

Writ Petition No. 8839/2013

6.9.2016

Shri Anoop Saxena, learned counsel for the petitioner.

None for the respondent Nos. 1 to 13.

Shri Sanjeev Kumar Singh, Panel Lawyer for respondent No. 14.

Heard.

Petitioner/plaintiff claiming right over the suit property through their common ancestor Sardar Kushwaha sought declaration of title over the suit property detailed in paragraphs 2 (a) and 2 (b) of the plaint, situated at village Ramtoriya, Patwari Halka No. 15. Revenue Circle Village Ghuwara, Tahsil Bada Malehara, District Chhatarpur and for the relief that the sale-deeds executed on 5.9.2012, 13.9.2012, 17.9.2012, 1.10.2012 and 3.1.2013 be declared null and void and the decree passed on 24.12.2002 in Civil Suit No. 49 A/99 as null and void being obtained by playing fraud and for setting aside the order of mutation. The Trial Court taking into consideration the number of plaintiffs and a finding that several causes of action have been joined (in context to the different sale deed) in the suit as permissible, under Order 2 Rule 3, Code of Civil Procedure, 1908; however, taking note of the decision of our High Court in **Rakesh Gautam and others v. State of M.P. and others** [ILR (2011) MP 2734], directed for payment of separate Court fees by each of the plaintiff.

Evidently, the case of Rakesh Gautam (supra) was a petition filed under Article 226 of the Constitution of India; wherein on a finding that respective petitioners were though joined in the single petition but were having distinct and separate cause of action and on the principles carved out from Section 17 of the Court Fees Act, 1870 to avoid inconvenience, separate Court fees by respective petitioners was ordered. The Trial Court observed:

“इस प्रकार इस न्याय दृष्टांत आई.एल.आर. 2011 एम.पी. पेज 2734 के अनुसार इस व्यवहार प्रकरण में 13 वादीगण ने भिन्न-भिन्न वाद हेतुओं के लिये मात्र 2000 रुपये स्वत्व घोषणा के लिये एवं 100 रुपये का स्थाई निषेधाज्ञा के लिये न्याय शुल्क अदा किया है। जबकि न्यायशुल्क अधिनियम की धारा 17 के अनुसार जहां एक से अधिक व्यक्ति एक ही वाद में जुड़े हों और भिन्न-भिन्न और प्रथक-प्रथक वाद हेतुओं पर सभी वादीगण अनुतोष चाह रहे हों, तब प्रत्येक वादी को अलग-अलग न्यायशुल्क अदा करना चाहिये। वादीगण ने प्रथक-प्रथक न्यायशुल्क अदा नहीं किया है। इस कारण प्रत्येक वादीगण को इस व्यवहार प्रकरण में 2000-2000 रुपये न्यायशुल्क अदा करना चाहिये, जिसे प्रत्येक वादी ने अदा नहीं किया है तथा स्थाई निषेधाज्ञा के लिये मात्र 100 रुपये का न्यायशुल्क अदा किया है, जबकि स्थाई निषेधाज्ञा की डिक्री प्राप्त करने के लिये प्रत्येक वादी को 100-100 रुपये का प्रथक-प्रथक न्यायशुल्क अदा करना चाहिये। इस प्रकार इस व्यवहार प्रकरण में प्रत्येक वादी $2000 \times 13 = 26,000$ रुपये स्वत्व घोषणा के लिये एवं $100 \times 13 = 1300$ रुपये स्थाई निषेधाज्ञा की डिक्री प्राप्त करने के लिये न्यायशुल्क अदा करना चाहिये। जबकि वादीगण ने मात्र 2000 रुपये न्यायशुल्क स्वत्व घोषणा के लिये स्थाई निषेधाज्ञा के लिये 100 रुपये न्यायशुल्क अदा किया है। ऐसी स्थिति में वादीगण

27,000–2100=25,200 रुपये की न्यायशुल्क की राशि 15 दिवस में आवश्यक रूप से अदा करें, तभी इस व्यवहार वाद को “अ” पंजी में दर्ज किया जावेगा अर्थात् वादीगण को 25,200 रुपये की न्यायशुल्क अदा करने के लिये 15 दिवस का समय प्रदान किया जाता है।”

Section 17 of Court Fees Act, 1870 envisages:

“17. Multifarious suit- (1) In any suit in which two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each, the plaint shall be chargeable with the aggregate amount of fees with which the plaints would be chargeable under this Act, if separate suits were instituted in respect of each cause of action.

Provided that nothing in this sub-section shall be deemed to effect any power conferred by or under the Code of Civil Procedure, 1908, to order separate trials.

