



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Reference No. 5/2020

Devnarayan Sharma S/o Kanwari Lal, R/o Peeplu, Tehsil Peeplu,
Distt. Tonk (Raj)

-----Petitioner

Versus

1. Ramphool S/o Rodu, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
2. Heeralal S/o Rodu, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
3. Prahlad S/o Rodu, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
4. Badam D/o Rodu, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
5. Manphool D/o Rodu, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
6. Manbhar D/o Rodu, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
7. Bhanwar Lal S/o Ramlal, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
8. Chhotu S/o Ramlal, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
9. Ramkanwar D/o Ramlal, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
10. Mamta D/o Ramlal, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
11. Shravani D/o Ramlal, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
12. Shanti D/o Ramlal, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
13. Sayar D/o Ramlal, B/c Gurjar, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
14. Bhaguli W/o Late Ramlal, R/o Peeplu Present R/o Gram Arniyatiwadi, Tehsil And Distt. Tonk (Raj)
15. Rajulal S/o Chhotu, R/o Peeplu, Distt. Tonk (Raj)

-----Respondents



For Petitioner(s) : Mr. Sandeep Jain
Mr. Manoj Bhardwaj
Mr. Rahul Kamwar,
Mr. Alok Chaturvedi
Mr. Maneesh Sharma,
Mr. Lakshya Pareek
Mr. Shreyansh Sharma
Mr. Nakul Kaushik
Mr. Rajesh Chaturvedi
Mr. Pankaj Agarwal
Mr. Pankaj Kumar
Mr. Anish Bhadala
Mr. O.P. Mishra
Mr. Rohitash Kumar
Mr. Tapish Saraswat
Ms. Meeta Pareek
Mr. Prashant Sharma
Mr. Abhilesh Sharma
Mr. Vimal Kumar Jain
Mr. Gaurav Jain
Mr. Rohitash Saini
Mr. Divanshu Gupta
Mr. Rajesh Sharma
Ms. Subhi Gaur
Mr. Farooq Ahmed

For Respondent(s) : Mr. Basant Singh Chhaba, AAG with
Mr. Hardik Singh
Mr. Praveen Kumar Jain

HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MR. JUSTICE BHUWAN GOYAL

Order

RESERVED ON :: **22/02/2024**

PRONOUNCED ON :: **11/03/2024**

(Per. Pankaj Bhandari,J)

REPORTABLE

1. In view of conflicting judgments by different single benches of this Court, learned Single Judge referred the following question for authoritative pronouncement by a Larger Bench:-

‘Whether the plaintiffs would be required to pay court fee in terms of proviso to Section 6(1) of the Rajasthan Court Fee and Suits Valuation Act, 1961 only on the value of the main relief and not on the basis of aggregate value of the different reliefs?’



2. Vide order dated 16.10.2019, on request of learned counsel for the parties, the questions to be answered in the present matter, were re-framed in the following terms:-

"1. Whether the plaintiffs shall be required to pay the court fee on the aggregate value of the distinct and separate reliefs claimed in the plaint as per Section 6(1) of the Rajasthan Court Fee and Suits Valuation Act, 1961 or whether relief prayed for declaring the sale deed as null and void being only ancillary to the main relief of specific performance of the agreement to sale, the court fee would be required to be paid only on the main relief as per proviso to Section 6(1) of the said Act?

2. Whether in a suit for specific relief with the prayer for declaring the sale deed executed subsequent to the agreement to sale in favour of the plaintiff as null and void, the plaintiff would be required to pay the court fee on *ad valorem* basis on the value of the property declared in the sale deed as per Section 38 of the Rajasthan Court Fee and Suits Valuation Act, 1961?"

3. Registrar (Judicial) was directed to publish a notice for information of the Members of the Bar, who may be willing to address the Court on the aforementioned questions. In consequence of the notice, Members of the Bar have put in appearance before the Court and have also submitted their written submissions along with the supporting case laws.

4. It is contended by learned counsel, Mr. Praveen Jain, appearing for the respondents that as per the proviso to Section 6(1) of the Rajasthan Court Fee and Suits Valuation Act, 1961 (hereinafter referred to as 'the Act of 1961'), if the relief sought is ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief. It is also contended that in a suit for specific performance where the prayer is for declaring the



subsequent sale deed as null and void, the same is a declaratory relief, which is sought from the Court and it is ancillary to the main relief i.e. decree for specific performance. It is further argued that cancellation of the sale deed and declaring the sale deed as null and void are two separate reliefs. If a person is a party to the sale deed, then he has to file a suit for cancellation of the sale deed and in that case, he is required to pay *ad valorem* court fee. However, if a person is not a party to the sale deed, he can file a suit for declaring the sale deed as null and void. In that case, the main relief would be for specific performance and the relief for declaring the sale deed as null and void would be an ancillary relief and the court fee would be payable on the value of the main relief.

