

IN THE HIGH COURT OF ORISSA AT CUTTACK

CMP No. 1094 OF 2022

(An application under Article 227 of the
Constitution of India)

Renubala Samantray and another

.....

Petitioners

-Versus-

Manash Ranjan Mohapatra

.....

Opp. Party

Advocates appeared:

For Petitioners : Mr. Banshidhar Baug, Advocate

For Opp. Party : Mr. Kshetrabasi Mohanty, Advocate

CORAM :
MR. JUSTICE K.R. MOHAPATRA

Heard and disposed of on 17.11.2023

JUDGMENT

K.R. Mohapatra, J.

1. This matter is taken up through hybrid mode.
2. Order dated 2nd September, 2022 (Annexure-4) passed by learned Civil Judge (Junior Division), Bhubaneswar in C.S. No.1211 of 2019 is under challenge in this CMP, whereby an application under Order VII Rule 11(b) CPC filed by the Defendants-Petitioners, has been rejected.
3. Mr. Baug, learned counsel for the Petitioners submits that the suit has been filed by the Plaintiff-Opposite Party for a declaration that the sale deed bearing ID No.1131904158 dated

21st May, 2019 executed by the Defendant No.1 in favour of Defendant No.2 is illegal and not binding on the Plaintiff. The Plaintiff also prayed for a consequential relief of permanent injunction. In Paragraph-4 of the plaint, the Plaintiff has specifically stated that Defendant No.1 being the owner of the suit property entered into an agreement with him (Plaintiff) to sale the suit land for a total consideration of Rs.2.00 crore and pursuant to that, the Plaintiff has already paid a sum of Rs.5.00 lakh. However, without respecting such registered agreement, sale deed in question has been executed in favour of Defendant No.2. Thus, the suit has been filed for the aforesaid relief. The Defendants-Petitioners, on their appearance, filed an application under Order VII Rule 11 (b) CPC stating that in a suit for declaration of a sale deed to be void, where the Plaintiff is not a party, he is free to value the suit as per his choice. But, it should not be palpably low and arbitrary. The valuation put by the Plaintiff must have some nexus with the market value of the land/subject matter at the time of institution of the suit. If the valuation put by the Plaintiff has no nexus with the market value of the property, the Court has the discretion to direct the Plaintiff to value the suit accordingly and pay the court fee. The Plaintiff having admitted in his plaint that an agreement was executed with him for Rs.2.00 crore, he should have valued the suit accordingly. But, the suit has been valued at Rs.1,000/- for the relief of declaration and Rs.100/- for the relief of injunction.

4. It is his submission that had it been a suit for declaration simpliciter, then he would have no objection to the valuation of

the suit. But, since a consequential relief of permanent injunction is sought for, the suit should have been valued as per Section 7(iv)(c) of Court Fees Act, 1870 (for short 'the Act'). He also relied upon the decision in the case of ***Sk. Majnu and another – v- Lochan Sahoo and others***, reported in 2011 SCC OnLine Ori 170, wherein at Paragraph-15, it is held as under:

“15. Also, even though provision under Section 7(iv)(c) of the Court Fees Act provides for determination of valuation of the suit by the Plaintiffs at his option but such valuation cannot be arbitrary & must have some relation with the real market value of the property at the time of institution of the suit. Referring to a number of authoritative judicial Biswal v. Budhanath Jena : 106 (2008) C.L.T. 595.

“6. On a close & composite reading of the provisions of Section 7(iv)(c) of the Court Fees Act along with the above noted case laws, one can comfortably infer that in a suit for declaration coupled with the consequential reliefs, the Plaintiffs as per the provisions of Section 7(iv)(c) of the Court Fees Act can value the suit at his option, but such valuation cannot be arbitrary & must have some relation with the real market value of the property at the time of institution of the suit.”

5. He also relied upon the decision of Hon'ble Supreme Court in the case of ***Tara Devi –v- Sri Thakur Radha Krishna Maharaj, through Sebaitis Chandeshwar Prasad and Meshwar Prasad and another***, reported in (1987) 4 SCC 69, wherein it is held as under:

“4. The instant special leave petition has been filed against the said order. We have heard the learned Counsel and in our considered opinion we do not find any merit in the arguments made on behalf of the petitioner. It is now well-settled by the decisions in this Court in Sathappa Chettiar v. Ramanathan Chettiar (supra) and Meenakshisundaram Chettiar v.

*Venkatachalam Chettiar (supra) that in a suit for declaration with consequential relief falling under Section 7(iv)(c) of the Court Fees Act, 1870, the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same. The plaintiff has valued the lease hold interest on the basis of the rent. Such a valuation, as has been rightly held by the Courts below, is reasonable and the same is not demonstratively arbitrary nor there has been any deliberate underestimation of the reliefs. We, therefore, do **not** find any reason to grant special leave to appeal asked for in the petition as the order passed in the said Revision is unexceptional. The special leave petition is therefore dismissed. There wilt however be no order as to costs.”*

6. It is also submitted that in the case of ***Dahiben –v- Arvindhbai Kalyanji Bhanusali (Gajra) (dead) through Lrs. and others***, reported in (2020) 7 SCC 366, the Hon’ble Supreme Court has held that the provision under Order VII Rule 11 CPC is mandatory in nature. If the ingredients are satisfied, the Court has no other option than to reject the same. It is further submitted that learned trial Court has erroneously referred to the provision of Article 17 (iii) of the second schedule of the Act, which does not relate to suit for declaration and consequential relief. He, therefore, submits that the impugned order under Annexure-4 is not sustainable and is liable to be set aside. Learned trial Court should be directed to consider the petition

under Order VII Rule 11 (b) CPC afresh taking note of the aforesaid provision as well as position of law.

