

Before Mr. Justice Tudball.

1916
February, 12.

NIHAL SINGH AND ANOTHER (PLAINTIFFS) v. SEWA RAM AND OTHERS
(DEFENDANTS)*

*Act No. VII of 1870 (Court Fees Act), section 7, clauses v and w—Court fee—
Suit for specific performance of contract to sell and for possession.*

The plaintiffs alleged that the defendants Nos. 2 and 3, having contracted to sell certain property to them and received part of the price, thereafter sold the same property to defendant No. 1, who had notice of the agreement with the plaintiffs, and they asked (1) that the defendants 2 and 3 might be compelled to complete the sale to the plaintiffs and (2) for possession of the property. *Held* that the suit was really one for specific performance of a contract and the court fee thereon was assessable under section 7, clause x, of the Court Fees Act, 1870. *Muht-ud-din Ahmad Khan v. Majlis Rai* (1) referred to.

THIS was a reference by the Taxing officer of the Court under section 5 of the Court Fees Act, 1870.

The facts of the case appear from the following orders.

Stamp Officer's report:—

"This appeal arises out of the following circumstances.—Defendant No. 2 owned a certain share out of zamindari property in mauza Barauli, pargana and district Mainpuri. He collusively executed a sale-deed in favour of his wife defendant No. 3. Defendants Nos. 2 and 3 entered into a contract with the plaintiffs to sell the aforesaid property, and for the completion thereof took Rs. 100 from plaintiff No. 2 and, having purchased a stamp paper, executed a sale-deed on the 9th of February, 1910. But as a sale-deed had been obtained by defendant No. 1, of which the plaintiffs came to know afterwards, the defendant No. 2 neither signed nor made his wife, defendant No. 3, sign the sale-deed. The plaintiff No. 2 sent a notice to defendant No. 2 on the 24th of May, 1910, asking him to complete the sale-deed within 15 days. Defendant No. 1 who had full knowledge of the said contract induced defendant 2 and obtained from him a sale-deed on the 8th of June, 1910. Although the plaintiffs tried their best to stop the completion and registration of the sale-deed yet the sale-deed was eventually executed by defendant No. 2 in favour of defendant No. 1 in order to cause loss to the plaintiffs in spite of the knowledge and information of the aforesaid contract between the plaintiffs and defendants Nos. 2 and 3.

* Stamp Reference in Second Appeal, No. 1266 of 1914.

On the facts briefly stated above the plaintiffs asked for the following relief :—

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“After completion of a sale-deed by defendants 2 and 3 possession over the property in suit be awarded to the plaintiffs as against the defendants and Rs. 2,800, out of Rs. 2,900, the amount of consideration which is still in the plaintiffs’ possession, be awarded to the right person, Rs. 100 having been paid already.

“The suit was valued for purposes of jurisdiction at Rs. 2,900, and for payment of court fee at Rs. 350, five times the Government revenue, and a court fee of Rs. 26-4 was paid on the latter valuation.

“The plaintiffs’ suit having been dismissed by both the courts below, they have come up to this Court in second appeal putting the same valuation and paying the same court fee as in the courts below.

“It appears to me that this suit embraces two reliefs, one for specific performance of the contract of sale governed by section 7, clause x (a), of the Court Fees Act, and the other for possession of the property governed by section 7, clause x (b), of the Act and if the above view is correct, separate court fee must be paid on both the reliefs on the authority of the ruling in I. L. R., 18 Mad., 415. This being so a court fee of Rs. 170 is payable on the relief for specific performance of the contract of sale on the amount of sale consideration, i.e., Rs. 2,900, and a court fee of Rs. 26-4, is payable in respect of the relief for possession of the property on Rs. 350, five times the Government revenue. In all a court fee of Rs. 196-4-0 is payable on the plaint. A court fee of Rs. 26-4, having been paid, there is therefore a deficiency of Rs. 170 on the plaint, and the same amount is due in the lower appellate court and this Court.

“Total deficiency due from the plaintiffs appellants for all the three courts is Rs. 510.”

On this the appellant’s vakil recorded the following objection :—

“I do not accept the report of the Stamp Reporter. The court fee has been rightly paid. See 14 C. L. J., 159. The case in 18 Mad., has no application. The suit is in substance one for possession.”

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Taxing officer's report :—

“ The plaintiffs appellants in the court of first instance sought to compel the defendants Nos. 2 and 3 to complete a sale-deed with them and thereafter they sought to be put in possession of the property in suit on payment of the sum of Rs. 2,800 after deducting Rs. 100 already paid. The suit was valued for purposes of jurisdiction at Rs. 2,900, and for payment of court fee at Rs. 350, being five times the Government revenue, and a court fee of Rs. 26-4 was paid on the latter valuation.