5. Written submissions have been filed by Mr. Manoj Bhardwaj, Advocate; Mr. T.L. Pandey, Advocate; Mr. Amit Kumar Sharma, Advocate; Ms. Meeta Pareek, Advocate; Mr. Divanshu Gupta, Advocate; Mr. Rajesh Sharma, Advocate; Ms. Shubhi Gaur, Advocate assisted by Mr. Lekhraj Dewasi and Ms. Vartika Sharma, Law Interns.

6. It is contended by Mr. Manoj Bhardwaj, Advocate that the relief for declaring the sale deed as null and void is an ancillary relief and thus, the court fee is not required to be paid for the ancillary relief as per the proviso to Section 6(1) of the Act of 1961. It is also contended that a suit for specific performance can be filed against the seller as well as subsequent purchaser as per Section 19 of the Specific Relief Act and such suit does not fall in



the category of a multifarious suit under Section 6(1) of the Act of 1961. It is further contended that once, a sale deed is registered in respect of the agreement to sell entered into prior to subsequent registered sale deed, which is sought to be declared null and void, the sale deed registered in pursuance to the earlier agreement to sell will relate back to the date of agreement as held in *Gurdial Singh & Ors. Versus Sewa Singh & Ors.*: **AIR 1973 Punjab & Haryana P. 254** and *Dina Versus Gujaba*: **AIR 1926 Nagpur 95**.

7. Mr. Amit Kumar Sharma, Advocate and Ms. Meeta Pareek, Advocate in their written submissions have placed reliance on *Suhrid Singh @ Sardool Singh Versus Randhir Singh & Ors.*: **2010 AIR (SC) 2807**.

8. *Per contra*; Mr. Divanshu Gupta, Advocate; Mr. Rajesh Sharma, Advocate and Ms. Shubhi Gaur, Advocate in their written submissions have mentioned that the plaintiff is required to pay the court fee on the aggregate value of the distinct and separate reliefs and that the relief declaring the sale deed as null and void cannot be termed as ancillary to the relief of specific performance of the agreement to sell.

9. With regard to Question No.2, learned counsels have in their written submissions mentioned that Section 38 of the Act of 1961 would apply and the plaintiff would be required to pay court fee on *ad-valorem* basis on the value of the property declared in the sale deed. It is mentioned in their written submissions that Section 24 of the Act of 1961 is a general provision, which does not



specifically contemplate cancellation of any document and it is meant for other kind of declaratory reliefs, which have nothing to do with cancellation. Learned counsel for the respondents have placed reliance on *Ratan Devi Versus Gawra Devi & Ors.*: **2015 AIR (Rajasthan) 29**; *Mahendra Singh Ranawat Versus Bhagwati Devi*: **2017 (1) DNJ 337**; *Sukh Lal & Ors. Versus Devi Lal & Ors.*: **1954 AIR (Rajasthan) 170** and *J. Vasanthi & Ors. Versus N. Ramani Kanthammal (D) Rep. By LRs & Ors.*: **2017 AIR (SC) 3813**.

10. We have considered the contentions. The Sections relevant for answering the reference are reproduced hereunder:-

11. Relevant provisions of Section 6(1) of the Act of 1961 reads as under:-

"Sec. 6. Multifarious suits- (1) In any suit in which separate and distinct reliefs are sought based on the same cause of action, the plaint shall be chargeable with a fee on the aggregate value of the reliefs:

Provided that, if a relief is sought only as ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

2....."

12. The other sections, which are relevant for answering the reference are Section 24(e), 38(1) and 40 of the Act of 1961 and Section 19 of the Specific Relief Act. The same are read as under:

"24. Suits for declaration:-

(e) in other cases, whether the subject-matter of the suit is capable of valuation or not, fee shall be computed on the amount at which the relief sought is valued in the plaint, subject to a minimum fee of twenty-five rupees."

**“38. Suits for cancellation of decrees, etc.-**

(1) In a suit for cancellation of a decree for money or other property having a money value, or other document which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest in money, movable or immovable property, fee shall be computed on the value of the subject-matter of the suit, and such value shall be deemed to be-

(a) if the whole decree or other document is sought to be cancelled the amount or value of the property for which the decree was passed or other document was executed; and

(b) if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.”

“40. Suits for specific performance.- In a suit for specific performance, whether with or without possession, fee shall be payable-

(a) in the case of a contract of sale, computed on the amount of the consideration;

(b) in the case of a contract of mortgage, computed on the amount agreed to be secured by the mortgagee;

(c) in the case of a contract of lease, computed on the aggregate amount of the fine or premium, if any, and of the average of the annual rent agreed to be paid;

(d) in the case of a contract of exchange, computed on the amount of the consideration, or as the case may be, on the market value of the property sought to be taken in exchange;

(e) in other cases, where the consideration for the promise sought to be enforced has a market value, computed on such market value or where such consideration has no market value, at the rates specified in section 45.”

