) of the Court Fees Act, 1870, as it is a relief independent to the main relief sought in the suit plaint.

In **Devaki vs Basu Singh 1971 JLJ-SN 111** wherein the plaintiff claims possession of the disputed property without claiming relief of setting aside the gift deed by which the disputed property was said to have been alienated. In these facts situation, he was held liable to pay Court fees according to Section 7(v)(b) of the Court Fees Act and not ad-valorem Court fees under Section 7(iv)(c). Thus, the facts and the law laid down in **Devaki** (supra) is of no assistance in the case at hand.

In **Subhash Chand Jain vs Chairman, M.P. Electricity Board 2000 (3) MPLJ 522**, a Full Bench of our High Court was concerned with the issue as to what form the basis for settling the court-fee payable in the case. Relying on the decisions in Sathappa Chettiar v. Ramanathan Chettiar AIR 1958 SC 245, Shamsher Singh v. Rajinder Prashad, AIR 1973 SC 2384 and Commercial Aviation and Travel Company v. Vimal Pannalal, AIR 1988 SC 1636, their Lordships were pleased to hold :

“6. The suits which are mentioned under Section 7(iv) of the Act of 1870 are of such nature where it is difficult to lay down any standard of valuation. This means that the valuation of the reliefs will have to be

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made by the plaintiff under the entry against which the suit is preferred. Provisions of Order 7 Rule 11B of the C.P.C. provides inter alia that the plaint shall be rejected where the relief claimed is under-valued and the plaintiff, on being required by the Court to correct the valuation within a time fixed by it, fails to do so. Under this provision, Court has to reach a finding of under-valuation, specify the correct valuation of the relief, determine the same and require the plaintiff to correct the same within the time fixed by the Court. Failure to do so would entail rejection of the plaint. Obviously, the Court would undertake this enquiry in the interest of revenue after realising that the valuation of plaintiff is demonstratively unreasonable and case for interference is made out. Otherwise the plaintiff is free to make his own estimation of the reliefs sought in the plaint and the valuation both for purposes of Court-fee and Jurisdiction has to be ordinarily accepted.

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

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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.”

In the case at hand, as evident from the plaint that the relief for permanent injunction does not flow from the relief for specific performance, it is to be separately valued and the Court fees under Section 7(iv)(d) of the Court Fees Act, 1870 is payable.

In view whereof, no indulgence is caused with the impugned order.

Consequently, petition fails and is **dismissed**. No costs.

(SANJAY YADAV)
JUDGE

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