“ The plaintiffs' suit having been dismissed both by the court of first instance and by the lower appellate court, they have come up to this Court in second appeal asking that the decree of the lower courts be set aside and their suit decreed. They have put the same valuation on the appeal and are paying the same court fee as in the two courts below.

“ It is quite clear from a perusal of the plaint in the court of first instance that the plaintiffs desire (a) specific performance of the contract of sale, viz., the completion of a certain sale-deed and (b) possession of the property in suit.

“ The proper court fee on (a) according to section 7, clause x (a) of the Court Fees Act is an *ad valorem* court-fee on the amount of the consideration, the court fee on (b) is governed by section 7, clause v (b), and is payable on five times the Government revenue.

“ It would appear quite clear that this suit embraces these two reliefs, and separate court fees must be paid on both. The stamp reporter quotes a ruling in *Krishnasami v. Sundarappayyar* (1).

“ This is not of great help as the case cited only shows that in a somewhat similar case the vendee sued (1) for the specific performance of the contract of sale and (2) for possession. On the other hand the learned counsel for the appellants who disputes the stamp reporter's report refers to a ruling in *Madan Mohan Singh v. Gaja Prasad Singh*, (2) where the Calcutta High Court has held that where the plaintiff not only seeks for specific performance of a contract of sale but also asks that the defendant may be compelled to execute a conveyance and to deliver possession

(1) (1894) I. L. R., 18 Mad., 415. (2) (1911) 14 C. L. J., 159.

of the property to him, the suit is in substance one for possession of the property and should be valued under section 7, clause v, of the Court Fees Act, according to the value of the subject-matter.

"This Court has not published any ruling on the subject and I am in some doubt as to whether this Court will follow the ruling of the Calcutta High Court. As Taxing Officer I am of opinion that two separate court fees are payable on the claim for specific performance of the contract of sale as well as on the claim to be put in possession of the property in dispute.

"If the Court holds this view to be correct there is a total deficiency due from the plaintiffs appellants for all the three courts of Rs. 510.

"The learned counsel will have an opportunity of arguing his case before the Bench hearing the appeal. Lay before that Bench for orders."

The matter was then laid before the Taxing Judge.

The Hon'ble Dr. *Tej Bahadur Sapru* and Pandit *Kailas Nath Katju*, for the appellants.

Mr. *A. E. Ryves*, for the Crown.

TUDBALL, J.—This matter comes up before me on the report of the stamp officer. The facts are simple. The plaintiffs brought a suit on the following allegations :—Defendants Nos. 2 and 3 contracted to sell to them certain zamindari property for the sum of Rs. 2,000. Of this sum Rs. 100 was paid as earnest money. The defendants 2 and 3, however, failed to carry out their contract, but instead, they executed a sale-deed in favour of defendant No. 1. The defendant No. 1 had full knowledge of the contract between plaintiffs and the defendants 2 and 3. The plaintiffs, therefore, ask for specific performance of the contract including possession of the property. The court fee paid in the courts below was that calculated under section 7, clause v, of the Court Fees Act, i.e., as in a suit for possession of land. A second appeal having been preferred by the plaintiffs in this Court, the stamp officer is of opinion that the plaintiffs should pay court fees not only under section 7, clause v, but also under section 7, clause x. This is contested by the plaintiffs appellants. As stated by a Bench of this Court in *Muhi-ud-din Ahmad Khan v. Majlis Rai* (1), the

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(1) (1884) L. L. R., 6 All., 281.

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suit is in substance one for specific performance of a contract and falls *prima facie* under section 7, clause x, of the Court Fees Act. I have no hesitation in accepting this as the true solution of the case, for one simple reason, viz., when a vendor contracts to sell, he contracts, as laid down in section 55 of the Transfer of Property Act, to execute a proper conveyance of the property to the buyer, and tender it to him for execution at a proper time and place on payment of the amount due in respect of the price. He also contracts to give to the buyer or such person as he directs such possession of the property as its nature admits. The plaintiffs in the present case are clearly seeking to enforce the contract of sale and they also seek to force the vendor to do that which he is bound to do under that contract, i.e., to execute and register a sale-deed and to hand over possession of the property. The subsequent transferee is also made a party under the terms of section 27 of the Specific Relief Act and the two reliefs can be enforced as against him by the plaintiffs. The suit, in my opinion, is in substance and in form a suit for specific performance of a contract, and the court fees must be paid in accordance with clause x of section 7 of the Court Fees Act.

In the present case the court fees calculated under that section amount to Rs. 170. The court fee already paid is Rs. 26-4. The memorandum of appeal in this Court is therefore deficient by the difference between the two sums. There is also an equal deficiency due from the same plaintiffs for each of the courts below. They will therefore have to make good the deficiency for all three courts. I allow six weeks within which to make good the deficiency for all the courts.