7. Mr. Mohanty, learned counsel for the Opposite Party vehemently objects to the same and submits that the Plaintiff is not a party to the sale deed. Hence, he is free to value the suit as per his choice. Paragraph-4 of the plaint relates to the registered agreement between the Plaintiff and Defendant No.1, which is not challenged in the suit. Hence, the consideration money put in the agreement cannot be the basis to value the suit. It is his submission that in the case of **Suhrid Singh @ Sardool Singh-v-Randhir Singh and Ors**, reported in AIR 2010 SC 2807, wherein it is held as under:

"5. Court-fee in the State of Punjab is governed by the Court-fees Act, 1870 as amended in Punjab ('Act' for short). Section 6 requires that no document of the kind specified as chargeable in the First and Second Schedules to the Act shall be filed in any court, unless the fee indicated therein is paid. Entry 17(iii) of Second Schedule requires payment of a court-fee of Rs.19.50 on plaints in suits to obtain a declaratory decree where no consequential relief is prayed for. But where the suit is for a declaration and consequential relief of possession and injunction, court-fee thereon is governed by section 7(iv)(c) of the Act which provides :

"7. Computation of fees payable in certain suits:- The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows :

(iv) in suits - x x x x (c) for a declaratory decree and consequential relief.- To obtain a declaratory decree or order, where consequential relief is prayed, x x x x x according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought :

Provided that minimum court-fee in each shall be thirteen rupees :

Provided further that in suits coming under sub-clause (c), in cases where the relief sought 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 this section."

The second proviso to section 7(iv) of the Act will apply in this case and the valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of the said section.

Clause (v) provides that where the relief is in regard to agricultural lands, court-fee should be reckoned with reference to the revenue payable under clauses (a) to (d) thereof; and where the relief is in regard to the houses, court-fee shall be on the market value of the houses, under clause (e) thereof."

8. Relying upon the said case law, this Court in the case of ***Rinarani Biswal –v- Pradeep Chauhan and another***, reported in 2017 (II) CLR 422, held as under:-

"7. In Tara Devi v. Sri. Thakur Radha Krishna Maharaj through Sebaitis Chandeshwar Prasad and Meshwar Prasad, AIR 1987 SC 2085, the apex Court held that in a suit for declaration with consequential relief falling under Sec.7(iv)(c) of the Court-fees Act, 1870, the plaintiff is free to make his own estimation of the reliefs sought in the plaint and such valuation both for the purposes of court-fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same.

8. In view of the authoritative pronouncement of the decisions cited supra, the inescapable conclusion is that when a non-executant is in possession and seeks a declaration that deed is null and void and is not binding on him, he has to pay the court fee under Sec.7(iv)(c) of the Court Fees Act. The plaintiff is free to make his own estimation of the reliefs sought in the

plaint and such valuation both for the purposes of court-fee and jurisdiction has to be ordinarily accepted. It is only in cases where it appears to the Court on a consideration of the facts and circumstances of the case that the valuation is arbitrary, unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same.”

9. He also relied upon the case of **Aruna Kumar Acharya – v- Nagendra Kumari Dwibedy and others**, reported in 2009 (I) OLR 188, wherein it is held that the Plaintiff is free to make his own estimation of the relief sought in the plaint and such valuation both for the purposes of Court-fee and jurisdiction has to be ordinarily accepted. It is held therein that in case, it appears to the Court that the valuation is arbitrary or unreasonable and the plaint has been demonstratively undervalued, the Court can examine the valuation and can revise the same. In the case at hand, learned trial Court has never opined that the suit is demonstratively undervalued. In that view of the matter, the impugned order should not be interfered with. The valuation of the suit can be adjudicated at the time of final adjudication of the suit by framing an issue to that effect. Hence, he prays for dismissal of the CMP.

10. Considering the submissions made by learned counsel for the parties and on perusal of the record, it appears that the Plaintiff himself stated at Paragraph-4 of the plaint that an agreement was executed between him and Defendant No.1 for alienation of the property at Rs.2.00 crore. Thus, it *prima facie* appears that the Plaintiff has admitted the market value of the

property to be Rs.2.00 crore. But, surprisingly, the suit has been valued at Rs.1000/- only for the relief of declaration and Rs.100/- for the relief of injunction.

11. No doubt, in view of the authoritative pronouncement of the Hon'ble Supreme Court and this Court, the Plaintiff is at liberty to value the suit as per his choice for the purpose of court fee and jurisdiction when he seeks for declaratory relief in respect of the sale deed, in which he is not a party. But, it must have some nexus or relation with the market value of the property or subject matter in dispute at the time of institution of the suit. It should not be demonstratively low or arbitrary. When a consequential relief is sought for along with declaration, the provision under Section 7(iv)(c) of the Act is applicable for the purpose of valuation and payment of court fee. It appears that learned trial Court has not taken the same into consideration while adjudicating the matter. Learned trial Court has referred to Article 17 (iii) of second schedule of the Act, which may not be applicable to the instant case. These material aspects were required to be considered by learned trial Court while adjudicating the matter, more particularly when, the same was raised in the petition filed by the Defendants under Order VII Rule 11(b) CPC. But, the impugned order is silent about these material aspects.

12. Thus, the impugned order under Annexure-4 is not sustainable in the eye of law and is accordingly, set aside. The matter is remitted to learned trial Court for fresh adjudication of the petition filed by the Defendants-Petitioners under Order VII

Rule 11(b) CPC giving opportunity of hearing to the parties concerned. Since the suit is of the year, 2009, the said application shall be adjudicated at the earliest.

13. With the aforesaid observation and direction, the CMP is accordingly disposed of.

Urgent certified copy of this judgment be granted on proper application.

(K.R. Mohapatra)
Judge

*Orissa High Court, Cuttack,
Dated 17th November, 2023/Madhu*