(2) Where more reliefs than one based on the same cause of action are sought jointly in any suit, the plaint shall be chargeable with the aggregate amount of the fees with which the plaints would be chargeable under this Act if separate suits were instituted in respect of each relief.

Provided that if a relief is sought only as ancillary to the main relief the plaint shall be chargeable only in respect of the main relief.

(3) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the largest of the fees with which the plaint would be chargeable under this Act if separate suits were instituted in respect of each such relief.

(4) The provisions of this section shall apply mutatis mutandis to appeals and cross objections.

Sub-section (4) provides that that the provisions of Section 17 shall apply mutatis mutandis to appeals and cross objections. Evidently, these provisions are not applicable to a writ petition under Article 226 of the Constitution of India, but the principle has been drawn from in cases where in a writ petition several persons joined with different cause of actions. In respect of writ petition under Article 226 of the Constitution of India Court fees as is provided under Article 1 (e) (a) of Schedule II of the Act is applicable. Whereas in respect of a plaint, written statement, pleading a set off or counter claim or memorandum of appeal (not otherwise provided for in the Act) presented to any Civil or Revenue Court except those mentioned in Section 3 of 1870 Act, Entry 1-A of Schedule I to the Court Fees Act, 1870 is attracted.

Rule 1 Order 1 Code of Civil Procedure, 1908 provides that all persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist in

such persons, whether jointly, severally or alternative or where if such persons brought separate suits, any common question of law or fact would arise.

Rule 2 Order 1 CPC; however, empowers the Courts to order separate trials where it appears to the Court that any joinder of plaintiffs may embarrass or delay the trial of the suit. Rule 3 of said order lays down who may be joined as defendants. Under the Scheme of CPC and the Court Fees Act, 1870 separate set of Court Fees are made applicable in respect of the plaint, written statement, pleading a set off or counter claim or memorandum of appeal wherein it is found that two or more separate and distinct causes of action are joined and separate and distinct reliefs are sought in respect of each .

That being the parameter, the question is whether in a suit as the present one wherein the defendant claiming themselves to the owner of suit property has sold the suit property on various dates and the plaintiffs have sought the suit for declaration that the alienation in favour of the different defendants are not binding on them, they have separate cause of action against each of the alienees and each declaration would constitute distinct cause of action. In this context reference can be had of the decision in **In re. D. Lakshminarayana Chettiar and another** (AIR 1954 Madras 594); wherein their Lordships while relying decision in **Gangi v. Ramaswami** (12 Mad LJ 103 (Z.7)) wherein reliance on a decision in **Shankar Baksh v. Daya Shankar**, 15 Ind App 66 (PC) (Z8) holding

“Though the ground of title on both suits are founded in one and the same and the causes of action also arose at the same time, yet the properties comprised in the two suits are different and the persons who severally withheld the same are also different. A reference to Section 50, C. P. C. clearly shows that in every suit the plaintiff must show that the defendant is or claims to be interested in the subject matter and that he is liable to be called upon to answer the plaintiff's demand. This clearly shows that the cause of action is not an abstraction, something independent of the defendant, but that the plaintiff should disclose a cause of action against the defendant.”;

were pleased to hold:

We respectfully agree with the aforesaid observations of the learned Judge, and this passage clearly brings out the distinction between the ground of title and the cause of action. A cause of action is something more than a ground of title. It not only includes the facts necessary to support the plaintiff's title, but also the facts which entitled him to relief against a particular defendant.

It is further held:

“50. If the aforesaid principles are applied to the facts of the instant case, we have no hesitation in holding that the suit comprised distinct causes of action. The appellants'

father executed two gift deeds in favour of their mother. The mother sold them under sale deeds on various dates to defendants 1, 2, 3, 4, 5th defendant's husband and 35th defendant. Defendants 6 to 32 are alienees from the 5th defendant's husband. The plaintiffs ask for a declaration that the alienations in favour of the different defendants are not binding on them. The plaintiff has a separate cause of action against each of the alienees in respect of the property alienated in his favour. Each declaration relates to a "distinct subject" within the meaning of Section 17, Court Fees Act. The appellant should, therefore, pay court-fee in respect of each declaration and the total amount of court-fee payable by them on that basis would be Rs. 1400. Two months time granted for the payment of additional court-fee.”

The impugned order when adjudged on the anvil of above analysis cannot be faulted with.

Consequently, petition fails and is dismissed. Interim stay vacated. Let the deficit Court fees be paid within 30 days from the date of communication of this order. There shall be no costs.

(SANJAY YADAV)
JUDGE