Section 19 of the Specific Relief Act -

“19. Relief against parties and persons claiming under them by subsequent title.—Except as otherwise provided by this Chapter, specific performance of a contract may be enforced against—

(a) either party thereto;



(b) any other person claiming under him by a title arising subsequently to the contract, except a transferee for value who has paid his money in good faith and without notice of the original contract;

(c) any person claiming under a title which, though prior to the contract and known to the plaintiff, might have been displaced by the defendant;

¹[(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation.]

(d) when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation;

(e) when the promoters of a company have, before its incorporation, entered into a contract for the purpose of the company and such contract is warranted by the terms of the incorporation, the company:

Provided that the company has accepted the contract and communicated such acceptance to the other party to the contract."

13. The difference between a suit for declaration and cancellation has been aptly explained by the Apex Court in *Suhrid Singh @ Sardool Singh Versus Randhir Singh & Ors.* (supra). The relevant paragraphs of the said judgment read as under:-

"6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to 'A' and 'B' -- two brothers. 'A' executes a sale deed in favour of 'C'. Subsequently 'A' wants to avoid the sale. 'A' has to sue for cancellation of the deed. On the other hand, if 'B', who is not the executant of the deed, wants to avoid it, he has to sue for a





declaration that the deed executed by 'A' is invalid/void and non-est/illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If 'A', the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If 'B', who is a non-executant, is in possession and sues for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under [Article 17\(iii\) of Second Schedule of the Act](#). But if 'B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under [Section 7\(iv\)\(c\) of the Act](#). [Section 7\(iv\)\(c\)](#) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of [Section 7](#).

7. In this case, there is no prayer for cancellation of the sale deeds. The prayer is for a declaration that the deeds do not bind the "co-parceners" and for joint possession. The plaintiff in the suit was not the executant of the sale deeds. Therefore, the court fee was computable under [section 7\(iv\)\(c\)](#) of the Act. The trial court and the High Court were therefore not justified in holding that the effect of the prayer was to seek cancellation of the sale deeds or that therefore court fee had to be paid on the sale consideration mentioned in the sale deeds.

14. The crux of the above is that if the prayer is for cancellation of a sale deed, the court fee is to be paid on the value of the sale deed whereas, if it is for a declaration that the sale deed be declared as null and void qua the plaintiff, then the court fee is to be calculated on the main relief. The judgments on which reliance





has been placed by learned counsel for the respondents were cases where the relief claimed was for cancellation of the sale deed. The question, which has been framed for our consideration is not a case where there is a relief claimed for cancellation of sale deed, but the relief prayed is for declaring the sale deed as null and void.

15. In *Dilip Bastimal Jain Versus Baban Bhanudas Kamble & Ors.*: **AIR 2002 Bom 279**, it was held that in a suit for specific performance, the only requirement is to join the subsequent transferee as defendant and the ancillary relief for declaration is not required to be prayed and to affix the court fees thereon in view of Section 48 of the Transfer of Property Act.

16. Proviso to sub-section (1) of Section 6 of the Act of 1961 in unequivocal terms provides for charging of fees on the main relief only and not on ancillary relief.

17. We are of the considered view that in a suit for specific performance, the relief for declaring the subsequent sale deed as null and void is an ancillary relief, in the question itself, which has been framed, it is mentioned as an ancillary relief.

18. In view of the pronouncement of the Apex Court in *Suhrid Singh @ Sardool Singh Versus Randhir Singh & Ors.* (supra), the question, which has been framed i.e. whether relief prayed for declaring the sale deed as null and void being only ancillary to the main relief of specific performance of the agreement to sell, the court fee would be required to be paid only on the main relief as per proviso to Section 6(1) of the Act of 1961, is no longer res-



integra and since, the main relief is for specific performance and the prayer for declaring the sale deed as null and void, is an ancillary relief, the court fee would be payable only on the main relief. We, accordingly, answer Question No.1. It is made clear that when the relief claimed is an ancillary relief, the plaintiff is required to pay the court fee only on the main relief and he is not required to pay the aggregate value of the distinct and separate relief as per Section 6(1) of the Act of 1961.

19. As regards Question No.2, we are of the view that the said question has not been properly framed. As per the question, which is framed, in a suit for specific relief, the question does not specify as to what is the relief sought for in the plaint. The question, however, mentions that if the prayer for declaring the sale deed executed subsequent to the agreement to sell in favour of the plaintiff as null and void, court fee on *ad valorem* basis is payable on the value of the property declared in the sale deed as per Section 38 of the Act of 1961. Suffice to say that suit for declaring the sale deed as null and void is not a suit for cancellation of the sale deed, hence, Section 38 of the Act of 1961 will not be applicable and *ad valorem* court fees is not payable. Though the question is not happily worded but we answer it in the negative.

20. The reference is answered accordingly. Before parting with the case, we would like to appreciate the assistance provided by the Members of the Bar.

(BHUWAN GOYAL),J

(PANKAJ BHANDARI),J

SUNIL SOLANKI /PS